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*W.A. No. 829 of 2021*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2023

CORAM

**THE HON'BLE MR. JUSTICE S. VAIDYANATHAN**

**AND**

**THE HON'BLE MRS. JUSTICE R. KALAIMATHI**

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C.M.P. No. 4670 of 2021

The Management of  
M/s. Hyundai Motor India Limited,  
Plot No. H-1, SIPCOT Industrial Park,  
Irungattukottai,  
Sriperumbudur – 602 117. ..Appellant

Vs.

Thiru M. Ganesan ..Respondent  
Prayer: Writ Appeal as against the order dated 03.12.2020 passed in

W.P. No. 17275 of 2019.

For Petitioner :: Mr.Sai Raaj for  
M/s. Sai Raaj Associates

For Respondent :: Mr.S. Prabakaran



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Senior Advocate for  
M/s.C.K. Appaji  
S. Regu  
S. Shannmugam

## **J U D G M E N T**

**S. VAIDYANATHAN,J.**

**AND**

**R. KALAIMATHI,J.**

The present appeal has been preferred by the Management questioning the order of the learned Single Judge dated 03.12.2020 passed in W.P. No. 17275 of 2019 whereby the learned Single Judge set aside the order dated 03.04.2018 passed by the III Additional Labour Court in Approval Petition No. 22 of 2010 in I.D. No. 418 of 2007.

2. The admitted case of the parties is that the employee, who was serving as a technician was issued with a charge memo for which enquiry was conducted and based on the proved charges, he was dismissed from service. As there was an industrial dispute pending between the Management and the Union, the Management/employer filed an approval



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petition as contemplated under Section 33(2)(b) of the Industrial Disputes Act, 1947 ("I.D.Act" in short). Since the Labour Court, while dealing with the issue, following the dictum of the Hon'ble Apex Court in **Lalla Ram V. Management of D.C.M. Chemical Works Limited and Another** reported in **1978 AIR 1004** held that the domestic enquiry was fair and proper and that there was no violation of principles of natural justice and confirmed the order of the Management by granting approval. The employee approached the learned Single Judge contending that the charges are not serious and a farce of an enquiry was conducted by the Management and the Labour Court's order granting approval under the provisions of Section 33(2)(b) of I.D. Act is erroneous.

3. The learned Single Judge accepted the contention of the employee and set aside the order of the Labour Court inspite of the fact that the decision of the Hon'ble Supreme Court in **John D'Souza V. Karnataka State Road Transport Corporation** reported in **2019 IV LLJ 513 (SC)** was referred to. The principle laid down in the said case is that if the domestic enquiry is found to be defective and principles of natural justice appear to



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have been violated, then the entire exercise will have to be redone by the authority under Section 33(2)(b) of I.D.Act. In fact, the scope of *Lalla Ram's case* was widened and the matter came to be dealt with afresh by the Approval Authority. In this case, the authority has gone into the various aspects on the five guidelines prescribed in *Lalla Ram's case*, dealt with the fairness of enquiry and came to the conclusion that the enquiry was fair and proper and that the Management had complied with all the norms. The learned Single Judge, after discussing the evidence let in by the parties, came to the conclusion that the order of the authority needs to be interfered with.

4. With respect to the learned Single Judge, we are of the view that the power of the authority under Section 33(2)(b) of I.D.Act is very limited and he has no powers to interfere with the punishment under Section 11-A of the I.D. Act. If the employee was aggrieved even after the orders of the approval authority, nothing prevented him from raising an industrial dispute under Section 2-A of I.D.Act or seek the assistance of the Union and raise a dispute under Section 10 of I.D.Act.



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5. Mr.S. Prabhakaran, learned Senior Counsel for the respondent has vehemently contended that even assuming for the sake of argument that the Labour Court was right in following the 5 guidelines prescribed by the Hon'ble Apex Court, it ought not to have gone in detail with regard to the enquiry and held that the enquiry was fair and proper. That apart, he would submit that the powers of this Court to interfere with the punishment under Article 226 of the Constitution of India is very wide and hence, taking note of the charges framed against the employee, this Court can mould the relief and the order of the learned Single Judge in interfering with the order of the Labour Court is perfectly valid.

6. Mr.R. Sai Raaj, learned counsel appearing for the appellant would submit that the Hon'ble Supreme Court in *John D'Souza's case* has categorically held that while following the guidelines in *Lalla Ram's case*, if it is found that the enquiry has not been conducted properly, the matter will have to go back to the authoirty forgiving an opportunity to the parties to putforth their submission. In this case, asthe Labour Court has rightly analysed the evidence and came to the conclusion that the domestic enquiry



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was fair and proper, the question of applying the principle in *John D'Souza's case* may not arise.

