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W.P.No.35598 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.35598 of 2016
and W.M.P.Nos.30604 of 2016 & 10462 of 2019

The Management,
State Express Transport Corporation
Tamil Nadu Limited,
Pallavan Salai,
Chennai – 2
Rep. by its General Manager.

... Petitioner

Vs.

1.Thiru M. Pachaiyapan

2.The Special Deputy Commissioner of Labour (Conciliation),
DMS Compound,
Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records passed by the second respondent in A.P.No.14/2012 dated 09.05.2016 and to quash the same.

For Petitioner : Mr.K. Kathiresan

For Respondents : Mr.V. Balamurugan [R1]
Mr.D. Gopal,
Government Advocate [R2]



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ORDER

On charges of an unauthorised absence, the first respondent herein was subjected to a domestic inquiry and on the basis of the proven charges, he was removed from service through an order dated 23.01.2012. On the same day, he made an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 before the second respondent herein, which came to be rejected by an order dated 09.05.2016, which is under challenge in the present Writ Petition.

2. The Authority while dealing with the Approval Petition, had rejected the same on the ground that the inquiry was against the principles of natural justice and that there was no *prima facie* case before the Inquiry Officer. Apart from these two grounds, the Labour Court had also found that the one month wages at the time of removal from service was not paid to the first respondent herein.

3. The learned counsel appearing for the petitioner submitted that the Management had marked the Charge Memo and the Inquiry findings before



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the Labour Court in Exs.A2 & A3 and therefore, the findings that there was no *prima facie* case or that the inquiry was against the principles of natural justice, is incorrect. He further submitted that the first respondent was paid full one month wages and that the first respondent herein was not entitled for other Dearness Allowances, which has not been taken into consideration by the Authority.

4. Per contra, the learned counsel for the first respondent submitted that the one month wages was not fully paid and therefore, is in violation of the procedure contemplated under Section 33(2)(B) of the Industrial Disputes Act, 1947. He further submitted that the entire inquiry was conducted without appropriate notice to the first respondent, Charge Memos and Summons were sent to the wrong address and therefore, the proceedings are in violation of the principles of natural justice.

5. The Hon'ble Supreme Court in the case of '**Lalla Ram Vs. D.C.M. Chemical Works Ltd. & another**' reported in '**(1978) 3 Supreme Court Cases 1**', had set out the five circumstances under which an application under Section 33(2)(b) of the Industrial Disputes Act, 1947, can be rejected.



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While holding so, the Hon'ble Supreme Court has held that in case any one of the circumstances are violated, the Authority will have the power to reject the Approval Petition. The relevant portion of the order reads as follows:-

..... “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 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



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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 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.”



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6. In the instant case, though the Management had marked the document namely Exs.A2 & A3, which relates to the Charge Memo and the inquiry findings, the receipt of the same is disputed by the first respondent herein.

7. It is in this background, the Authority had come to the conclusion that there was no *prima facie* case and that the principles of natural justice was violated in the inquiry. Likewise, insofar as the one month wages as contemplated under Section 33(2)(b) of the Industrial Disputes Act, 1947, is concerned, the Management has miserably failed to establish before the Authority that the full wages was indeed paid to the first respondent herein. Having failed to do so, it is now not open to the Management to raise these grounds before this Court, exercising its power under Article 226 of the Constitution of India. All these factual aspects with regard to the receipt of the one month wages by the first respondent or the quantum of one month wages, requires to be established before the Authority. However, no documents have been produced before the Authority, with regard to the payment of the one month wages. As such, I do not find any infirmity in the findings of the Authority.



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8. Accordingly, the Writ Petition stands dismissed. No costs.

Connected miscellaneous petitions are closed.

31.01.2023

Speaking/Non-speaking Order

Neutral Citation: Yes/No

Index: Yes/No

Internet: Yes/No

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To

The Special Deputy Commissioner of Labour (Conciliation),
DMS Compound,
Chennai.



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M.S.RAMESH,J.

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