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W.P.No.22794 of 2019 & W.M.P. No.22357 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.22794 of 2019 & W.M.P. No.22357 of 2019

The Assistant General Manager,
Personnel and Industrial Relations
Parry Agro Industries Limited,
Paralai Estate,
Iyerpadi Post 642 108,
Valparai (Taluk)

... Petitioner

Vs.

Thirupathi

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari calling for the records pertaining to the orders dated 11.04.2019 of the Presiding Officer, Industrial Tribunal, Tamil Nadu, Chennai, in A.P.No.9 of 2017 and to quash the same.

For Petitioner : Mr.Michael Amalraj
for M/s.T.S.Gopalan & Co.

For Respondent : Mr.S.T. Varadarajulu

ORDER



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Challenge in this Writ Petition is made to the order dated

11.04.2019 of the Presiding Officer, Industrial Tribunal, Chennai, in A.P.No.9 of 2017.

2. The respondent Thirupathi was working for the Writ Petitioner Management as an Estate workman. According to the Writ Petitioner, the respondent has been habitually absenting himself from attending duty and in this regard a show cause notice was issued to the respondent on 09.10.2013 seeking his explanation for his unauthorised absence from 09.02.2013 to 09.10.2013. A departmental enquiry was conducted in which the respondent admitted all the charges framed against him. Thereafter, he was dismissed from service with effect from 02.06.2014. The Management subsequently filed an Approval Petition in A.P. No.9 of 2017 under Section 33(2) (b) of the Industrial Disputes Act, 1947 (in short 'ID Act') before the Industrial Tribunal, Chennai, seeking approval of their action of dismissing the respondent from service. The learned Presiding Officer, Industrial Tribunal, though had come to a conclusion that the departmental enquiry was conducted in a fair and proper manner, had held that the punishment of dismissal from service for unauthorised absence is too harsh. He, therefore, dismissed the Approval Petition.



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3. Mr.Michael Amalraj, learned counsel for the Writ Petitioner relying on the decision in ***John D'Souza vs. Karnataka State Road Transport Corporaration*** reported in ***(2019) 18 Supreme Court Cases 47*** contended that the Labour Court or Tribunal, while holding enquiry under Section 33(2)(b) cannot invoke the adjudicatory powers vested in them under Section 10(i)(c) and (d) of the Act nor can they in the process of formation of their prima facie view under Section 33(2)(b), dwell upon the proportionality of punishment, as erroneously done in the instant case, for such a power can be exercised by the Labour Court or Tribunal only under Section 11-A of the ID Act. His specific contention is that the respondent has been habitually absenting himself for which he was given punishments.

4. Per contra, Mr.S.T. Varadarajulu, learned counsel for the respondent would contend that since the workman has attained the age of superannuation some leniency can be shown to him.

5. In the decision in ***Lalla Ram Vs. D.C.M. Chemical Works***



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Limited and another reported in (1978) 3 SCC 1, the Hon'ble Supreme

Court has held 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 .

..... 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



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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. 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."

It is seen from the orders passed by the Industrial Tribunal, that the



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Presiding Officer had not only dismissed the Approval Petition but also directed the petitioner Management to reinstate the respondent workman into service with back wages from the date of dismissal till the date of reinstatement. The past track record of the respondent workman clearly shows that he has been habitually absenting himself from attending duty and this has not been disputed by the learned counsel for the respondent. In fact the respondent has been punished on various occasions as is seen from the records. The Industrial Tribunal had also given its findings that the Enquiry was held properly by the Writ Petitioner Management.

6. In the decision in ***John D'Souza vs. Karnataka State Road Transport Corporation*** (cited supra) it has been very clearly held that when the the Labour Court or Tribunal, while holding enquiry under Section 33(2)(b) cannot invoke the adjudicatory powers vested in them under Section 10(i)(c) and (d) of the ID Act. The Tribunal/Labour Court cannot also see the proportionality of punishment and in the instant case the Tribunal had erroneously had done it. Furthermore, in the Approval Petition filed by the Writ Petitioner Management under Section 33 (2) (b) of the ID Act, the Tribunal had directed the Management to reinstate the respondent with full back wages from the date of the petition. Therefore,



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the order passed by the Industrial Tribunal, Chennai, is totally perverse
and accordingly, the Writ Petition stands allowed. No costs.

Consequently connected Writ Miscellaneous Petition is closed.

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Index : yes/no

Speaking /Non speaking Order



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R.HEMALATHA, J.

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