



W.A.No.2758 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.12.2022

Coram:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.2758 of 2022
and
C.M.P.No.22403 of 2022

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The Management,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Villupuram.

.. Appellant

Vs.

1. Assistant Commissioner of Labour (Conciliation),
DMS Compound,
Chennai.

2. S.Karunakaran

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against
the order dated 18.02.2022 passed by the learned Single Judge in
W.P.No.25351 of 2013 on the file of this Court.

Writ Petition No.25351 of 2013 filed under Article 226 of the



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Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the first respondent made in Approval Petition No.213 of 2010 dated 27.12.2012 and quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For appellant : M/s.S.Pavithra

For respondents : Mrs.E.Ranganayaki, Addl. G.P. for R-1
Mr.R.Muralidharan for R-2/caveator

JUDGMENT

(The Judgment of the Court was delivered by S.Vaidyanathan, J)

The present appeal has been preferred by the Tamil Nadu State Transport Corporation (Villupuram) Limited, challenging the dismissal of the Writ Petition in W.P.No.25351 of 2013, confirming the order of the authority under Section 33-2(b) of the Industrial Disputes Act, 1947.

2. The second respondent/employee was dismissed from service on 30.11.2010 and as an industrial dispute was pending in which the second respondent-workman was concerned, an application seeking approval of the



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action was filed by the Management on 08.12.2010 and that there was a delay of eight days in filing the application and that the application has not been filed simultaneously in terms of Rule 64 of the Tamil Nadu Industrial Disputes Rule, 1958. For the sake of convenience, Section 33-2(b) of the Industrial Disputes Act, 1947 and Rule 64 of the Tamil Nadu Industrial Disputes Rule, 1958, are extracted hereunder:

Section 33: Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings.-

.....

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied between him and the workman-

(a)

(b) for any misconduct not connected with the dispute, discharge or punish whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

Rule 64: Application to the Conciliation Officer,



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Board, Labour Court or Industrial Tribunal under Section 33. -- (1) An application under sub-section (1) or sub-section (3) of section 33 shall be in duplicate in Form “S” and filed before the Conciliation Officer, Board, Labour Court or Tribunal either personally or by registered post acknowledgment due. A copy of it shall also be served simultaneously either personally or by registered post acknowledgment due on the workman or the workmen concerned and the fact indicated on copies of the application presented to the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be.

(2) An employer seeking the approval of the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be, of any action taken by him under clause (a) or clause (b) of sub-section (2) of section 33 shall present an application in Form “T” in duplicate to such Conciliation Officer, Board, Labour Court or Tribunal either personally or by registered post with acknowledgment due. A copy of it shall also be served simultaneously either personally or by registered post acknowledgment due on the workman or workmen concerned and the fact indicated on the copies of the application presented to the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be.

(3) Every application under sub-rule (1) or sub-rule (2) shall be verified by the employer making it or by some other person proved to the satisfaction of the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be, to be acquainted with the facts of the case. 1 Subs. vide S.R.O. No. A-37/85, dated the 20th February,



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1985.

(4) The person verifying shall specify by

reference to the numbered paragraphs of the application, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(5) The verification shall be signed by the person making it and shall state the date on which and the place at which it was verified.

(6) The workman or workmen concerned shall file a counter before the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be, either personally or by registered post within a week from the date of receipt of the application and shall serve a copy of it on the employer either personally or by registered post acknowledgment due. The endorsement of service or the acknowledgment of the employer shall be filed before the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be, as soon as it is received. The Conciliation Officer, Board, Labour Court or Tribunal may, in exceptional cases, grant extension of time not exceeding fifteen days for filing the counter. If the counter is not filed within the specified time, he shall proceed with the application after giving a week's notice to the parties concerned."

3. The Management contended that even though the order of dismissal was passed against the second respondent/employee on

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30.11.2010, the said dismissal order was sent simultaneously to the second respondent/workman and to the authority concerned on 04.12.2010 (Saturday) by Post and the same was received by the authority concerned on 08.12.2010 (Wednesday), on which date, application under Section 33(2)(b) of the Industrial Disputes Act was filed. Further, according to the Management, there is no evidence to that effect produced before the Court to show that the order was despatched within four days from 30.11.2010 (Tuesday) being the date of order of dismissal passed against the second respondent/employee, till it was filed before the authority on 08.12.2010 and that rest of the days till 04.12.2010 are postal working days. There were no Government holidays for the Postal Department except Sunday (05.12.2010).

