



W.P.No.14667 of 2016

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DATED : 04.07.2023

CORAM

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.14667 of 2016
and WMP.No.12843 of 2016

The Management,
Tamil Nadu State Transport Corporation Ltd.,
No.12, Ramakrishna Road,
Salem-7.
Rep. By its General Manager.

...Petitioner

Vs

1. The Special Deputy Commissioner of Labour,
DMS Compound, Anna Salai,
Chennai.

2. R.Selvam

...Respondents

The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records of the order passed in Approval Petition AP No.74/2012 dated 15.05.2013 on the file of the first respondent and to quash the further or other orders as this Hon'ble Court may deem fit for the facts and circumstances of the case.



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For Petitioner : Mr.R.K.Ganesh

For Respondents : Ms.Ramapriya Gopalakrishnan R2

ORDER

This petition has been filed seeking to quash the order passed in Approval Petition AP. No.74/2012 dated 15.05.2013 on the file of the first respondent.

2. It is the case of the petitioner that the second respondent, who was working as Conductor at Tharamangalam Branch in the petitioner's Corporation. The second respondent did not report for his duty continuously from 26.07.2011 onwards without any prior permission and intimation. Therefore, the Management has issued a charge memo dated 11.08.2011 to the second respondent through post and the same was returned with an endorsement as "No such addressee is available" . As there was no reply from the second respondent the petitioner Management was constrained to appoint an enquiry officer to enquire into the charges and the same was informed to the second respondent on 17.09.2011. Thereafter, the EO conducted enquiry on 06.10.2011, on



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that day, the second respondent has appeared before the EO and later, the EO has submitted his report, in which the charges levelled against the second respondent were proved. The petitioner Management sent a showcase notice to the second respondent on 04.12.2011 calling his explanation and the second respondent submitted his reply on 26.12.2011 wherein there is no valid reason for his absence. Finally the petitioner Management passed an order of dismissal dated 23.02.2012 to the second respondent along with one month salary. Thereafter, the petitioner management sought for approval of the first respondent with regard to the dismissal as under Section 33(2)(b) of the ID Act, 1947. But the first respondent authority, vide his order dated 23.07.2013, has held that the punishment of dismissal awarded to the second respondent is a harsh one and the said petition was rejected. Challenging the said order, the present petition has been filed.

3. The learned counsel for the petitioner submitted that from 26.07.2011 to 23.02.2012 i.e. 212 days, the second respondent has never approached the management either in person or through other



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communications for grant of leave. The second respondent has never approached the management explaining valid reasons for his unauthorized absent. Finally, the Management was forced to dismiss the respondent as there is no other alternative and the second respondent himself thrown away the job voluntarily. As per section 33(2)(b) of ID act, the first respondent is entitled to decide whether a fair opportunity was given to the second respondent before dismissal order and further one month salary was disbursed to the second respondent. The petitioner has satisfied these two grounds before the first respondent and the first respondent also arrived at a conclusion that twin conditions have been fulfilled. However, the Labour Court held that the punishment imposed by the the management is too harsh and without considering the entire facts, set aside the punishment, which is unsustainable in law. The said decision is contrary to the decision of the Hon'ble Supreme Court *in the case of Lalla Ram Vs. Management of DCM. Chemical Works Ltd., and others* reported in MANU/SC/0268/1978.

4. The learned counsel for the second respondent submitted that



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the first respondent while deciding the approval petition filed by the petitioner Management, framed five issues. However, four issues were ended in favour of the petitioner Management. In respect of the 5th issue, the first respondent arrived at a conclusion that the punishment imposed on the second respondent is with malafied intention, and therefore, passed order in favour of the second respondent, which is perfectly in order and the same cannot be interfered with.

5. Heard the learned counsel for the petitioner and the learned counsel for the second respondent and perused the materials available on record.

