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W.P.No.25652 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.25652 of 2016 and
W.M.P.Nos.21985 and 36912 of 2016**

National Plywood Industries Limited,
215/2, Hosur Thali Road,
Kalukondappalli - 635 114,
Krishnagiri District.

... Petitioner

Vs.

1. The Labour Officer,
Krishnagiri.

2. A.Jayakumar

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records in A.P.No.1068 of 2014 on the file of the Labour Officer, Krishnagiri / the first respondent herein and quash the order dated 08.12.2015

For Petitioner	:	Mr.M.R.Raghavan
For Respondents	:	Mr.K.M.Ramesh
		Senior Counsel
		for Mr.S.Apunu for R2



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ORDER

The Writ Petition has been filed to quash the order dated 08.12.2015 in A.P.No.1068 of 2014 passed by the Labour Officer, Krishnagiri / the first respondent herein.

2. The case of the petitioner is that for the alleged misconduct committed by the second respondent, an enquiry was conducted and the second respondent was found guilty of the charges leveled against him. The second show cause notice was issued, for which, the second respondent given a reply and finding that it was not satisfactory, he was dismissed from service vide order dated 29.12.2014. The petitioner filed Approval Petition before the Labour Court under Section 33(2)(b) of the Industrial Disputes Act, 1947. The second respondent / employee participated in the approval proceedings and filed a reply for which the petitioner also filed rejoinder. On consideration of the materials placed on record, the first respondent Labour Court rejected the Approval Petition vide order 08.12.2015. Challenging the same, the present Writ Petition has been filed by the petitioner Management.

3. The learned counsel appearing for the petitioner by relying upon the judgment of the Hon'ble Supreme Court in the case of **Lalla Ram vs.**



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D.C.M.Chemical Works Ltd., and another reported in ***(1978) 3 SCC 1*** would contend that, the principles laid down in the said judgment where certain guidelines had been given by the Hon'ble Supreme Court that respect to the manner in which the proceedings under Section 33(2)(b) of the Act shall be dealt with by the Industrial Tribunal have not been followed by the Industrial Tribunal. He further submitted that the said judgment is squarely applicable to the facts of the present case and that the Industrial Tribunal unauthorisedly assumed the role of the Appellate Authority and exceeded the well-defined limits of its jurisdiction in refusing to accord its approval. The relevant portion of the said judgment is extracted hereunder:

"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 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



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settled by the decisions of this Court in [Bengal Bhatdee Coal Co. v. Ram Probesh Singh](#), [Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar](#), [Hind Construction & Engineering Co. Ltd. v. Their Workmen](#), [Workmen of Messrs Firestone Tyre & Rubber Company of India \(P\) Ltd. v. Management and Eastern Electric and Trading Co. v. Baldev Lal](#) 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 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



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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."

4. The learned Senior Counsel appearing for the second respondent would submit that the termination order was passed without following the procedure contemplated in the Standing Orders of the petitioner Management and no opportunity was given before passing the termination order. He further submitted that considering the nature of the charges leveled against him, the punishment imposed, namely, dismissal from service is disproportionate and hence, the Labour Court should have taken the said point in consideration before approving the Approval Petition.

5. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

6. Pursuant to the enquiry conducted and the alleged irregularities committed by the second respondent, he was suspended from service and it is evident that, the termination was only after issuance of the second show



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cause notice and not being satisfied with the explanation given by the delinquent. Hence, it cannot be stated that, there was a denial of opportunity to the workman for putting forth his case. That apart, the Tribunal has not followed the guidelines issued in the **Lalla Ram's** case as stated *supra* and in fact delved deep into the facts of the case and assumed the role of the Appellate Authority and exceeded the well-defined limits of its jurisdiction in refusing to accord its approval of the action taken by the employer. That apart, though the petitioner Management had issued the second show cause notice and on being dissatisfied with the explanation given by the delinquent / employee, had dismissed him only thereafter. However, the Tribunal has come to the conclusion that the Management had not at all sought for any written explanation from the delinquent / employee, this factor is incorrect.

7. From the above discussion, it is apparent that, the Approval Petition was not dealt with as per the guidelines issued by the Hon'ble Supreme Court in **Lalla Ram's** case and that the Management had not



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violated any principles of natural justice.

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8. Accordingly, this Writ Petition stands allowed and impugned order passed by the first respondent is set aside and the dismissal order is restored. However, the second respondent is at liberty to raise a fresh Industrial Dispute as against the dismissal order before the competent forum setting out all the contentions available to him. No costs. Consequently, connected miscellaneous petitions are closed.

12.07.2023

NCC: Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji

To

The Labour Officer,
Krishnagiri.



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M.DHANDAPANI, J.

vji

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