IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
08.02.2023	08.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.No.940 of 2021 and
C.M.P.No.5544 of 2021

D.Illango Thilagar ... Appellant

-vs-

1. The Tamil Nadu State Transport Corporation (Villupuram) Ltd, rep. by its General Manager Vellore.

2. The Joint Commissioner of Labour (Conciliation) DMS Compound, Teynampet Chennai-600 006. ... Respondents

Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 08.11.2019 passed by the learned Single Judge in W.P.No.35332 of 2006.

For Appellant : Mr.S.Kumaradevan
For Respondents : Mr.T.Chandrasekaran
Mrs.R.Ranganayaki (R2)
Additional Government Pleader
***

JUDGMENT

The present Writ Appeal has been filed against the order dated 08.11.2019 passed by the learned Single Judge in W.P.No.35332/2006, in allowing the writ petition, thereby setting aside the order dated 12.02.2005 passed by the authority under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as, "the Act") in Approval Petition No.311/2003.

2. The employee/appellant herein was dismissed from service on 02.08.2003 for his unauthorized absence for a period of 15 days from 07.07.2001 to 22.07.2001. After due enquiry, on the charges framed against the employee, he was dismissed from service on the ground that he could not produce a Medical Certificate for the period of absence. Admittedly, the employee had joined the services of the 1st respondent on 03.11.1998, but was not a permanent employee. In the enquiry, the principles of natural justice have been followed and punishment was imposed. Even though, the employee has stated that he was not made permanent, a Medical Certificate was produced stating that since he was suffering from typhoid, he could not report for work and that there is violation of principles of natural justice. In the light of the decision of the Hon'ble Supreme Court in **Lalla Ram vs. D.C.M.Chemical Works** reported in **AIR 1978 (SC) 1004**, the guidelines have been followed and five principles have been laid down for the

authority to decide as to whether the guidelines have been followed or not.

3. The learned counsel appearing for the 1st Respondent/Employer has also relied upon a judgment of the Hon'ble Supreme Court in Civil Appeal Nos.6765-66/2014 dated 02.09.2016 wherein the Supreme Court has held that the authority who is dealing with an application u/s.33(2)(b) of the Act has got limited powers and the jurisdiction under the said provision cannot be equated to that of one under Section 10 of the Act. The Supreme Court has also held that the powers under section 33(2)(b) of the Act are very limited. In the decision rendered in the case of ***Martin Burn Ltd. Vs. R.N.Banerjee*** reported in **AIR 1958 SC 79**, the Supreme Court has held thus:

> *"While exercising jurisdiction under Section 33(2)(b) of the Act, the Industrial Tribunal is required to see as to whether a prima facie case has been made out as regard the validity or otherwise of the domestic enquiry held against the delinquent; keeping in view the fact that if the permission or approval is granted, the order of discharge or dismissal which may be passed against the delinquent employee would be liable to be challenged in an appropriate proceeding before the Industrial Tribunal in terms of the provision of the Industrial Disputes Act. In martin Burn's case (supra) this Court stated:*

> *"A prima facie case does not mean a case proved to the hilt but a*

case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record. (See Buckingham @ Carnatic Co. Ltd. Vs. The Workers of the Company (1952) Lab. AC 490 (F).""

4. The main contention of the workman in this present Appeal is that the employer has not paid wages in terms of the proviso to Section 33(2)(b) of the Act, which has been refuted by the Management that the employee was a daily wage casual labourer and was drawing a sum of Rs.97/- per day and taking note of the same, the amount of wages have been paid and that he cannot have any grievance over the same. The learned Single Judge has rightly held that the employer has discharged the burden to comply with the provision under Section 33(2)(b) of the Act and rightly interfered with the order of the authority. The authority while dealing with the short fall of one

month wages, have taken into account that the minimum wages payable to the employee by the Transport Corporation was Rs.3117.40 and that the employee was paid only Rs.2522/- as wages. The authority relied upon G.O.(2D) No.102, Labour & Employment, dated 22.9.1999 holding that there was a short fall in payment of one month wages. The authority has also held that in terms of Rule 64(2) of the Tamil Nadu Industrial Disputes Rules, 1958, the Approval Application has to be forwarded to the employee and that no evidence was produced before the authority that the application has been forwarded to the opposite party in terms of Rule 64(2). The compliance of the proviso to Section 33(2)(b) of the Act and Rule 64(2) of the Tamil Nadu Industrial Disputes Rules, 1958 are mandatory in nature. The Apex Court in the case of ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., Vs. Ram Gopal Sharma*** reported in ***2002 (2) SCC 244*** has held that no provision in the Statute should be made meaningless and hence a proper interpretation has to be given in the present case on hand with regard to payment of wages.