6. The facts of the case are not in dispute. The second respondent is employed in the petitioner Management and he entered into a service in the year 1988. Admittedly, the workman has not reported duty from 2011 onwards and he was unauthorized absent for 212 days. Thereby, the petitioner management issued show cause notice in terms of Section 16(e) of the Certified Standing Orders and thereafter, enquiry was conducted



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and after enquiry, charges were proved against the workmen and therefore, the petitioner management has passed termination order against the second respondent on 23.02.2012. After termination, the petitioner management filed approval petition under 33(2)(b) of the ID Act. The said approval petition was rejected solely on the ground that the punishment imposed by the petitioner Management on the second respondent is too harsh.

7. The issues that arise in the present case are that i) whether the Labour Court has followed the guidelines framed by the Hon'ble Apex Court in the case of Lalla Ram as stated supra; ii) whether the enquiry was conducted in a fair and proper manner; iii) whether prima facie materials are available against the workman for passing the order of termination and whether one month salary was paid.

8. A perusal of the materials available on record reveal that for the unauthorised absence, the workman had not placed any records in the form of medical reports to show that he was medically unfit to attend the



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job. In fact no iota of material has been placed by the workman to show the reason for his absence. On the side of the Management, witnesses have been examined to establish the absence of the workman. However, curiously, without adverting to the necessity of the workman to file requisite documents to establish the reason for his absence, the Labour Court had gone on a tangent and fastened the liability on the Management by pointing out that the punishment imposed on the second respondent is too harsh. The reasons adduced by the Labour Court are not only frivolous, but wholly perverse. The unauthorised absence of the workman is not for a day or two but for more than few months. In such a scenario, the reason for such a long leave along with the requisite documents in support thereof should be submitted so as to enable the Management to appreciate the necessity of leave. In the absence of any material placed by the workman, putting the ball in the court of the Management to prove that the workman had not attended duty is wholly impermissible and defies logic. Therefore, the findings recorded by the Labour Court with regard to the requisite documents not being filed by the Management cannot be sustained.



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9. The next issue is whether the enquiry had been conducted in a fair and proper manner, to which the Labour Court had answered that it has not been conducted in a fair and proper manner. The last of the issue relates to the payment of one month's wages to the workman, as is provided for under proviso to Section 33 (2)(b). The Labour Court has recorded a finding that one month salary has not been paid to the workman and, therefore, the compliance of proviso to Section 33 (2)(b) cannot be said to have been made.

10. The issue relating to the grant of approval for the dismissal of a workman u/s 33 (2) (b) was dealt with by the Apex Court in the case of *Lalla Ram (supra)* and in the said decision, the Apex Court held thus :-

“8. In Agnani's case (supra), this Court held as under :

“It is true that if a domestic enquiry is properly held and the employer terminates the services of his employee, the industrial



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tribunal dealing with industrial disputes arising out of such dismissal is not authorized to sit in appeal over the findings of the enquiry committee, or to examine the propriety of the ultimate order of dismissal passed by the employer.”

9. Though it is true that private quarrel between an employee and a stranger with which the employer is not concerned as in Agnani's case (supra) falls outside the categories of misconduct, it cannot be reasonably disputed that acts which are subversive of discipline amongst employees or misconduct or misbehavior by an employee which is directed against another employee of the concern may in certain circumstances constitute misconduct so as to form the basis of an order of dismissal or discharge. It cannot also be disputed that the extent of jurisdiction exercisable by an approving authority Under Section 33(2)(b) of the Act is very limited as has been clearly and succinctly pointed out by this Court in a number of decisions. In Lord Krishna Textile Mills v. Its Workmen MANU/SC/0216/1960 : (1961)ILL J211SC this Court after referring to its



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earlier decisions and explaining the distinction between 'permission' and 'approval' observed as follows :

“Therefore, putting it negatively the jurisdiction of the appropriate industrial authority in holding an enquiry Under Section 33(2)(b) cannot be wider and is, if at all, more limited, than that permitted Under Section 33(1), and in exercising its powers Under Section 33(2) the appropriate authority must bear in mind the departure deliberately made by the Legislature in separating the two classes of cases falling under the two Sub-sections, and in providing for express permission in one case and only approval in the other. It is true that it would be competent to the authority in a proper case to refuse to give approval, for Section 33(5) expressly empowers the authority to pass such order in relation to the application made before it under the proviso to Section 33(2)(b) as it may deem fit; it may either approve or refuse to approve; it can, however, impose no



