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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2022

CORAM

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

W.P. No. 27975 of 2019
and
W.M.P. No. 27588 of 2019

Dhanalakshmi Mills Ltd.,
130, B.S. Sundaram Road,
Tirupur.
Rep. by its Director

... Petitioner

-vs-

A.Arumugam

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records and quash the order dated 09.06.2017 passed in A.P. No. 18 of 2011 on the file of the Industrial Tribunal, Chennai.

For Petitioner : Mr. C.Manohar Gupta
M/s.Gupta and Ravi

For Respondent : No appearance

O R D E R

Heard Mr. C.Manohar Gupta, Learned Counsel for the Petitioner and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner (hereinafter referred to as 'the employer' for short), which is operating a textile unit at Tiruppur, had dismissed the Respondent (hereinafter referred to as 'the employee' for short), who was its employee, on the charge of misconduct. As the industrial dispute in I.D. No. 1 of 2002 between the employer and the Trade Union in which the employee is member was then pending before the Industrial Tribunal, Chennai (hereinafter referred to as 'the Industrial Tribunal' for short), the employer had made an application in A.P. No. 18



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of 2011 under Section 33(2) (b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) for approval of their termination, which was ultimately rejected by order dated 09.06.2017 and has been challenged in this Writ Petition.

3. It is evident from the impugned order that the Industrial Tribunal has examined the application for approval made by the employer 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. In respect of item (i), it has been held that since the Enquiry Officer had subsequently appeared as the Advocate for the employer before the Industrial Tribunal in the Approval Petition, following the dictum laid down by the Delhi High Court in Indian Refrigeration Industries -vs- Ram Rathana Sharma [(2006) 2 LLJ 1103], it was held that the bias of the Enquiry Officer has been established and would invalidate the fairness of the domestic enquiry that had been conducted. In this context, it would be necessary to point out 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:-

"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



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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 Industrial Tribunal 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.

5. At this juncture, it must be recapitulated here that the Constitution Bench of the Hon'ble Supreme Court of India in Karnataka State Road Transport Corporation -vs- Lakshmiddevamma [(2001) 5 SCC 433] has held that in order to avoid unnecessary delay and multiplicity of proceedings, when an employer seeks



approval under Section 33(2)(b) of the Act, leave to lead additional evidence to support the action in the alternative and without prejudice to his rights and contentions has to be made in application itself. In this case, it is seen from para 17 of Form-T that the employer has sought for such leave. The Industrial Tribunal in para 34 of the impugned order has observed as follows:-

" In this case already the petitioner has prayed this tribunal to give the opportunity to the petitioner to adduce additional evidence if this tribunal comes to the conclusion that there is no proper and fair enquiry conducted against the respondent herein. Considering the settled law that once the preliminary issue regarding the fairness of the enquiry has been concluded against the petitioner herein if they come forward to adduce additional evidence the same shall be allowed. Accordingly this tribunal inclined to furnish the petitioner herein to adduce additional evidence to prove the mis-conduct against the respondent herein. Further evidence was examined and the documents were marked. The approval petition is dismissed. The points are answered accordingly."

There is apparently no discussion regarding the additional evidence led by the parties to prove the charges against the employee and as such, the conclusion arrived cannot be sustained in law.

6. The Industrial Tribunal has also not dealt with the requirements of items (ii), (iv) and (v) in the impugned order refusing permission for approval of termination. In respect of item (iii), though the employee had raised certain contentions, the Industrial Tribunal has not expressed any view in that regard.

7. Since the exercise in accordance with the procedure required to be followed had not been undertaken by the Industrial Tribunal in this case, it would not be possible to uphold the impugned order refusing approval for termination of the employee.

8. In view of the foregoing discussion, the following order is passed:-

- (i) the impugned order dated 06.06.2017 in A.P. No. 9 of 2013 passed by the Industrial Tribunal is set aside and the matter is remitted back to the Industrial Tribunal for deciding the matter afresh in the required manner;
- (ii) the matter shall be listed for hearing before the Industrial Tribunal on 28.07.2022 when the employer and the employee



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shall appear in person or through their authorized representative as well as on the subsequent dates to which it is adjourned and it shall be ensured by the Industrial Tribunal that there is atleast one effective hearing every week showing progress of the case;

- (iii) after affording full opportunity of hearing is afforded to all parties concerned following the prescribed procedure in consonance with the principles of natural justice, reasoned orders shall be passed dealing with each of the contentions raised by them on merits and in accordance with law, and the decision taken communicated under written acknowledgment and proof of such compliance shall be filed before the Registrar (Judicial) of this Court; and
- (iv) though obvious, it is made clear that while deciding the matter, the Industrial Tribunal shall not be inhibited or influenced by the impugned order, which has been set aside.

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

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

dm

To

The Presiding Officer,
Industrial Tribunal,
Chennai - 104.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

+1cc to M/s.Gupta and Ravi, Advocate, S.R.No.22520

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and

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BP[co]
NSK/24/06/2022