



W.P.No.19389 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.19389 of 2018
and W.M.P.No.22796 of 2018

The Management
Tamil Nadu State Transport
Corporation (Kumbakonam) Limited
Trichy Region, Trichirapalli-620001.

...Petitioner

Vs

1.The Special Deputy Commissioner of Labour
DMS Campus, Anna Salai, Chennai.

2.S.C.Elangovan

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of certiorarified Mandamus, call for the records pertaining to the order dated 12.09.2017 passed by the 1st respondent in A.P.No.28 of 2013 and quash the same, consequently direct the 1st respondent to approve the order of the petitioner dated 02.02.2013 dismissing the 2nd respondent.

For Petitioner : M/s.D.Venkatachalam

For Respondent-1 : Mr.M.S.Prem Kumar, Government Advocate

For Respondent-2 : Mr.Chittibabu
for M/s.Jemmy Vasanth



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ORDER

Assailing the impugned Award of the 2nd respondent/Labour Court in A.P.No.28 of 2013, the petitioner is before this Court.

2. The case of the petitioner is that the 2nd respondent was appointed as a Driver in the petitioner corporation during the relevant point of time. While so, for unauthorised absence, the 2nd respondent was 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.28 of 2013. However, the 1st respondent dismissed the said approval petition on the ground that, the punishment imposed for the misconduct committed by the 2nd respondent is too harsh. Challenging the said rejection order passed by the 1st respondent in the approval petition, the petitioner corporation has come up with this Writ Petition.



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3. Learned counsel for the petitioner submitted that the approval petition filed under Section 33(2)(b) of the Industrial Disputes Act has been rejected by the 2nd respondent contrary to the ratio laid down by the Hon'ble Apex Court in case of ***Lalla Ram Vs. Management of D.C.M Chemical Works Ltd and Ors*** in Civil Appeal No.351 of 1971 dated 16.02.1978 in which, the Apex Court has prescribed the procedure to be followed while deciding the approval petition. However, contrary to the said procedure, the 2nd respondent has rejected the approval petition filed by the petitioner Corporation. Accordingly, he prays for allowing this Writ Petition.

4. Per Contra, learned counsel for the 2nd respondent/Workman submitted that though the petitioner corporation claims to have conducted the enquiry as to the allegations levelled against the workman, prior to the dismissal of the 2nd respondent from service, however, no opportunity of personal hearing was given to the workman to put forth his case. He further submitted that there is a shortfall in the payment of monthly wages and that one month salary has not been fully paid. As per Section 33(2)-(b) of the Industrial Disputes Act, it is mandatory that one month wages has to be paid to the employee and there should not be any shortfall. However, in the



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present case, there was a shortfall in payment of monthly wages. Hence, the finding rendered by the Labour Court that the workman was not paid with full one month wages is fully justified which needs no interference.

6. Heard learned counsel for the petitioner and the learned counsel appearing for the 2nd respondent and perused the materials available on record.

7. Admittedly, the petitioner Corporation has passed the order of dismissal as against the 2nd respondent on the ground of unauthorized absence from duty, for which, the petitioner Corporation filed an approval petition before the Labour Court under Section 33(2)(b) before the second respondent/Labour Court. It is an undisputed fact that the approval petition 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:-

"(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 case on hand, though the 1st respondent held that the petitioner corporation satisfied the procedures contemplated in the case of ***Lalla Ram (supra)***, but rejected the approval petition filed by the petitioner corporation solely on the ground that, the punishment imposed for the misconduct committed by the 2nd respondent is too harsh. However, the fact remains that, while dealing with the approval petition 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 1st respondent in the impugned order cannot be sustained. Hence, the order passed by the 1st respondent in the approval petition is to be interfered with as the same is perverse.



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9. In view of the above, the order impugned in the Writ petition is set aside, confirming the order of dismissal passed by the petitioner corporation as against the 2nd respondent and the workman is at liberty to challenge the order of dismissal passed by the petitioner corporation in the manner known to law and the period during which the case was pending before this Court shall stand excluded for the purpose of computation of limitation and it is made clear that, the limitation prescribed under Section 2A3 of the ID Act, shall start from the date of this order i.e., 20.09.2023.

10. With the above observation and direction, this Writ petition stands allowed. There shall be no order as to costs. Consequently, the connected Miscellaneous petition is closed.

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Index : Yes / No

Neutral Citation Case : Yes / No

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Note to office: Issue order copy on 20.11.2023.



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M.DHANDAPANI, J

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