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W.P.No.10838 of 2019 & W.M.P. No.11289 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.10838 of 2019 & W.M.P. No.11289 of 2019

The Management,
Tamil Nadu State Transport Corporation
(Villupuram) Limited,
Cuddalore Region
Cuddalore 631 552

... Petitioner

Vs.

1. A. Anbazagan
2. The Special Deputy Commissioner of Labour
D.M.S. Compound
Chennai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari or any writ, order or direction to call for the records of the 2nd respondent made in A.P. No.258/2012 dated 12.09.2017 and to quash the same.

For Petitioner	:	Mr.M. Aswin
For R1	:	Mr.K.M. Ramesh, Senior Counsel
For R2	:	Ms. C. Meera Arumugam Additional Government Pleader



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ORDER

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Challenge in this Writ Petition is made to the orders dated dated 12.09.2017, passed in A.P. No.258/2012 by the The Special Deputy Commissioner of Labour, Chennai.

2. The Writ Petitioner is the Tamil Nadu State Transport Corporation (Villupuram) Limited, Cuddalore. The 1st respondent was appointed as a driver on 22.08.1990. Since the 1st respondent unauthorisedly absented himself from attending duty from 26.05.2009, a Charge Memo dated 08.09.2009 was issued to him and a Domestic Enquiry was conducted. The Enquiry Officer held that the charge framed against the 1st respondent was proved. Subsequently, the Disciplinary Authority imposed a punishment of dismissal of the 1st respondent from service and they also filed an Approval Petition in A.P. No.258/2012 under Section 33(2) (B) of the Industrial Disputes Act, 1947 (herein after referred to as "the Act") before the 2nd Respondent, the Special Deputy Commissioner of Labour, Chennai. The 2nd respondent, vide his orders dated 12.09.2017 dismissed the Approval Petition on the ground that the Approval Petition was filed with a delay of 27 days from the date of



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dismissal of the employee from service. Challenging the said orders, the present Writ Petition is filed.

3. Mr.M. Aswin, learned counsel for the Writ Petitioner would contend that the 1st respondent had unauthorisedly absented himself and the 2nd respondent without taking into account the provisions envisaged under Section 33(2)(B) of the Act dismissed the petition filed by the petitioner Management. He therefore, prayed for setting aside the orders of the 2nd respondent.

4. Mr.K.M. Ramesh, learned Senior Counsel appearing for the 1st respondent relied on the decision in ***Lalla Ram vs. D.C.M. Chemical Works Ltd.*** reported in ***(1978) 3 SCC 1*** wherein it has been held thus:

"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 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



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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 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



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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.

His contention is that in the instant case the employer has not filed a petition for approval within the reasonable period before the 2nd respondent and therefore, the order passed by the 2nd respondent is perfectly in order.

5. A perusal of the records shows that the 1st respondent was dismissed from service on 16.10.2012 and the Approval Petition was filed only on 12.11.2012. The delay in filing the Approval Petition has not been explained by the present Writ Petitioner. In the decision in



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Lalla Ram vs. D.C.M. Chemical Works Ltd. (cited supra) it has been

held that the jurisdiction of the Industrial Tribunal is confined to the following enquiries:

- 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.

In the instant case, admittedly there is a delay of 27 days in filing the Approval Petition and, already observed, this has not been properly



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explained by the Writ Petitioner. Therefore, I do not see any reason to interfere with the orders passed by the 2nd respondent.

6. In the result, the Writ Petition is dismissed as devoid of merits.

No costs. Consequently connected Writ Miscellaneous Petition is closed.

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bga

Index : yes/no

Speaking /Non speaking Order

To

The Special Deputy Commissioner of Labour
D.M.S. Compound
Chennai.



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R.HEMALATHA, J.

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