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W.P.No.7151 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.7151 of 2016

and

W.M.P.No.6354 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 Sec.33 (2) (b) of the
Industrial Disputes Act, 1947, Chennai.

2.B.Sivakumar

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari to call for the records of the order passed by the 1st respondent in Approval Petition in A.P.No.126/2011 dated 21.08.2014 and to quash the same as illegal.

For Petitioner : Mr.R.Ramanlal - AAG... Assisted by
Mr.M.Chidambaram

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 Approval Petition in AP.No.126 of 2011, dated 21.08.2014, is under challenge in the present writ petition.

2. The petitioner is Metropolitan Transport Corporation (Chennai) Limited. The second respondent was a workman who served in the cadre of Driver and remained unauthorizedly absent from 06.05.2009. Disciplinary proceedings were initiated against him. A charge memo was issued and a domestic inquiry was conducted, and thereafter by affording opportunity to the delinquent employee, a final order was passed, imposing the penalty of removal from service.

3. The petitioner Corporation filed an Approval Petition in AP.No.126 of 2011, under Section 33(2)(b) of the Industrial Disputes Act, and the 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.***



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4. With reference to the issues, the first respondent made a finding that the inquiry was not conducted and the findings arrived were not based on any evidence. The employer has not established any prima facie case for the purpose of initiation of Department Disciplinary Proceedings.

5. In this regard, the learned Additional Advocate General appearing on behalf of the writ petitioner mainly contended that it was an ex-parte inquiry. The petitioner Management marked the documents to establish that the charge memo was served to the writ petitioner and he acknowledged the said charge memo. However, he failed to appear before the inquiry officer and therefore the inquiry officer held ex-parte inquiry and submitted his final report, holding that the charges are proved. Therefore, the procedures as contemplated, were followed and the Rules of Principles of Natural Justice had been complied with. Without calling for any records and verifying the procedures followed, the first respondent erroneously formed an opinion that there was no evidence for the initiation of departmental disciplinary proceedings. The order of the first respondent is non-speaking and there is no reason recorded for arriving at such a final conclusion.



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6. In the event of the non-availability of the documents during the course of adjudication, the first respondent is empowered to call for the relevant records and accordingly, adjudicate the issues on merits and in accordance with law by affording the opportunity to all parties. Contrarily, he has merely formed a final opinion based on the ex-parte inquiry report, which was submitted by the Management.

7. The ex-parte inquiry report cannot be rejected on the threshold. If the procedure followed by the employers is in accordance with law, then such ex-parte inquiry reports are to be accepted by the competent authorities. It is not as if all the ex-parte inquiries are null and void. An ex-parte inquiry, conducted without affording an opportunity to the charged official alone is null and void but on the other hand, inspite of the opportunities provided, if the charged official did not avail the opportunity, then such ex-parte inquiry is held valid. Therefore, the facts in this regard were not considered by the first respondent while forming the final opinion.

8. In this regard, 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 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



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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 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



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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 the issue that the domestic enquiry was held in a proper and fair manner also acquires significance here. 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.

9. Therefore this Court is of the opinion that the first respondent have to call for the records from the petitioner Corporation and scrutinize the documents by affording opportunities to all the parties and thereafter, form a final opinion that whether there is a prima facie case made out for the initiation of disciplinary proceedings or not. While forming a final opinion, reasons ought to be recorded for arriving at any conclusion. In the other words, the first respondent is bound to pass speaking orders with reference to the conclusion.



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10. In view of the facts and circumstances, the order dated 21.08.2014 in A.P.No.126 of 2011, is quashed and the matter is remanded back to the first respondent for fresh consideration. Accordingly, the first respondent shall call for the records from the writ petitioner Corporation and adjudicate the issues on merits and in accordance with law and by affording opportunity to all the parties and pass a speaking order, assigning reasons for the conclusions. The said exercise is directed to be done as expeditiously as possible without causing any undue delay.

11. With these directions, this writ petition stands **allowed**. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

11.11.2022

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Internet : Yes
Index : Yes
Speaking order



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S.M.SUBRAMANIAM, J.

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To

- 1.The Management of Metropolitan
Transport Corporation (Chennai) Ltd.
Pallavan Illam, Anna Salai, Chennai 2.
- 2.The Special Deputy Commissioner of Labour
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