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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2022

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 21181 of 2019

and

W.M.P. No. 20385 of 2019

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

-vs-

1. The Special Deputy Commissioner of Labour,
D.M.S. Complex IV Floor,
Teynampet, Anna Salai,
Chennai-600 006.

2. J.Kalitas ... Respondents

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records pertaining to the order passed in A.P. No. 301 of 2013 dated 28.11.2018 on the files of the First Respondent and quash the same.

For Petitioner : Mr. M.Chidambaram

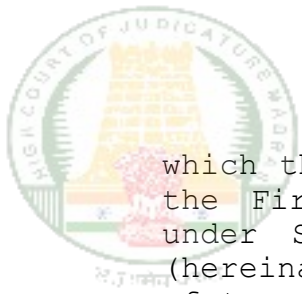
For Respondents: Mrs. C.Sangamithirai
Special Government Pleader (For R1)

Mr. S.T.Varadarajulu (For R2)

O R D E R

Heard Mr. M.Chidambaram, Learned Counsel for the Petitioner and Mrs. C.Sangamithirai, Learned Special Government Pleader appearing for the First Respondent, Mr. S.T.Varadarajulu, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent, who was employed as driver, had been terminated from service by the Petitioner by Order in Proc. No. 29577/ SaPi(ONa)14/MaPoKa/2012 dated 15.10.2013 on the charge of negligent driving of the bus of the Petitioner causing the death of a pedestrian. Since conciliation proceedings relating to an industrial dispute between the Petitioner and the Trade Union in



which the Second Respondent was a member was then pending before the First Respondent, the Petitioner had made an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act' for short), for approval of termination, but it was rejected by order dated 28.11.2018 in A.P. No. 301 of 2013 passed by the First Respondent. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the same.

3. It is evident from the impugned order that the First Respondent has examined the application for approval made by the Petitioner with reference to the relevant aspects stipulated in the decision of the Hon'ble Supreme Court of India in Lalla Ram -vs- D.C.M. Chemical Works Ltd. [(1978) 3 SCC 1], which are as follows:-

- (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held;
- (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out;
- (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee;
- (iv) whether the employer has paid or offered to pay wages for one month to the employee; and
- (v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.

4. The First Respondent came to the conclusion that the requirement in item (iv) and (v) had been satisfied and in respect of the aspects in items (i), (ii) and (iii), it was held that since enquiry proceedings has not been produced, the domestic enquiry has not been conducted following the Rules, Standing Orders and the principles of natural justice, and prima facie case has not been made out and it was not possible to determine whether the dismissal from service was an act of victimization.

5. Insofar as the question relating to validity of the domestic enquiry is concerned, it would be necessary to focus here that the Hon'ble Supreme Court of India in the decision in John D'Souza -vs- Karnataka State Transport Corporation (Order dated 16.10.2019 in Civil Appeal No. 8042 of 2019) has explained the law relating to the procedure to be adopted in a proceeding for approval under Section 33(2)(b) of the Act with reference to the earlier rulings, as follows:-



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"31. This Court in the above cited decisions has, in no uncertain terms, divided the scope of enquiry by the Labour Court/Tribunal while exercising jurisdiction under Section 33(2)(b) in two phases. Firstly, the Labour Court/Tribunal will consider as to whether or not a prima facie case for discharge or dismissal is made out on the basis of the domestic enquiry if such enquiry does not suffer from any defect, namely, it has not been held in violation of principles of natural justice and the conclusion arrived at by the employer is bona fide or that there was no unfair labour practice or victimisation of the workman. This entire exercise has to be undertaken by the Labour Court/Tribunal on examination of the record of enquiry and nothing more. In the event where no defect is detected, the approval must follow. The second stage comes when the Labour Court/Tribunal finds that the domestic enquiry suffers from one or the other legal ailment. In that case, the Labour Court/Tribunal shall permit the parties to adduce their respective evidence and on appraisal thereof the Labour Court/Tribunal shall conclude its enquiry whether the discharge or any other punishment including dismissal was justified....

34. It, thus, stands out that though the Labour Court or the Tribunal while exercising their jurisdiction under Section 33(2)(b) are empowered to permit the parties to lead evidence in respect of the legality and propriety of the domestic enquiry held into the misconduct of a workman, such evidence would be taken into consideration by the Labour Court or the Tribunal only if it is found that the domestic enquiry conducted by the Management on the scale that the standard of proof required therein can be 'preponderance of probability' and not a 'proof beyond all reasonable doubts' suffers from inherent defects or is violative of principles of natural justice. In other words, the Labour Court or the Tribunal cannot without first examining the material led in the domestic enquiry jump to a conclusion and mechanically permit the parties to lead evidence as if it is an essential procedural part of the enquiry to be held under Section 33(2)(b) of the Act."

Viewed from this perspective, if the Second Respondent had been of the opinion that the domestic enquiry suffered from any infirmity, it ought to have disclosed the same to the parties and thereafter called upon them to adduce their evidence in support of their respective contentions and then finally decided the validity of the domestic enquiry.



6. At this stage, Learned Counsel for the Second Respondent, on instructions, states that the Second Respondent does not have any objection for granting approval for termination of the Second Respondent without prejudice to his rights to invoke the remedy available under Section 2-A of the Act to challenge the order of termination on merits and in accordance with law. He has also made an endorsement to that effect in the court record.

7. In that view of the matter, the impugned order dated 28.11.2018 in A.P. No. 301 of 2013 is set aside and it shall be treated that the First Respondent has granted approval under Section 33(2)(b) of the Act to the Petitioner for the termination of the Second Respondent. Though obvious, it is made clear that no view has been expressed by this Court on the correctness or otherwise of the merits of the rival contentions of the parties on the termination of the Second Respondent from service and that the Second Respondent is not precluded from working out his remedies to impeach the order of termination before the proper forum in the manner recognized by law (including resort to complaint under Section 33-A of the Act, if available), and that the period from the date of termination till the date on which certified copy of this order is made ready by the Registry, shall be excluded for the purpose of computation of limitation in that regard.

In fine, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gd
To

1.The Special Deputy Commissioner of Labour,
D.M.S. Complex IV Floor,
Teynampet, Anna Salai, Chennai-600 006.

2.The Management,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Illam, Anna Salai, Chennai-2.

+1cc to Mr.S.T.Varadarajulu, Advocate, S.R.No.24977

W.P. No. 21181 of 2019

NR(CO)
KM(19/05/2022)