



W.P.Nos.42704 & 42708 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

CORAM

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

W.P.Nos.42704 & 42708 of 2016

and

WMP.No.32268 of 2016

The General Manager,
Tamil Nadu State Transport Corporation (Villupuram) Ltd,
Vazhuthareddy, Salamedu,
Villupuram Region, Villupuram - 605 602. ...Petitioner in both W.P's.

Vs.

1. K.Manikkam
2. The Special Deputy Commissioner of Labour,
D.M.S. Compound,
Chennai. ...Respondents in W.P.No.42704 of 2016

Vs.

1. K.Saravanayuvraj
2. The Special Deputy Commissioner of Labour,
D.M.S. Compound,
Chennai. ...Respondents in W.P.No.42708 of 2016



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Prayer in W.P.No.42704 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the 2nd respondent made in A.P.No.156/2011 dated 05.03.2013 and to quash the same as illegal and against the provisions of the Industrial Disputes Act 1947.

Prayer in W.P.No.42708 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the 2nd respondent made in A.P.No.361/2011 dated 04.04.2016 and to quash the same as illegal and against the provisions of the Industrial Disputes Act 1947.

For Petitioner : Mr.M.Aswin, SC
(in both W.P's.)

For Respondents : Mr.K.Arunagiri, for R1
(in W.P.No.42704 of 2016)

COMMON ORDER

Since the issue involved in both the Writ petitions are similar in nature, they are disposed of by way of this common order.

2. The petitioner has come up with these Writ petitions seeking quashment of the orders of the 2nd respondent dated 05.03.2013 and 04.04.2016 made in A.P.No.156/2011 and A.P.No.361/2011 respectively.



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3. The case of the petitioner is that the respective 1st respondent in both the Writ petitions (hereinafter referred as respective workmen) were appointed as Drivers in the petitioner corporation's respective depots during the relevant point of time. While so, for unauthorised absence, the respective workmen were dismissed from service, based on the proven minutes drawn by the enquiry officer upon conducting appropriate enquiry, by issuing appropriate charge memo and after affording opportunity and parallelly, sought approval under Section 33(2)(b) of the Industrial Disputes Act, 1947 from the 2nd respondent in A.P.Nos.156 & 361 of 2011 respectively. However, the 2nd respondent dismissed the above said approval petitions on the ground that, the punishment imposed for the misconduct committed by the 1st respondents is too harsh. Challenging the respective rejection orders passed by the 2nd respondent in the approval petitions, the petitioner corporation has come up with these Writ petitions.

4. Learned counsel for the petitioner submitted that, the petitioner corporation received basic reports from the Branch Manager concerned stating that Mr.K.Manikkam absented for duty from 10.2.2010 and that

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Mr.K.Saravanayuvaraj absented for duty from 25.7.2010. Therefore, charge memos came to be issued against them. However, the employees did not file their reply. Hence, the petitioner corporation was left with no option except to appoint an enquiry officer so as to enquire into the charges. After affording opportunity to either parties, the enquiry was conducted and the Enquiry Officer gave reports stating that the charges framed against the respective first respondent were proved. In respect of Mr.K.Manikkam, though, he was permitted to join duty on 19.11.2010 without prejudice to the charges, he did not join duty, but absented himself from 21.11.2010. Further, being not satisfied with the reply sent by the said Manikkam, upon receipt of the copy of the enquiry report, the second show cause notice dated 08.3.2011 came to be issued and though a reply was submitted, the petitioner corporation was not able to make out anything. Therefore, the petitioner corporation passed an order of dismissal dated 27.5.2011 and sought approval under Section 33(2)(b) of the Industrial Disputes Act, 1947 from the second respondent. Insofar as Mr.K.Saravanayuvaraj is concerned, he remained absent throughout till the final order was passed. When the copy of the enquiry report was sent to him calling for explanation, he did not send any reply. Hence, the second show cause notice dated 30.6.2011