7. Heard both parties.

8. The First Bench of this Court, on 05.09.2022 has passed the following order:

*""Heard the parties on the appeal challenging the order of the learned Single Judge dated 24.11.2020.*

2. *The writ petition was filed against the approval granted by the Labour Court on an application under Section 33(2)(b) of the Industrial Disputes Act, 1947. The Labour Court found satisfaction of all the required conditions for maintaining an application under Section 33(2)(b) and even found the enquiry to be fair. The Labour Court then found prima facie case making out the charges and accordingly accepted the application.*

3. *The learned Single Judge substituted the finding of the enquiry officer as well as of the Labour Court going beyond the jurisdiction conferred under Section 33(2)(b) of the Act of 1947 and the interpretation of the term "prima facie" given by the Apex Court in the case of **Martin Burn Ltd. V. R.N. Banerjee (AIR 1958 SC 79)**. It was held that the Labour Court cannot substitute its finding to the finding of the enquiry officer if the view taken by the Enquiry Officer is a possible one based on the evidence.*



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4. *The learned Single Judge has recorded finding in regard to the third charge as if exercising the power under Section 11A on a reference under Section 10 of the Act. Ignoring that it was on an application under Section 33(2)(b) of the Act.*

5. *It is further stated that even the punishment was substituted finding that the third charge has not been proved, whereas substitution of the punishment was not within the jurisdiction of the Court on an application under Section 33(2)(b). It can be only while exercising powers under Section 11A of the Act of 1947 on a reference of the dispute under Section 10 of the said Act, which is not the case herein.*

6. *The learned Single Judge interfered with the order of the Labour Court ignoring the settled proposition of law and the recent judgment of the Apex Court in **John D'Souza V. Karnataka SRTC [(2019) 18 SCC 47]**, wherein, in paragraph 37, it is held as under:*

*'37. The Labour Court or Tribunal, therefore, while holding enquiry under Section 33(2)(b) cannot invoke adjudicatory powers vested in them under Sections 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 11A of the Act....."*



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9. This Court, on 22.02.2023, has passed the following order:

*"A reading of the order passed by the learned Single Judge runs counter to the Judgment of the Hon'ble Supreme Court in **John D'Souza Versus Karnataka State Road Transport Corporation** reported in 2019(18) SCC 47 as the authority dealing with the issue under Section 33(2)(b) of the Industrial Disputes Act, 1947 (in short 'the Act') has no power to interfere under Section 11-A of the said Act, as it is not a Industrial Dispute referred under Section 10 or raised under Section 2-A of the Act. Though this Court is empowered to interfere with the order of the Labour Court, it can exercise the same, provided there is perversity and the punishment is shockingly disproportionate to the gravity of the misconduct. That power is not available to the Labour Court and it is available only under Section 11-A of the Act while dealing with the issue on hand. When no such powers are available, more so, in the present case on hand, the Management being a private Management, this Court should be very slow in interfering with the order of the Labour Court under Section 33(2)(b) of the said Act, invoking Article 226 of the Constitution of India. Since the order of the Apex Court stated supra is staring at the workman concerned in this matter, we have also suggested the employee to accept gratuity together with interest @ 10% per annum in order to give quietus to the issue or to raise Industrial Dispute under Section 2-A of the Act. Even though order of dismissal has been passed after 15.09.2010, as the matter is pending before this Court, the period needs to be excluded for the purpose of computation of limitation. The order passed under Section 33(2)(b) is not a bar for raising Industrial Dispute. If a dispute is raised under Section 2-A of the said Act, the Labour Court will have the powers under Section 11-A of the Act,*



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*depending upon the pleading and evidence that may be let in before the Court to interfere with the punishment. This observation does not mean that the Labour Court shall interfere with the punishment. Therefore, the reason given is to differentiate the powers of the Labour Court while dealing with the issue under Section 33(2)(b) and a dispute under Section 2-A or under Section 10 of the said Act. The learned counsel appearing for the Employee/workman seeks time.*

*Post this appeal on 01.03.2023, immediately after admission."*

10. Since the employee has not accepted the suggestion made by this Court, we have dealt with the matter on merits. In the present case, we do not find any error on the part of the Labour Court in deciding the issue under Section 33(2)(b) of I.D. Act and granting approval for the action of the Management in dismissing the employee. However, it does not mean that the order of the Labour Court under Section 33(2)(b) of I.D. Act is final. All the issues are left open and they can be re-agitated by the employee, in case, he raises a dispute under Section 2-A of I.D. Act.

11. In the case on hand, the employee was dismissed from service on 09.11.2020 and the matter is pending for nearly 10 years. Section 2-A was amended introducing the limitation period of 3 years, which came into



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effect from 15.09.2010. The period of limitation in the present case may not be applicable or it will be applicable on and from the date of the order passed by this Court as the period during which the matter was pending before this Court needs to be excluded.

12. At this stage, Mr.S. Prabhakaran, learned Senior Counsel for the respondent submitted that the employee is without employment for over a decade and that a time limit may be prescribed for the appropriate Court to decide the matter at the earliest point of time.

13. It is open to the employee to raise an industrial dispute within a period of 3 years from the date of receipt of a copy of this order and in case of such a dispute being raised before the Conciliation Officer, if conciliation fails or the conciliation is not concluded within a period of 45 days from the date of initiation, it is open to the employee to approach the Labour Court and the Labour court is expected to take up the matter and decide the same following the timeline prescribed under Rule 34(7) of Tamil Nadu Industrial Disputes Rules, 1958 by not adjourning the matter beyond 7 working days

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at any given point of time and bring the issue to its logical conclusion. We once again make it clear that the finding on fairness of enquiry or any other issue touching upon the merits of the matter, decided by the Labour Court or by the learned Single Judge or by us will not have any bearing when the industrial dispute is taken up for adjudication.

14. The writ appeal stands allowed with the above directions. No costs. Connected W.M.P. is closed.

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(S.V.N.J.) (R.K.M.J.)  
08.03.2023

**S. VAIDYANATHAN,J.**

**AND**



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