4. Further, the word "simultaneously" has got to be construed to enable the employer to send the order of dismissal immediately either by Post or to be served on the employee in person. Since there was delay, the approval authority has rejected the approval application, which was tested in the Writ Petition and the rejection of the approval application was



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challenged before the learned Single Judge, and the learned Single Judge confirmed the order of the approval authority approving the order of dismissal passed against the second respondent-employee.

5. The contention of the Management (appellant-Transport Corporation) that an order was passed on 27.12.2012 in Approval Petition No.213 of 2010 pertaining to another employee, wherein the delay of 15 days in filing the approval application, was condoned.

6. The learned counsel appearing for the appellant/Transport Corporation relied on a judgment of a Division Bench of this Court in Writ Appeal No.2814 of 2012, dated 09.07.2021 (V.Duraisamy Vs. The Management, Tamil Nadu State Transport Corporation (Coimbatore Divn-I), Limited, Coimbatore and another), in support of his submissions.

7. A reading of the above said judgment of the Division Bench of this Court makes it clear that the contention regarding the word "simultaneously" serving the order of dismissal on the workman, has not



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been considered.

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8. Another Co-ordinate Bench of this Court in Writ Appeal No.1608 of 2022 (judgment dated 21.07.2022) has considered the question of sending the order "simultaneously" together with payment made to the employee, and the same should be satisfied, which must be part of the same transaction and non-compliance of the same renders the approval application invalid.

9. In the above said judgment dated 21.07.2022 in Writ Appeal No.1608 of 2022, the Co-ordinate Bench has considered the provisions of Section 33-2(b) of the Industrial Disputes Act and action to be taken "simultaneously", which is absent in the case before the other Division Bench in W.A.No.2814 of 2012 (supra) by judgment dated 09.07.2021.

10. One of us (S.Vaidyanathan, J) has dismissed a Writ Petition in W.P.No.24613 of 2019, by order dated 30.07.2021, filed by the Managment, taking note of the provisions of Section 33-2(b) of the



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Industrial Disputes Act and also Rule 64(2) of the Tamil Nadu Industrial Disputes Rules, 1958, and in that case also, there was a delay of eight days in filing the approval petition and the employee therein was not served and this Court held that the employee has got to be served with the notice of dismissal/order of dismissal and that the approval application of dismissal order of the employee needs to be served on the employee "simultaneously", and the said approval application has got to be filed before the authority.

11. In the present case on hand, there was a delay of eight days in serving the order of dismissal on the second respondent-employee.

12. It is pertinent to note a decision in Writ Appeal filed by the Management before the Division Bench of this Court, in Writ Appeal No.1555 of 2022, which was dismissed on 01.08.2022, thereby, the order passed in W.P.No.24613 of 2019 (supra), by order dated 30.07.2021, was confirmed by the Division Bench in the said Writ Appeal.

13. Even though the learned counsel appearing for the



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appellant/employer (Transport Corporation) stressed on the issue that the past records of the second respondent-employee is bad, the same need not be gone into in the approval application, and if any of the conditions stipulated as per the order of the Apex Court in the case of Lallaram Vs. D.C.M.Chemicals, reported in AIR 1978 SC 1004 = 1978 (3) SCC 1, is not satisfied, then the order of the employer needs to be interfered with. It is useful to extract the said conditions as postulated by the Apex Court in Lallaram case (supra) 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



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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."

14. The exception that has been drawn by the Apex Court in the above said Lalla Ram case, is that if an enquiry is held to be bad, then the matter will have to go before the authority concerned for fresh consideration.

15. In the above context, it is worthwhile to notice a decision of the Supreme Court reported in 2019 (18) SCC 47 (John D.Souza Vs. Karnataka State Road Transport Corporation), wherein the Apex Court observed as follows:

"38. Consequently, the Labour Court shall in the instant case re-visit the matter afresh

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within the limit and scope of Section 33(2)(b), as explained above and keeping in mind that the exercise in hand is not adjudication of an “industrial dispute” under Section 10(1)(c) or (d) read with Section 11-A of the Act. However, if the Labour Court finds that the domestic inquiry held against the appellant is suffering from one of the incurable defects as illustrated by this Court in *Mysore Steel Works (P) Ltd.* [*Mysore Steel Works (P) Ltd. vs. Jitendra Chandra Kar*, (1971) 1 LLJ 543 SC] or *Lalla Ram* [*Lalla Ram vs. DCM Chemical Works Ltd.*, (1978) 3 SCC 1 : 1978 SCC (L&S) 396] cases, then it may look into the evidence adduced by the parties for the purpose of formation of its prima facie opinion."

