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WP No.7150 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11-11-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.7150 of 2016

And

WMP No.6353 of 2016

The Management of Metropolitan
Transport Corporation (Chennai) Ltd.,
Pallavan Illam,
Anna Salai,
Chennai – 600 002.

..

Petitioner

vs.

1.The Special Deputy Commissioner of Labour,
Authority under Section 33(2)(b) of the
Industrial Disputes Act, 1947,
Chennai.

2.G.Govardhan

..

Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the order passed by the first respondent in Approval Petition in A.P.No.406/2011 dated 25.10.2013 and to quash the same as illegal.



WP No.7150 of 2016

For Petitioner

: Mr.R.Ramanlal,
Additional Advocate General
assisted by Mr.C.Gauthama Raj.

For Respondent-1

: Mr.P.Kumaresan,
Additional Advocate General
Assisted by Mr.S.John J.Raja Singh,
Additional Government Pleader.

For Respondent-2

: Not Ready in Notice.

ORDER

The order passed by the first respondent in Approval Petition in A.P.No.406 of 2011 dated 25.10.2013, is under challenge in the present writ petition.

2. The petitioner is the Metropolitan Transport Corporation (Chennai) Limited.

3. The petitioner states that the second respondent-workman was a driver and did not report for duty regularly and remained unauthorisedly absent from 28.11.2008 onwards. Departmental disciplinary



WP No.7150 of 2016

proceedings were initiated against the second respondent-workman, charge memo was issued and departmental enquiry was conducted. The second respondent-workman was imposed with the punishment of removal from service.

4. The provisional conclusion to impose the penalty of removal from service was confirmed by the Competent Authority and the second respondent-workman was removed from service vide order dated 27.12.2010. Thereafter, an Approval Petition was filed in A.P.No.406 of 2011 under Section 33(2)(b) of the Industrial Disputes Act, 1947.

5. The Competent Authority-first respondent adjudicated the issues with reference to the principles laid down by the Hon'ble Supreme Court of India in the case of **Lalla Ram vs. DCM Chemical Works Ltd [(1978) 3 SCC 1]**. Accordingly, the first respondent formulated five issues in accordance with the judgment of the Supreme Court, cited supra and, in respect of the first issue, made a finding that the domestic enquiry was conducted in compliance with the rules of natural justice.



WP No.7150 of 2016

WEB COPY

6. Regarding the second issue, the first respondent found that the finding of the Enquiry Officer is without having any acceptable evidence and the charges were not held proved based on the evidence. Regarding the third issue, the first respondent held that there was no victimisation or otherwise. As far as the fourth issue is concerned, the one month salary was also paid to the workman. Regarding the fifth issue, the findings of the first respondent is that there was a delay of one month in filing the Approval Petition before the Competent Authority-first respondent. Regarding the delay of one month in filing an Approval Petition, the same shall be condoned.

7. As far as the second issue is concerned, this Court is of an opinion that the prima facie case against the workman acceptable or not is to be decided based on the documents and the evidences available on record. If the first respondent could not form an opinion in this regard, then he is empowered to call for the records from the petitioner-Corporation and verify the materials available on records, so as to arrive a conclusion



WP No.7150 of 2016

WEB COURT

whether there is any prima facie materials available or not for the purpose of initiation of departmental disciplinary proceedings.

8. Contrarily, based on the findings of the Enquiry Officer and without examining all the relevant records, the first respondent ought not to have formed a final opinion. Practically it may not be possible to form a final opinion without examining the connected records. In such circumstances, wherever a doubt arises in the mind of the Competent Authority, then he is empowered to call for the records from the employer concerned examine or scrutinise the same and thereafter form a final opinion regarding the justifiability or prima facie case for the purpose of initiation of departmental disciplinary proceedings.

9. Practical and pragmatic approach is required on the part of the Competent Authority, while adjudicating such issues. Mechanical approach would result in miscarriage of justice. It is not as if the Competent Authority can merely verify the findings of the Enquiry Officer in his report and form a final opinion with reference to the prima facie case for the



WP No.7150 of 2016

purpose of initiation of departmental disciplinary proceedings. Prima facie materials may be available in the files and therefore, the Authorities are bound to call for the records from the employer concerned scrutinise such records and thereafter arrive a conclusion, whether materials are available on record for initiation of disciplinary proceedings against the workman.