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*conditions and pass no conditional order, x x
x In view of the limited nature and extent of
the enquiry permissible Under Section
33(2)(b) all that the authority can do in
dealing with an employer's application is to
consider whether a prima facie case for
according approval is made out by him or not.
If before dismissing an employee the employer
has held a proper domestic enquiry and has
proceeded to pass the impugned order as a
result of the said enquiry, all that the
authority can do is to enquire whether the
conditions prescribed by Section 33(2)(b) and
the proviso are satisfied or not. Do the
standing orders justify the order of
dismissal ? Has an enquiry been held as
provided by the Standing Orders ? Have the
wages for the month been paid as required by
the proviso ?; and, has an application been
made as prescribed by the proviso ?”*

*10. In another case between Kalyani (P. H.) and
Air France, Calcutta [1963] 1 L.L.J. 679, Wanchoo,
J. (as he then was) speaking for a bench of five*



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judges of this Court said :

“If the enquiry is not defective, the labour court has only to see whether there was a prima facie case for dismissal, and whether the employer had come to the bona fide conclusion that the employee was guilty of misconduct. Thereafter, on coming to the conclusion that the employer had bona fide come to the conclusion that the employee was guilty, i.e. there was No. 1 unfair labour practice and no victimization, the labour court would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If the enquiry is defective for any reason, the labour court would also have to consider for itself on the evidence adduced before it whether the dismissal was justified. However, on coming to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified, its approval of the order of dismissal made by the employer in a defective enquiry would still relate back to the date



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when the order was made.”

11 . In Central Bank of India Ltd., New Delhi v. Shri Prakash Chand Jain MANU/SC/0416/1968 : (1969)IILLJ377SC , this Court laid :

“These decisions of this Court make it clear that when an industrial tribunal is asked to give its approval to an order of dismissal Under Section 33(2)(b) of the Act, it can disregard the findings given by the Enquiry Officer only if the findings are perverse. The test of perversity that is indicated in these cases is that the findings may not be supported by any legal evidence at all.... A finding by a domestic tribunal like an Enquiry Officer can be held to be perverse in those cases also where the finding arrived at by the domestic tribunal is one at which no reasonable person could have arrived on the material before it.”

12. The position that emerges from the above quoted decisions or this Court may be stated thus : In proceedings Under Section 33(2)(b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic



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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 MANU/SC/0136/1963 : (1963)ILL J291SC , Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar [1961] 2 L.L.J. 511, Hind Construction & Engineering Co. Ltd. v. Their Workmen MANU/SC/0210/1964 , Workmen of Messrs Firestone Tyre & Rubber Co. of India (P) Ltd." v. Management and Ors. MANU/SC/0305/1973 : (1973)ILL J278SC ., and Eastern Electric and Trading Co. v. Baldev Lal [1975] Lab. I.C. 1435 (S.C.) that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and



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the Tribunal is not required to consider the propriety or adequacy of the punishment or whether 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 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. 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



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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.

13. Let us now see whether the aforesaid requirements are satisfied in the present case or not. As stated earlier, the Enquiry Officers had, after a regular enquiry properly made according to the requirements of the Standing Orders and principles of natural justice, come to a categoric and bona fide conclusion that the appellant obstructed Shyam Singh in the execution of his legitimate official duties (of protecting the immovable property of the Company and preventing its improper and unauthorised use) by abusing, threatening and roughly handling him and thereby committed misconduct as contemplated by Standing Order 27(i). The Industrial Tribunal had itself also clearly found that the Enquiry Officers were not biased against the appellant; that the domestic enquiry held against the appellant was not violative of the principles of natural justice and that it could not be



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said that the findings of Enquiry Officers were not based upon evidence or were perverse. The material on record also disclosed that the employer paid one month's wages to the appellant and simultaneously made an application to the specified authority before which the main industrial dispute was pending, for grant of approval of the dismissal of the appellant. Further the misconduct for which the disciplinary action was taken against the appellant was undoubtedly directed against Shyam Singh to prevent him from investigating into a matter relating to immovable, property belonging to the Company which he was bound to protect in discharge of the duties which devolved upon him as a security officer. In face of all the aforesaid factors which make out a strong prima facie case against the appellant, it is difficult to understand how the Additional Industrial Tribunal could legitimately ignore the bona fide findings of the Enquiry Officers which it had itself endorsed by holding that there was no rational nexus between the appellant's misconduct and his employment and that of Shyam Singh and withhold its approval of the action taken by the management



