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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2022

CORAM

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

W.P.NO.33877 OF 2017

AND

W.M.P.NO.37569 OF 2017

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

...Petitioner

Vs

1.Industrial Tribunal
Chennai.

2.S.Krishnasami

...Respondents

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 06.06.2017 passed in A.P. No. 8 of 2013 on the file of the First Respondent, Industrial Tribunal, Chennai.

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

For Respondents : Mr. V.Sivakumar
(for R2)

R1 - Tribunal

O R D E R

Heard Mr.C.Manohar Gupta, Learned Counsel for the Petitioner and Mr. V.Sivakumar, Learned Counsel for the Second Respondent 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 Second 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. Nos. 24 and 25 of



2010 between the employer and the Trade Union in which the employee is member was then pending before the First Respondent, the employer had made an application in A.P. No. 8 of 2013 under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) for approval of his termination, which was ultimately rejected by order dated 06.06.2017 and has been challenged in this Writ Petition.

3. It is evident from the impugned order that the First Respondent 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 First Respondent in the Approval Petition, following the dictum laid down by the Delhi High Court in Indian Refrigeration Industries -vs- Ram Rathan 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



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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 First 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.

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 10 of Form-T that the employer has sought for such leave.

6. The First Respondent came to the conclusion that the requirement in item (ii) had been satisfied. In respect of item (iii), though the employee had raised certain contentions, the First Respondent has not expressed any view in that regard.

7. Further, it has been held that as there has been a shortfall of Rs. 243/- in one month wages, the requirements of item (iv) has not been satisfied. However, there is no discussion referring to the evidence as to how such conclusion has been arrived. It has been held by this Court in Management of Metropolitan Transport Corporation (Chennai) Ltd. -vs- A.Ramesh Babu (Order dated 03.02.2016 in W.P. Nos. 33497 to 33505 of 2015) that if the employer has undertaken to pay the difference in one month wages that may arise in the Approval Petition under Section 33(2)(b) of the Industrial Disputes Act, 1947, and if there is any calculation mistake or any other error, it would not vitiate the termination when the employer makes good the deficit payable. It would follow as a corollary that if there is any difference in wages remaining to be paid, it is incumbent upon the First Respondent to call upon the employer to pay the same to the employee under written acknowledgment before refusing approval for that reason.

8. The First Respondent has also not dealt with the requirements of item (v) in the impugned order refusing permission for approval of termination.

9. Since the exercise in accordance with the procedure required to be followed had not been undertaken by the First Respondent in this case, it would not be possible to uphold the impugned order refusing approval for termination of the employees.

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

- (i) the impugned order dated 06.06.2017 in A.P. No. 8 of 2013 passed by the First Respondent, which cannot be sustained, is set aside and the matter is remitted back to the First Respondent for deciding the matter afresh in the required manner;
- (ii) the matter shall be listed for hearing before the First Respondent on 28.07.2022 when the employer and the employee 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 First Respondent 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 First Respondent shall not be inhibited or influenced by the impugned order, which has been set aside.

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

Sd/-
Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

dm

To

The Presiding Officer,
Industrial Tribunal,
Chennai.

Copy to

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

+1cc to M/s.Gupta and Ravi, Advocate Sr.No.10104

W.P.No.33877 of 2017

NR (CO)
RVM(27/06/2022)