10. The objectivity of the principles laid down in Lallaram's case, cited supra, is not to decide the questions in an arithmetical manner. Application of mind is certainly imminent and warranted, while adjudicating the issues. No doubt the Supreme Court laid down the principles and the questions to be verified at the time of adjudication. While exercising the power of adjudication, an application of mind for the purpose of verification of records is certainly warranted and therefore, it is not as if the Authorities Competent shall verify the records placed before him and form a final opinion, which will result in miscarriage of justice and may cause prejudice to either of the parties that is the workman or the employer.

11. In the present case, the Authority Competent examined the



findings of the Enquiry Officer and formed an opinion that there is no prima facie case, however, no reasons are given to form such a final opinion. In such circumstances, where the Authority Competent forms an opinion that there is no prima facie case established against the workman for initiation of departmental disciplinary proceedings, then there must be a clear finding on that. Mere perusal of records would be insufficient. Recording of findings or materials, which alone would throw light on the issues.

12. The first respondent, being the Original Authority, dealing with the Approval Petition under Section 33(2)(b) of the Industrial Disputes Act, 1947, is expected to give clear findings on the facts and circumstances and mechanical way of answering the five questions in an Approval Petition is to be avoided at all circumstances. It is the statutory power conferred on the Authority. While exercising the statutory power, application of mind is certainly warranted and mere findings in the form of final decision would not provide any clarity on the findings and more-so in the absence of reasons recorded in the order, the Court cannot form an opinion, whether it was decided based on the records available or not.



WP No.7150 of 2016

WEB COPY

13. It is the common principle that any statutory order passed by the Competent Authority must be a speaking order. A speaking order does not mean the extraction of facts or otherwise. Independent application of mind and findings with reference to the documents placed by the respective parties are of paramount importance and such findings alone will be a deciding factor for the purpose of forming final opinion. Therefore, whenever an Approval Petition is filed under Section 33(2)(b) of the Industrial Disputes Act, 1947, the Authorities are bound to not only consider the documents, but also give reasonings for the conclusion.

14. In the present case, the reasons are not given by examining all the relevant records. More-so for the purpose of forming an opinion whether a prima facie case has been established for initiation of departmental disciplinary proceedings or not. As far as the delay in filing an Approval Petition is concerned, the delay is very meagre and the same is to be condoned and on such technical ground, the misconducts cannot be condoned or the persons, who committed such misconducts can be



WP No.7150 of 2016

exonerated. Certain procedural, defects not affecting the merits of the case cannot stand in the way of deciding the issues on merits. Therefore, only certain violations, which all are vital are to be taken as a ground for quashing the entire proceedings and in respect of certain minor procedural violations, which caused no prejudice to an employee, who is committing misconduct cannot be allowed to escape from the clutches of departmental disciplinary proceedings. If such minor discrepancies or violations are taken into consideration for quashing the entire proceedings, then the very objectivity of the departmental disciplinary proceedings will be defeated.

15. Therefore, this Court is of the considered opinion that the practical and pragmatic approach is required, so as to ensure that free and fair opportunities and procedures are followed and the workman also be afforded with a fair opportunity of defending his case by availing the opportunities provided to him.

16. In the present case, the first respondent has made a finding regarding the prima facie case without examining all the relevant records.



