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W.P. No.19902 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.11.2022

DELIVERED ON : 07.02.2023

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. No.19902 of 2014
and W.M.P.No.6393 of 2022
and M.P.No.1 of 2014

The Management of
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Illam, Anna Salai
Chennai – 600 002.
Rep.by its General Manager

... Petitioner

.Vs.

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

2.G.Vijayakumaran
Cleaner, Staff No.A 23442

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
to pass a Writ of Certiorari, to call for the records of the order passed by
the 1st respondent in Approval Petition in A.P.No.396 of 2011 dated
22.07.2013 and to quash the same.



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For petitioner : Mr.Ramanlal
Additional Advocate General
assisted by Mr.A.Vinodh.

For respondents : Mr.G.Velu
Additional Government Pleader for R1
Mr.S.T.Varadarajulu for R2

ORDER

Challenging the dismissal order passed by the 1st respondent/Special Deputy Commissioner of Labour in Approval Petition in A.P.No.396 of 2011 filed under Section 33(2)(b) of the Industrial Disputes Act, 1947, the present Writ Petition has been filed.

2. The 2nd respondent is the workman under the Writ Petitioner/Management. As per the averments in the writ petition, 2nd respondent was charge sheeted for his unauthorised absence from 27.04.2007. A charge memo was issued to the workman on 11.05.2007. But he did not give any reply to the charges. On the charges levelled, enquiry was conducted. Based on enquiry report, an order of removal from service was passed by the Management on 26.12.2007.



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3. As per the provision under Section 33 (2) (b) of the Industrial Disputes Act, 1947, (hereinafter referred to as 'the Act'), Approval Petition was filed before the Special Deputy Commissioner of Labour, in Approval Petition No.396 of 2011 and since the said petition was rejected, the present Writ Petition came to be filed by the Petitioner/Management.

4.The learned Additional Advocate General appearing for the petitioner Management would submit that for the charge memo dated 27.11.2007 issued by the Petitioner-Management, the 2nd respondent did not give any explanation, which amounts to admission of guilt. Moreover, the defect pointed out by the Special Deputy Commissioner of Labour that the mandatory condition of Section 33(2)(b) of the Act that one month wages to the workman is not paid would not be applicable for the case on hand, for the reason that the 2nd respondent is a casual labourer. The payment of monthly salary is mandated only in the case of workmen, who is permanently employed.



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5. The learned Additional Advocate General would further submit that the Labour Court erred in rejecting the Approval Petition mainly on the three grounds, viz., (1) dismissal amounts to unfair labour practice, (2) one month wages was not paid and (3) the Approval Petition was filed belatedly after nearly 4 years. The Authority failed to note that the 2nd respondent-workman has not given any explanation for the charge memo issued by the Management and in such circumstances, based on enquiry report, the workman was dismissed from service.

6. The learned Additional Advocate General, in support of his contention that when prima facie case of dismissal is made out, punishment does not amount to unfair labour practice and victimisation, relied on the following decisions,

(1) John D'Souza Vs. Karnataka State Road Transport Corporation reported in (2019) 18 Supreme Court Cases 47,

(2) The Management, Tamil Nadu State Transport Corporation (Villupuram) Limited, Kancheepuram Region, Kancheepuram-631 552, Rep. By its General Manager Vs. M.Chitti Babu (Deceased) and three



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others [W.P.No.20915 of 2019 dated 01.10.2020]

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(3) The Management, The Tamil Nadu State Transport Corporation (Coimbatore) Ltd., 37, Mettupalayam Road, Coimbatore-43 Vs. 1.The Special Joint Commissioner of Labour, DMS Compound, Chennai-600 006 and 3 others [W.P.No.21621 of 2019 dated 21.09.2022]

7. The learned counsel for the 2nd respondent-workman would submit that the 2nd respondent joined the service of the petitioner's Management as cleaner on 01.11.1994. He performed his duty diligently and honestly, without any blemishes. He had rendered nearly 13 years of service. However, his service was terminated on 26.12.2007, for absence from duty for a period of 8 days. On the other hand, the Approval Petition filed by the petitioner Management in A.P.No.396 of 2011 got rejected. The Authority found that there is no prima facie case made out for dismissal; Management had not come to a bona fide conclusion that the workman was guilty and hence, the dismissal amounts to unfair labour practice.



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8. The learned counsel for the 2nd respondent-workman, in support of his submissions, relied on the judgment passed by a Division Bench of this Court in ***W.A.No.1324 of 2002 dated 28.06.2022***, wherein, it is held that application under Section 33(2)(b) of the Act is mandatory and the judgment of the Apex Court in the case of ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., Vs. Ram Gopal Sharma and others (2002 (2) SCC 244)*** is cited, wherein, it is held that adherence to and obedience of law should be obvious and necessary in a system governed by rule of law; an employer by design can avoid to make an application after dismissing or discharging an employee or file it and withdraw before any order is passed on it, on its merits, to take a position that such order is not inoperative or void.

9. Heard both sides and also perused the materials available on record.

10. A perusal of the order impugned in this writ petition that is dismissal order passed in the Approval Petition would go to show that the



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Special Deputy Commissioner of Labour/1st respondent clearly pointed out that proper domestic enquiry was conducted by the Management, however, the enquiry report revealed that the Management witness has not been examined and no prima facie case has been made out against the workman in the domestic enquiry. The Authority also pointed out that Management failed to comply with the mandatory condition of Section 33(2)(b) of I.D.Act regarding payment of one month wages at the time of dismissal, thereby not complied with mandatory provisions.

11. The Authority also pointed out that the date of dismissal of the employee was 26.12.2007 and the filing of Approval Petition was on 11.10.2011 and the time gap is 4 years and hence the petition was not filed in time and for such reasons, dismissed the Approval Application filed under Section 33(2)(b) of the Act.

12. The decisions relied on by the learned Additional Advocate General to support the case of the Petitioner-Management is not applicable to the facts of this case. Further, in the dismissal order dated



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26/12/2007 passed by the management, it is shown that the workman was

working as Server/Cleaner Staff No. A 23442 in the Poonamallee Depot.

Therefore, the argument raised by the learned Additional Advocate General that the workman was a casual labourer, cannot be accepted.

13. It is settled principle of law that when the Management failed to comply with the provisions of Section 33(2)(b) of the Act, clearly it amounts to unfair labour practice. The contravention of Section 33(2)(b) proviso would drive the employee to have recourse to one or more proceeding by making a compliant. The Constitution Bench of the Honourable Supreme Court in the decision ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., Vs. Ram Gopal Sharma and others (2002 (2) SCC 244)***, agreed and endorsed the view taken in the case of Strabboard and Tata Iron & Steel Co., wherein it is *held as under:-*

"order of dismissal or discharge being incomplete and inchoate until the approval is obtained, cannot effectively terminate the relationship of the employer and employee and that if the approval is not accorded by the tribunal, the employer would be bound to treat the



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respondent as its employee and paying his full wages for the period even though the employer may subsequently proceed to terminate the services of the respondent".

14. In view of the above settled proposition of law, the findings arrived by the Special Deputy of Labour/1st respondent, does not require any interference by this Court. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

07.02.2023

Index :Yes/No
Internet:Yes/No
Speaking order/Non-speaking order
Jer/nvsri

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



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J.NISHA BANU, J.

Jer/nvsri

PRE-DELIVERY ORDER
MADE IN
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