



W.P.(MD) No.10263 of 2018

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.10263 of 2018
and W.M.P.(MD).No.9299 of 2018

The Management
Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited,
Pudukkottai Region,
51/1, Pillai Thannerpandal,
Thirumayam Road,
Pudukkottai – 622 001

... Petitioner

Vs.

1.The Special Deputy Commissioner of Labour,
Chennai.

2.M.Mohan

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari, calling for the records relates to the order, passed by the 1st respondent herein, dated 13.03.2017, in AP.No.204 of 2014, quash the same.



W.P.(MD) No.10263 of 2018

WEB COPY

For Petitioner : Mr.D.Sivaraman

For Respondents : Mrs.D.Farjana Ghoushia for R1
Special Government Pleader

Mr.P.Ganapathi Subramanian for R2

ORDER

The second respondent herein is a Conductor. The charge levelled against him was that he had collected Rs.14/- (Rupees Fourteen only) from two passengers and had issued only one 7 Rupee ticket and thereby, misappropriated Rs.7/- (Rupees Seven only) from the said passenger.

2. Based on the levelled charges, an enquiry was conducted, in which, the Management had examined the Checking Inspector as a witness MW1. On the basis of the proven charges against the second respondent, the Disciplinary Authority had imposed a punishment of dismissal from service on 26.09.2014. On the same day, the Management had filed an application before the Authority under Section 33(2)(b) of the Industrial Disputes Act, seeking for approval of the order of dismissal. Through the impugned order, dated 13.03.2017, the application was rejected on the ground that there was violation of principles of natural justice and there was no *prima facie* case



W.P.(MD) No.10263 of 2018

WEB COPY before the Disciplinary Authority, when the order of dismissal was passed.

The rejection order is put under challenge by the Management in the present writ petition.

3. Mr.D.Sivaraman, the learned Standing Counsel for the petitioner Corporation, submitted that since the evidence of Checking Inspector in the enquiry was crucial evidence to substantiate the charges against the workman, such evidence was not taking into consideration by the Authority while the impugned order of rejection was passed. According to the learned counsel, the observation of the Authority that no independent witnesses were examined and consequently, holding that the workman was denied the opportunity to cross-examine the other independent witnesses and rejecting the same on the ground that there was no *prima facie* case before the Disciplinary Authority, cannot be substantiated. In support of his submissions, the learned Standing Counsel placed reliance on a decision of the Honourable Supreme Court in the case of ***Management of Tamil Nadu State Transport Corporation (Coimbatore) Limited Vs. M.Chandrasekaran*** reported in (2016) 6 SCC 16.



W.P.(MD) No.10263 of 2018

WEB COPY

4. Per contra, the learned counsel for the second respondent submitted that the Honourable Supreme Court in the case of ***Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd., and another*** reported in ***(1978) 3 SCC 1***, has established the scope for interference to an application under Section 33(2)(b) by the Authority under the Act and among such grounds of interference, the Authority is entitled to reject an application seeking for approval on the ground of violation of principles of natural justice as well as on the ground that there was no *prima facie* material available before the Disciplinary Authority while the order of rejection was passed. As such, he would submit that there is no infirmity in the order of the authority and therefore, the writ petition requires to be dismissed.

5. I have given careful consideration to the submissions made by the respective counsel.

6. The decision rendered by the learned two Judges of the Honourable Supreme Court in *Lalla Ram's case* (Supra) has laid down the circumstances, under which the powers of the Authority under Section 33 (2)(b) of the Act



W.P.(MD) No.10263 of 2018

can be exercised for interfering with an application seeking for approval.

These guidelines have consistently been followed by the Authorities for more than 40 years. Such guidelines insofar as it relates to the powers of Authority to interfere with an order of dismissal on the ground of violation of principles of natural justice and absence of *prima facie* case, have been reiterated in the case of ***Cholan Roadways Ltd., Vs. G.Thirugnanasambandam*** reported in ***(2005) 3 SCC 241***.

7. The decision in *Cholan Roadways Ltd.,'s case* (Supra) was followed by the Three Judges of the Honourable Supreme Court in the case of ***Mr.M.Chandrasekaran*** (Supra). While dealing with such powers of Authority, *M.Chandrasekaran's case* held that while dealing with the approval petition, the Authority cannot substitute his own judgment, but must only consider whether the view taken by the Disciplinary Authority is a possible view on the evidence of record. Thus, the scope of powers of Authority under Section 33(2)(b) of the Act has been well established in view of the decisions of the Honourable Supreme Court in the cases of *Lalla Ram, Cholan Roadways Ltd.,* and *M.Chandrasekaran (Supra)*. On comprehensive view of the law laid



W.P.(MD) No.10263 of 2018

down in the aforesaid decisions, the Authority while dealing with the application under Section 33(2)(b) of the Act, requires to establish as to whether the evidence let in in the Disciplinary proceedings were believed by the Authority and that it need not be dealt with as to whether the case has been proved beyond all reasonable doubt, only to establish the factum of a *prima facie* case. Further, the Authority cannot substitute his own views for taking such a decision, but rather must analyse as to whether the Disciplinary Authority could have possibly taken the view, based on the evidence on record.

8. As stated earlier, the Checking Inspector was examined as a Management witness - MW1 in the instant case and based on his evidence, the charges against the second respondent were held to be proved. Secondly, the Disciplinary Authority has imposed the punishment of dismissal from service. On the application made by the Management under Section 33 (2)(b) of the Act, seeking for approval of the order of dismissal, the Authority had observed that there were no independent witnesses, like the passengers, were examined during the course of enquiry, owing to which, the petitioner was denied the



W.P.(MD) No.10263 of 2018

WEB COPY

benefit of cross-examination of such witnesses and therefore, there was violation of principles of natural justice, as well as absence of sufficient materials before the Disciplinary Authority, for the purpose of establishing a *prima facie* case. Such finding, without referring to the Management's other witnesses, particularly, the evidence of MW1, may not be proper. When the law requires the Authority to look into the entire materials on record, which were available before the Disciplinary Authority for the purpose of establishing whether the principles of natural justice was violated or that there was a *prima facie* case before the Disciplinary Authority, a mere reference to non-examination of independent witnesses as a reason to reject the approval application, cannot be sustained.

9. In the result, the impugned order passed by the 1st respondent herein, in AP.No.204 of 2014, dated 13.03.2017, is hereby set aside and consequently, the matter is remanded back to the first respondent herein for fresh consideration and there shall be a direction to the first respondent herein to complete the proceedings initiated by the petitioner Management against the order of dismissal of the second respondent, dated 26.09.2014 and pass final



W.P.(MD) No.10263 of 2018

orders, within a period of three months from the date of receipt of a copy of this order. In view of the orders passed by this Court today in W.M.P. (MD).No.18786 of 2018 in W.P.(MD).No.1036 of 2019, the Management shall forthwith disburse all the last drawn wages to the petitioner, within a period of one month from the date of receipt of a copy of this order.

10. This writ petition stands partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

08.08.2022

Index : Yes
Speaking Order

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To

1.The Special Deputy Commissioner of Labour,
Chennai.



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W.P.(MD) No.10263 of 2018

M.S.RAMESH,J.

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W.P.(MD) No.10263 of 2018

08.08.2022