16. Further, in W.P.No.30541 of 2019, order dated 01.10.2020 (The Management, Tamil Nadu State Transport Corporation (Villupuram) Limited, Vs. P.Eppan and another), this Court set aside the order passed in the Approval Petition and remitted the matter back to the second respondent



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therein for deciding the matter afresh in the required manner. This view was taken by this Court based on the decisions of the Supreme Court reported in Lalla ram case (supra) and John D'Souza (supra).

17. The Apex Court, in the case of The Strawboard Manufacturing Co. Ltd. Vs. Saharanpur (reported in AIR 1962 SC 1500), has considered the word "simultaneously" in the said decision and for the sake of convenience, the relevant portions are extracted hereunder:

"10. The contrary view has been taken by the Calcutta High Court in Metal Press Works Limited Vs. Deb (H.R) (1) where it has been held that payment of wages and the making of the application should be simultaneous with the order of discharge or dismissal. It has further been pointed out that 'the word "simultaneously" must of course be taken reasonably and a notion of split-second timing should not be imported. It should be done at once and without delay', and it will depend upon the facts of each case whether the application has been made at once or without delay. This, we think, is the correct view to take.

11. Let us therefore see what has happened in this case. The appellant-concern is situate at Saharanpur while one tribunal was at Meerut and the other at Allahabad. What the appellant did was to pass an order of dismissal on-February 1, 1960. On the same day he sent two



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applications by post addressed to the two tribunals. The application at Meerut was received on February 3 and the application at Allahabad on February 4, 1960. In these circumstances we are of opinion that the appellant had made the application to the tribunal simultaneously and without delay on its passing the order of dismissal and its action was therefore in accordance with the proviso. The view taken by the labour court that the application must be made before dismissing the respondent is not correct. The appellant in this case had complied with the proviso to s.33(2)(b) when it dismissed the workman, paid him or offered to pay the necessary wages and at the same time sent the application by post to the tribunal concerned for approval of the action taken by it."

In the afore mentioned case, it is seen that the employer had posted the dismissal order dated 01.02.1960 ON THE VERY SAME DAY and despatched to two Tribunals, one at Meerut and the other at Allahabad and it has reached the two Tribunals on two different dates. The Court had considered the act of the Management in despatching the order of dismissal by post and came to the conclusion that the Management had made the application to the Tribunal simultaneously and without delay on its passing the order of dismissal and had complied with the proviso to Section 33(2)(b) of the Industrial Disputes Act.



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18. Rule 64 of the Tamil Nadu Industrial Dispute Rules, 1958, more particularly, Rule 64(2) would categorically state that the employer will have to make an application simultaneously. It does not mean that it should be made in a notion of a split second.

19. The Apex Court, in yet another case, in Jaipur Zila Sahakari Bhoomi Vikas Bank Vs. Ram Gopal Sharma and others, reported in 2002 (2) SCC 244, has categorically held in paragraph No.14 that the order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of the employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de-jure only when the authority grants approval. The Apex Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Limited case, held that "it is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous.

20. As the employer in this case, namely the appellant-Transport



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Corporation has failed to comply with the mandatory provisions of Section 33-2(b) of the Industrial Disputes Act, coupled with Rule 64 of the Tamil Nadu Industrial Disputes Rules, 1958, we are of the view that the second respondent-employee is entitled to "wages" as if there is no dismissal order in the eye of law. If the Approval is granted, the dismissal order will relate back to the date of dismissal order passed by the Management, and if the Approval Petition was rejected, then the employee is deemed to be in service as if there is no dismissal order in the eye of law, as laid down by the Supreme Court in the decision reported in 2002 (2) SCC 244 (Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and others). Thus, the order passed by the employer is non-est in the eye of law.

21. With the above observations, the Writ Appeal is dismissed. There shall be no order as to costs. Consequently, Civil Miscellaneous Petition is closed.

(S.V.N., J) (M.S.Q., J)
23.12.2022

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Speaking Order: Yes/no
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(Villupuram) Ltd.,
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2. The Assistant Commissioner of Labour (Conciliation),
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and

MOHAMMED SHAFFIQ, J

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