



W.P.No.18566 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>11.10.2022</i>
<i>Pronounced on</i>	<i>02.01.2023</i>

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.18566 of 2010
and M.P.No.1 of 2010

The Management,
Formerly Anna Pokkuvarathu Kazhagam,
Now re-named as Tamil Nadu State
Transport Corporation (Salem) Ltd.,
No.12, Ramakrishna Road,
Salem – 7.
Rep. by its Managing Director.

... Petitioner

Vs.

1.The Presiding Officer,
Industrial Tribunal,
Tamil Nadu, Chennai – 600 104.

Sathar Sahib (died)
2.Sarthaj Begum
3.S.Allavudeen

... Respondents

[2nd & 3rd respondents are impleaded as the legal heirs of the deceased Sathar Sahib vide order dated 11.10.2022 passed by this Court in WP.No.23830 of 2021]

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records concerning with the order passed in Approval Petition No.106 of 1994 dated 18.11.2009 on



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the file of 1st respondent and quash the same.

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For Petitioner : Mr.R. Babu

For Respondents : R1 – Court

Mr.K.V. Shanmuganathan [R2]

ORDER

The second respondent herein while serving as a Driver under the Petitioner/Corporation, was imputed with Charge Memos dated 08.01.1994, 12.03.1994 and 23.04.1994, predominantly for the misconduct of unauthorized absence. On not being satisfied with the explanation rendered by the second respondent to the levelled charges, a domestic inquiry was held and on the basis of the Inquiry Report holding the charges as proved, a second show cause notice was issued. The explanation rendered by the second respondent was rejected and through an order dated 04.11.1994, the second respondent was dismissed from service.

2. The petitioner/Corporation had filed an Approval Petition under Section 33(2)(b) of the Industrial Disputes Act, 1947, on 15.11.1994, which is after about 11 days from the date of dismissal.



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3. Though the Labour Court had found the inquiry to be fair and proper, it had rejected the Approval Petition on the ground that the application under Section 33(2)(b) of the I.D. Act, was not made simultaneously, but after 11 days and since the petition was earlier dismissed for default on 14.09.1995 and the petitioner/Corporation had belatedly filed restoration application after the delay of 4037 days, it would indicate malafides on their part. The Labour Court also held that the quantum of one month wages as contemplated under Section 33(2)(b) of the I.D. Act, was disputed by the second respondent and therefore, the mandatory provision was not followed.

4. The Hon'ble Supreme Court of India in the case of '**Lalla Ram Vs. D.C.M. Chemical Works Ltd. & another**' reported in '**(1978) 3 Supreme Court Cases 1**', had culled out the scope of jurisdiction of the Industrial Tribunal in dealing with proceedings under Section 33(2)(b) of the Act under five heads, in the following manner:-

.....

“12. The position that emerges from the above quoted decisions of this Court may be stated thus : In proceedings under section 33(2)(b) of the Act, the jurisdiction of the



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industrial Tribunal is confined to the enquiry as to (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 regard being had to the position settled by the decisions of this Court in Bengal Bhatdee Coal Co, v. Ram Probesh Singh(1), Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar(2), Hind Construction & Engineering Co. Ltd. v. Their Workmen(3), Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management & Ors(4), and Eastern Electric and Trading Co. v. Baldev Lal(5) that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (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



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such reasonably short time as to form part of the game transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.”

5. The aforesaid extract is self-explanatory. When the Hon'ble Supreme Court has held that when any of these circumstances referred above, have been violated while the inquiry was conducted or the Approval Petition has been filed, the order of dismissal itself would stand vitiated.



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6. In the instant case, it is not in dispute that the Approval Petition was belatedly filed on 15.11.1994 after the second respondent was dismissed from service on 04.11.1994. This apart, the Labour Court has also found that there was no bonafides on the part of the respondents in having belatedly filed restoration application and it is not after 4037 days and therefore, had imputed malafides on that part. This apart, one month wages sent along with the dismissal order to the second respondent herein, was disputed by the second respondent and therefore, the mandatory requirement of making the one month wage under Section 33(2)(b), is also violated. These grounds would stand in the way of the Labour Court granting the approval to the action taken by the Corporation in view of the ratio laid down by the Hon'ble Supreme Court in '*Lalla Ram's case*'.

7. Accordingly, there are no merits in the present Writ Petition and the same stands dismissed. No costs. Connected miscellaneous petition is closed.

02.01.2023

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To

The Presiding Officer,
Industrial Tribunal,
Tamil Nadu, Chennai – 600 104.



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M.S.RAMESH,J.

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Pre-delivery Order in
W.P.No.18566 of 2010

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