5. For the sake of convenience, the proviso to Section 33(2)(b) is extracted below.

"33:Conditions of service etc., to remain unchanged under certain circumstances during pendency of proceedings--

(2)During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute [or, where there are no such standing orders, in accordance with the terms of the contract, whether express of implied, between him and the workman]-

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

Therefore, it is clear that one month wages must be not less than the minimum wages prescribed. If the contention of the employer is accepted as affirmed by the learned Single Judge, the provision to Section 33 (2)(b) of the Act would be defeated. Then, the employer would start paying less than minimum wages and contend at a later point of time that the wages agreed have been paid, and it is for the employee to work out the difference of payment of minimum wages before a different forum.

6. The purpose of the Industrial Disputes Act, 1947, is to investigate and settle the industrial disputes and for certain other purposes. The mandatory provisions cannot be construed as a directory one and the contention of the employer is not acceptable. The authority has rightly referred to G.O No.102, dated 22.09.1999 mentioned supra and held that the basic wages and Dearness Allowance works out to Rs.3117.40 and that the employer has filed the Approval Petition before the authority in time. But there is no evidence to show that a copy of the aforesaid G.O. dated 22.09.1999 has been marked to the employee. The employee has attained the age of superannuation in the year 2022 and the question of putting him back in service now is not possible. Since law has to be construed very strictly, the employee is entitled to full wages from the date of dismissal i.e. from 02.08.2003 till the date of attaining superannuation. The employee has not taken a plea about the shortfall of wages before the authority as he has not filed any counter before the authority. However, the powers of the authority to decide and ascertain as to whether at least the minimum wages has been extended or not, are not taken away. Therefore, the order of the authority is perfectly correct and the order of the learned Single Judge in interfering with the same is liable to be set aside.

7. At this stage, we posed a suggestion as to whether the employee is willing

to give up a of the portion of the back wages, as he is also at fault in not taking a plea before the authority, in the counter. Therefore, the employee was directed to file an Affidavit of Undertaking stating that he is willing to give up 50% of the back wages. Accordingly, the employee has filed an Affidavit dated 07.02.2023, the relevant portion of which is extracted hereunder:

> *"6.I state that I was attained my age of superannuation on 17.03.2022 and now I could not reinstate my work in the first respondent corporation. In the above said circumstances, I am willing to accept to receive 50% of back wages from 02.08.2003 to still attaining the age of superannuation and other benefits."*

8. In the light of the above, the order of the learned Single Judge is set aside and the authority under Section 33(2)(b) of the Industrial Disputes Act, 1947 is empowered to see as to whether minimum wages have been paid to the employee or not and that the last drawn wages payable under the provision as extracted supra shall not be less than the minimum wages and in view of the short fall in the monthly wages and in light of the decision of the Apex Court in *Lalla Ram case*, we interfere with the order of the learned Single Judge and the order of the authority is restored.

9. Since the Workman has filed an affidavit dated 07.02.2023 giving up 50% of

the back wages, the 1st Respondent/Employer is directed to workout the entire wages due to the employee as if no dismissal order exists in the eye of law as per the Industrial Disputes Act, 1947 and adjust the amount if any already paid, pursuant to the interim order of this Court dated 23.12.2008 passed in M.P.No.1 of 2006 in W.P.No.35332 of 2006 and the said order is extracted below:-

> *"There shall be an order of interim injunction on condition that the petitioner pays 50% of the amount due to the second respondent towards back wages and also pays the 1st drawn salary to the petitioner from the date of filing of the writ petition, failing which the interim injunction granted shall stand vacated automatically vacated without any further reference. The balance of 50% of the amount shall be deposited in any nationalised bank for a period of three years and shall be renewed periodically and the first respondent is entitled to receive the interest once in three months."*

10. It is made clear that the employer can deduct the employee's share of the EPF contribution from the said 50%, thereby enabling the employee to get the pensionary benefits on and from the date of retirement. The employer is directed to remit the amount and pay the balance of back wages after adjusting the EPF dues payable to the EPF Trust insofar as the employee's contribution is concerned within a period of three months failing which, the contribution will attract statutory interest which shall be payable by the Corporation and the interest portion payable can be recovered from the

officers concerned, who are liable to pay the amount.

11. Pursuant to the orders passed in the Writ Petition, 50% of the amount has been withdrawn by the Management. Hence, it is the duty of the Management to rework the calculation and pay the amount directed supra, within a period of three months from the date of receipt of a copy of this order.

12. In the result, this Writ Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.V.N., J.,] [R.K.M., J]
08.03.2023

Index: Yes / No
Internet: Yes / No
tsi/arr

To

1. The Tamil Nadu State Transport Corporation
   (Villupuram) Ltd, rep. by its General Manager
   Vellore.

2. The Joint Commissioner of Labour
   (Conciliation)
   DMS Compound, Teynampet
   Chennai-600 006.

S. VAIDYANATHAN,J.,
and
R.KALAIMATHI.,J

arr

W.A.No.940 of 2021

08.03.2023