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of respondent No. 1 On a careful consideration of the entire facts and circumstances of the case, we are therefore clearly of the view that the requisite nexus was there and the Industrial Tribunal unauthorisedly assumed the role of an appellate authority and exceeded the well defined limits of its jurisdiction in refusing to accord its approval of the action taken against the appellant by holding not on the basis of any legal evidence but purely on the basis of conjectures and surmises that the present was a case of victimisation. We would like to call attention at this stage to the decisions of this Court in Tata Engineering & Locomotive Co. Ltd. v. Prasad (S.C.) and Anr. [1969] 2 L.L.J. 799 and Hamdard Dawakhana Wakf v. Its Workmen and Ors. [1962] 2 L.L.J. 772 and reiterate and re-emphasize that no question of victimisation or management having a bias against the appellant can arise once it is held that the findings of misconduct alleged against the workman were properly arrived at and the domestic enquiry was in no way vitiated. We would also like to emphasize that it is not necessary as stressed by the learned Counsel for the appellant



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that both the victim and the delinquent workman should be engaged in the performance of their official duties when the act which is the subject matter of misconduct is said to have been committed. It is sufficient if the victim and the delinquent workman are both employees of the same concern and the misconduct is directed against the former while he is acting in the discharge of the duties imposed him by virtue of his office. Thus the jurisdiction of the Industrial Tribunal being a limited one, as stated above and all the essential requisites of the proviso to Section 33(2)(b) of the Act being present in the instant case, the Industrial Tribunal was not, in our opinion, justified in withholding its approval and the High Court was perfectly right in passing the impugned judgment and order.”

11. From the aforesaid decision, it is explicitly evident that if the domestic enquiry is properly held and the employer terminates the services of its employee, the industrial tribunal dealing with such disputes arising out of such dismissal is not authorised to sit in appeal over the



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findings of the enquiry committee or to examine the propriety of the ultimate order of dismissal passed by the employer.

12. It has been further held in the said decision that so long as the enquiry is not defective the Court has to only see whether there was a *prima facie* case for dismissal and whether the employer had come to the *bona fide* conclusion that the employee was guilty of misconduct. What is further to be seen is that the conclusion arrived at by the employer is *bona fide* as to the guilt of the employee and that there was no unfair labour practice or victimization involved and satisfaction of the same, approval is to be given from the date on which the employer had ordered the dismissal. However, if the enquiry is found to be defective for any reason, the Labour Court would also have to consider for itself on the evidence adduced before it whether the dismissal was justified.

13. In the case on hand, from the discussion above, it implicitly transpires that not only the enquiry was held in a fair and proper manner, but the workman was provided with opportunity to put forth his case and



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one month salary was paid to the second respondent, upon appreciation of the materials, the report has been given by the enquiry officer, which has been accepted and acted upon by the disciplinary authority. Further, proviso to Section 33 (2) (b) also having been complied with, necessarily in the absence of any dispute, relating to the dismissal or discharge or termination of the workman, the approval petition ought to have been allowed by the Labour Court. But on erroneous reasoning the approval petition has been rejected, which necessarily requires the interference at the hands of this Court.

14. For the reasons aforesaid, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed. However, liberty is granted to the workman to work out his remedy in the manner known to law, if so advised.

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Index: yes / no

Internet : yes / no

Speaking / Non speaking order

21/23

<https://www.mhc.tn.gov.in/judis>



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To

1. The Appellate Authority Under
Payment of Gratuity Act and
Joint Commissioner of Labour,
Dr.Balasundaram Road,
Coimbatore.

2. The Controlling Authority
Under the Payment of Gratuity Act and
Assistant Commissioner of Labour,
Dr. Balasundaram Road, Coimbatore.



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