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came to be issued again calling for explanation. Even thereafter, there was no reply from him. Therefore, the petitioner corporation passed an order of dismissal dated 14.9.2011 and sought approval under Section 33(2)(b) of the Industrial Disputes Act, 1947 from the second respondent. After contest, though the 2nd respondent held that the petitioner corporation satisfied the procedure prescribed by the Apex Court in the case of ***Lalla Ram Vs. Managment of D.C.M. Chemicals Works Ltd. & Ors.*** reported in ***AIR 1978 SC 1004***, the Labour Court has rejected the approval petitions filed by the petitioner by two separate orders dated 05.12.2013 and 04.4.2016 respectively, which is not sustainable. Further, it is mandatory on the part of the Labour Court that, it has to consider the approval petitions filed under Section 33(2)(b) of the ID Act, in terms of the law laid down by the Apex Court in the case of ***Lalla Ram (supra)***, in which, the Apex Court has prescribed the procedure to be followed while deciding the approval petitions. However, contrary to the said procedure, the Labour Court has rejected the approval petitions filed by the petitioner Corporation.

5. Learned counsel for the 1st respondent in W.P.No.42704 of 2016 submitted that, though departmental proceedings were initiated as against

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the 1st respondent for unauthorised absence, however, for mere unauthorised absence, the petitioner corporation had imposed a punishment of dismissal from service, which is highly disproportionate and the 2nd respondent, after considering all the above said facts, passed the present impugned order rejecting the approval petition, which does not warrant interference of this Court and accordingly, prayed for dismissal of the above Writ petition.

6. Heard learned counsel for the petitioner and the learned counsel appearing for the 1st respondent in the first writ petition and perused the materials available on record.

7. Admittedly, the petitioner Corporation has passed the order of dismissal as against the respective 1st respondent on the ground of unauthorized absence from duty, for which, the petitioner Corporation filed an approval petitions before the Labour Court under Section 33(2)(b) before the first respondent/Labour Court. It is an undisputed fact that the approval petitions has to be decided based on the law laid down by the Apex Court in the case of ***Lalla Ram Vs. Managment of D.C.M. Chemicals Works Ltd. & Ors.*** reported in ***AIR 1978 SC 1004***, wherein the Apex Court held as under:-



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"(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."

8. In the present cases, though the 2nd respondent held that the petitioner corporation satisfied the procedures contemplated in the case of ***Lalla Ram (supra)***, but rejected the respective approval petitions filed by the petitioner corporation solely on the ground that, the punishment



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imposed for the misconduct committed by the 1st respondents is too harsh.

However, the fact remains that, while dealing with the approval petitions filed under Section 33(2)(b) of the ID Act, the 2nd respondent, has no such power to modify or question the punishment imposed by the petitioner corporation, unless the respective dismissal order is challenged in the manner known to law and the observation made by the 2nd respondent in the respective impugned order cannot be sustained. Hence, the orders passed by the 2nd respondent in the respective approval petitions are liable to be interfered with as the same are perverse.

9. At this point, the learned counsel appearing for the 1st respondent in the first writ petition sought liberty of this Court to challenge the dismissal order in the manner known to law.

10. In view of the above, the orders impugned in these Writ petitions are set aside, confirming the orders of dismissal passed by the petitioner corporation as against the respective 1st respondent and the respective workmen are at liberty to challenge the order of dismissal passed by the petitioner corporation in the manner known to law and the period during



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which the cases were pending before this Court shall stand excluded for the purpose of computation of limitation and it is made clear that, the limitation a prescribed under Section 2A3 of the ID Act, shall start from the date of this order i.e.,03.07.2023.

11. With the above observations and directions, these Writ petitions stand allowed. No costs. Consequently, the connected Miscellaneous petition is closed.

03.07.2023

skt

NCC : Yes / No
Speaking Order : Yes / No
Index : Yes / No

To

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

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