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W.P.No.42494 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.42494 of 2016

and

W.M.P.Nos.36388 & 36389 of 2016

The Management of Metropolitan
Transport Corporation (Chennai) Ltd.,
Pallavan Illam, Anna Salai, Chennai-600002.

... Petitioner

Vs.

1.The Special Deputy Commissioner of Labour
(Under Sec.33 (2) (B) of the
Industrial Disputes Act, 1947), Chennai.

2.Mr.T.Suresh

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the order passed by the first respondent in Approval Petition in A.P.No.34 of 2012 dated 09.01.2015 and quash the same as illegal

For Petitioner : Mr.R.Ramanlal, AAG, Assisted by
Mr.C.Gauthamaraj

For Respondents : Mr.P.Kumaresan, AAG, Assisted by
Mr.S.John J.Raja Singh [R.1]
: No appearance [R.2]



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ORDER

The order dated 09.01.2015 passed in A.P.No.34 of 2012 is under challenge in the present writ petition.

2. The petitioner is Metropolitan Transport Corporation (Chennai) Limited. The second respondent workman was a driver, who committed the misconduct of unauthorised absence for several days. Disciplinary proceedings were initiated and a charge memo was issued, a domestic inquiry was conducted and finally, the punishment of removal from service was imposed vide order dated 23.01.2012.

3. The writ petitioner filed an Approval Petition in A.P.No.34 of 2012, under Section 33(2)(B) of the Industrial Disputes Act. The 1st respondent framed issues based on the judgement of the Hon'ble Supreme Court in the case of *Lalla Ram*.

4. The learned Additional Advocate General mainly contended that the findings of the first respondent in the order impugned is perverse since the first respondent authority held that the Principles of Natural Justice had



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not been followed. However, he has not verified the procedures followed by the writ petitioner Corporation while conducting the disciplinary proceedings. In the absence of examining the records regarding the procedure followed, the first respondent authority ought not to have arrived at a conclusion and the Rules of Natural Justice had not been followed.

5. In this regard, the learned Additional Advocate General relied upon the judgement the Hon'ble Supreme Court of India, in the case of ***John D'Souza vs. Karnataka State Road Transport Corporation*** reported in **2019 (18) ACC 47** held as follows-

31. A Division Bench of this Court in *Cholan Roadways Ltd. v. G. Thirugnanasambandam*, also went into the issue of jurisdiction exercisable under Section 33(2)(b) of the Act and relying upon *Martin Burn Ltd.*, it has opined as follows: (*Cholan Roadways Ltd. case*, SCC p. 248, para 18)

“18. The jurisdiction of the Tribunal while considering an application for grant of approval has succinctly been stated by this Court in *Martin Burn Ltd. v. R.N. Bangerjee*. While exercising jurisdiction under Section 33(2)(b) of the Act, the Industrial Tribunal is required to see as to whether a *prima facie* case has been made out as regards the validity or otherwise to the domestic enquiry held against the delinquent, keeping in view the fact that if the permission or



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approval is granted, the order of discharge or dismissal which may be passed against the delinquent employee would be liable to be challenged in an appropriate proceeding before the Industrial Tribunal in terms of the provision of the Industrial Disputes Act."

The Court then observed that: (*Cholan Roadways Ltd. SCC 249, paras 19-20*)

"19. It is further trite that the standard of proof required in a domestic enquiry vis-à-vis a criminal trial is absolutely different. Whereas in the former, "preponderance of probability" would suffice; in the latter, "proof beyond all reasonable doubt" is imperative.

20. The Tribunal while exercising its jurisdiction under Section 33(2)(b) of the Industrial Disputes Act was required to bear in mind the aforementioned legal principles. Furthermore, in a case of this nature the probative value of the evidence showing the extensive damages caused to the entire left side of the bus; the fact that the bus first hit the branches of a tamarind tree and then stopped at a distance of 81 ft therefrom even after colliding with another bus coming from the front deserved serious consideration at the hands of the Tribunal. The nature of impact clearly demonstrates that the vehicle was being driven rashly or negligently."

...

34. If the awards/orders of the Labour Court or the judgments passed by learned Single Judge(s) and the Division



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Benches of the High Court are evaluated on these principles, it appears to us that all of them went partly wrong and their respective orders suffer from one or the other legal infirmity. While the Labour Court and the learned Single Judge(s) have erroneously presumed that no enquiry can be held under Section 33(2)(b) without asking the parties to lead their evidence, the learned Division Benches of the High Court have proceeded on the premise that in a prima facie fact-finding enquiry under Section 33(2)(b) no evidence can be adduced or considered by the Labour Court except what is on the record of domestic enquiry. Both the views do not go hand in hand with the law laid down by this Court in *Punjab National Bank*, *Mysore Steel Works (P) Ltd.* and *Lalla Ram* 15 cases. The Division Bench of the High Court solely depended upon *Martin Burn Ltd.* and *Cholan Roadways Ltd.* to hold that the scope of enquiry under Section 33(2)(b) being limited to see that prima facie the enquiry is just and proper, the Labour Court is precluded from asking the parties to lead any other evidence. Such a view is not in conformity with the exposition of law in *Punjab National Bank*, *Mysore Steel Works (P) Ltd.* and *Lalla Ram* cases, cited above. The Labour Court did not exceed its jurisdiction in permitting the parties to adduce the evidence before it though it erred in relying upon the same without holding that the enquiry was defective or the punitive action was vitiated for want of bona fides. The finding on Issue that the domestic enquiry was held in a proper and fair manner also acquires significance here. Still further, the scope and object of Section 33(2)(b) cannot be expanded to an extent that the very scheme of adjudication of an "industrial dispute"



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under Sections 10(1)(c) and (d) read with Section 11-A of the Act becomes superfluous.

6. A perusal of the order impugned reveals that one month salary was also not calculated correctly. The correctness ought not to be verified through records. Certain technical mistakes can be condoned, so also meager administrative delay in filing an Approval Petition also needs to be condoned. Equally, an enormous delay in filing an Approval Application cannot be condoned by the competent authorities. Therefore, the principles in this regard are to be followed with reference to the facts and circumstances of the case, which all are to be established by examining the files. Contrarily the first respondent, while exercising the statutory power, ought not have formed an opinion even without verifying the original records, then the principles of natural justice had not been followed. Thus, the findings in this regard are perverse and therefore, the matter is to be remanded back.

7. Accordingly, the order dated 09.01.2015 passed in A.P.No.34 of 2012 is quashed and the matter is remanded back for fresh consideration.

The first respondent is directed to call for the entire records from the writ petitioner Management, examine the same, adjudicate the issues by



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affording opportunity to all the parties, and thereafter pass speaking orders on merits and in accordance with law as expeditiously as possible.

8. With these directions, the writ petition stands **allowed**. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

11.11.2022
($\frac{1}{2}$)

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Internet : Yes

Index : Yes

Speaking order

To

- 1.The Management of Metropolitan Transport Corporation (Chennai) Ltd.
Pallavan Illam, Anna Salai, Chennai 2.
- 2.The Special Deputy Commissioner of Labour Authority Under Sec.33 (2) (b) of the Industrial Disputes Act, 1947, Chennai.

S.M.SUBRAMANIAM, J.



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