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17. The Supreme Court of India in the case of **John D'Souza vs. Karnataka State Road Transport Corporation [(2019) 18 SCC 47]**, wherein in paragraphs-31 and 34, it has been held as follows:-

“31. A Division Bench of this Court in Cholan Roadways Ltd. vs. G. Thirugnanasambandam [Cholan Roadways Ltd. vs. G. Thirugnanasambandam, (2005) 3 SCC 241 : 2005 SCC (L&S) 395], also went into the issue of jurisdiction exercisable under Section 33(2)(b) of the Act and relying upon Martin Burn Ltd. [Martin Burn Ltd. vs. R.N. Bangerjee, 1958 SCR 514 : AIR 1958 SC 79], it has opined as follows : (Cholan Roadways Ltd. Case [Cholan Roadways Ltd. vs. G. Thirugnanasambandam, (2005) 3 SCC 241 : 2005 SCC (L&S) 395] , 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. vs. R.N. Bangerjee [Martin Burn Ltd. vs. R.N. Bangerjee, 1958 SCR 514 : AIR 1958 SC 79]. While exercising jurisdiction under Section 33(2)(b)



WP No.7150 of 2016

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 of the domestic enquiry held against the delinquent, keeping in view the fact that if the permission or 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.”

(emphasis supplied)

The Court then observed that : (Cholan Roadways Ltd. Case [Cholan Roadways Ltd. vs. G. Thirugnanasambandam, (2005) 3 SCC 241 : 2005 SCC (L&S) 395] , SCC p. 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,



WEB COPY



WP No.7150 of 2016

“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) [Karnataka SRTC vs. John D'Souza, 2017 SCC OnLine Kar 4473 : ILR 2017 Kar 4711], [John D'Souza vs. Karnataka SRTC, 2012 SCC OnLine Kar 8848 : (2012) 135 FLR 731], [Karnataka SRTC vs. John D'Souza, 2014 SCC OnLine Kar 12814] and



the Division Benches [Karnataka SRTC vs. John D'Souza, 2018 SCC OnLine Kar 3778], [Karnataka SRTC vs. John D'Souza, 2016 SCC OnLine Kar 8041 : ILR 2016 Kar 3357], [John D'Souza vs. Karnataka SRTC, 2013 SCC OnLine Kar 10303 : (2013) 5 Kant LJ 99] 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 [Punjab National Bank Ltd. vs. Workmen, (1960) 1 SCR 806 : AIR 1960 SC 160] , Mysore Steel Works (P) Ltd. [Mysore Steel Works (P) Ltd. vs. Jitendra Chandra Kar, (1971) 1 LLJ 543 SC] and Lalla Ram [Lalla Ram vs. DCM Chemical Works



Ltd., (1978) 3 SCC 1 : 1978 SCC (L&S) 396] cases. The Division Bench of the High Court solely depended upon Martin Burn Ltd. [Martin Burn Ltd. vs. R.N. Bangerjee, 1958 SCR 514 : AIR 1958 SC 79] and Cholan Roadways Ltd. [Cholan Roadways Ltd. vs. G. Thirugnanasambandam, (2005) 3 SCC 241 : 2005 SCC (L&S) 395] 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 [Punjab National Bank Ltd. vs. Workmen, (1960) 1 SCR 806 : AIR 1960 SC 160], Mysore Steel Works (P) Ltd. [Mysore Steel Works (P) Ltd. vs. Jitendra Chandra Kar, (1971) 1 LLJ 543 SC] and Lalla Ram [Lalla Ram vs. DCM Chemical Works Ltd., (1978) 3 SCC 1 : 1978 SCC (L&S) 396] 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



WP No.7150 of 2016

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

18. The Supreme Court also reiterated that the Authority Competent has to call for the files and examine the same by affording an opportunity to the workman to defend his case in the manner known to law.

19. This being the factum, the case is to be remanded back for the purpose of deciding the issues on merits and in accordance with law.

20. Accordingly, the order dated 25.10.2013 passed by the first respondent in AP No.406 of 2011 is quashed and the matter is remanded back to the first respondent for fresh adjudication. The first respondent shall call for the relevant records from the Transport Corporation and accordingly, adjudicate the issues by affording an opportunity to all the



WP No.7150 of 2016

parties concerned and thereafter give a finding by recording sufficient reasons for arriving a final conclusion. The said exercise is directed to be done as expeditiously as possible.

21. With the abovesaid observations, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

11-11-2022

Index : Yes/No.
Internet : Yes/No.
Speaking Order/Non-Speaking Order.
Svn



WP No.7150 of 2016

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WEB COPY



WP No.7150 of 2016

S.M.SUBRAMANIAM, J.

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WP 7150 of 2016