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W.A.No. 3514 of ----

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

CORAM :

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ**

**Writ Appeal No.3514 of 2023
and
CMP.No.28735 of 2023**

The General Manager,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Kancheepuram Region,
Ponnerikarai,
Bengaluru National Highways,
Kancheepuram - 631 552.
Appellant

..

Versus

1. The Special Deputy Commissioner of Labour
D.M.S. Campus, Anna Salai,
Chennai.

2. K.Raghulan
Respondents

..

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 17.04.2023 passed by the learned Judge in W.P. No.32643 of 2013.



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For R2

: Mr.V.Ajoy Khose

JUDGMENT

(Judgment of the Court was made by R. MAHADEVAN, J.)

This Writ Appeal has been filed by the Transport Corporation, challenging the order dated 17.04.2023 passed by the learned Judge in W.P.No.32643 of 2013.

2. According to the appellant, while the second respondent was working as a conductor in Orikkai Depot, he was issued with a charge memo dated 26.02.2010 for the alleged collection of fare and non-issuance of ticket, thereby misappropriated a sum of Rs.16/- for a ticket and also kept shortage of Rs.17/-. Due to the same, he was suspended from service on 20.02.2010. Thereafter, domestic enquiry was conducted. Based on the report submitted by the enquiry officer, holding the charges as proved, the second respondent was dismissed from service by order dated 21.07.2011. Consequently, the appellant preferred an application in A.P.No.108 of 2012 under section 33(2)(b) of the Industrial Disputes Act, 1947, seeking approval for the dismissal of the second respondent from service. The first respondent Labour Court by order dated 27.12.2012 dismissed the approval petition, on the ground that the passenger was not examined at the time of enquiry. Challenging the dismissal order



petition bearing no.32643 of 2013 and the same was also dismissed on 17.04.2023, which is impugned herein. Aggrieved by the same, the appellant is before this Court with the present appeal.

3. The learned counsel appearing for the appellant submitted that the second respondent was given adequate opportunity to defend the enquiry proceedings and his explanation was also considered and only after completion of enquiry and analysing all other aspects, the second respondent was dismissed from service. The learned counsel further submitted that the second respondent himself admitted his misconduct to the effect that due to his negligence, he was not given ticket to the passenger, after collecting the fare; and therefore, there is no need for further examination of the passenger as witness, which aspect was not properly appreciated by the first respondent, while rejecting the approval petition. The learned counsel also submitted that the power of approval should be limited to an extent of seeing that there is existence of *prima facie* case. Without considering all these factors, the learned Judge erred in dismissing the writ petition filed by the appellant Transport Corporation. It is also submitted that the judgment in *Roop Singh Negi vs. Punjab National Bank and others* [2009 (2) SCC 570] relied on by the learned Judge while dismissing the writ petition, is not applicable to the facts and circumstances of the present case. Stating so, the learned counsel sought to



allow this writ appeal by setting aside the order passed by the learned Judge.

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4. On the other hand, the learned counsel appearing for the second respondent submitted that without conducting proper enquiry and without considering his explanation, the second respondent was dismissed from service, which is arbitrary, illegal and in violation of the principles of natural justice. It is further submitted that during the enquiry, neither the passenger was enquired nor the conductor was cross-examined on the side of the appellant and therefore, the action taken by the appellant against the second respondent was a vindictive action. Taking note of the same, the first respondent has rightly rejected the approval petition under section 33 (2) (b) of the Industrial Disputes Act, 1947, and the same was also affirmed by the learned Judge. Thus, the learned counsel submitted that the order impugned herein does not require any interference in the hands of this Court.

5. Heard the learned counsel on either side and also perused the materials available on record.

6. The fact remains that for the alleged misconduct, the second respondent was subjected to domestic enquiry and thereafter, he was inflicted with the punishment of dismissal from service by the appellant Transport



Corporation. The petition filed by the appellant seeking approval of the said punishment was dismissed by the first respondent Labour Court. The writ petition filed challenging the said order of the Labour Court, also came to be dismissed, by the writ court, by the order impugned herein. Therefore, this writ appeal by the appellant Transport Corporation.

7. The specific ground raised by the learned counsel for the appellant is that the role of the Labour Court while granting approval under Section 33(2)(b) of the Industrial Disputes Act, 1947 is very limited and it is only to the extent of scrutinizing, whether at all there exists *prima facie* case. It is his further contention that when *prima facie* case is specifically made out as in this case, the Labour Court ought not to have refused approval to the order of dismissal inflicted on the second respondent. To answer the said submissions, this Court is guided by the decision of the Hon'ble Apex Court in ***Mysore Steel Works Pvt. Ltd. v. Jitendra Chandra Kar and Others [(1971) 1 LLJ***

543]. The relevant portion of the said judgment is extracted as under:

“10. The question as to the scope of the power of an Industrial Tribunal in an enquiry under Section 33(2) of the Industrial Disputes Act has by now been considered by this Court in a number of decisions and is no longer in dispute. ***If the Tribunal comes to the conclusion that the domestic enquiry was not defective, that is, it was not in violation of the principles of natural justice, it has only to see if there was a prima facie case for dismissal, and whether the employer had come to a bona fide conclusion that the employee was guilty of misconduct. In other words, there was no unfair labour practice and no victimisation. It will then grant its approval. If the Tribunal, on the other hand, finds that the enquiry is defective for any reason, it would have to consider for itself on the evidence adduced before it whether the***



dismissal was justified. If it comes to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified it would give its approval to the order of dismissal made by the employer in a domestic enquiry. (See P.H. Kalyani v. Air France [1964 (2) SCR 104 at 112]) where, therefore the domestic enquiry is conducted in violation of the principles of natural justice evidence must be adduced before the Tribunal by the employer to obtain its approval. Such evidence must be adduced in the manner evidence is normally adduced before the Tribunal, that is, witnesses must be examined and not by merely tendering the evidence laid before the domestic enquiry, unless the parties agree and the tribunal given its assent to such a procedure. (See K.N. Barmab v. Management of Badla Beta Tea Estate [CA No. 1017 of 1968, decided on 9th March, 1967]). It is clear, therefore, that the jurisdiction of a tribunal under Section 33(2) is of a limited character. Where the domestic enquiry is not defective by reason of violation of principles of natural justice or its findings being perverse or by reason of any unfair labour practice, the tribunal has only to be satisfied that there is a prima facie case for dismissal. The tribunal in such cases does not sit as an appellate Court and come to its own finding of fact.”

8. A reading of the above clearly shows that it is only in the case where the Labour Court is satisfied that the domestic enquiry was properly conducted by the employer, a mere existence of *prima facie* case would be sufficient for grant of approval to the order of dismissal from service. However, in this case, admittedly, the enquiry was carried out perfunctorily without oral examination of independent witness and more importantly, the appellant Transport Corporation has merely tendered document(s) without proof, which altogether would go to prove that the enquiry was conducted in haste and the finding of the enquiry officer is perverse as it is unsupported by material evidence. Hence, the order of dismissal passed by the appellant based on such enquiry report, is contrary to law. Considering the same, the Labour Court has rightly rejected the approval petition and the order of the learned Judge, confirming the said



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decision of the Labour Court, placing reliance on ***Roop Singh*** case needs no interference by this court.

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9. Finding no merit, this writ appeal deserves to be dismissed and is accordingly, dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

J.]

[R.M.D., J.]

[M.S.Q.,

20.12.2023

Index : Yes / No
Internet : Yes / No
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To

The Special Deputy Commissioner of Labour
D.M.S. Campus, Anna Salai,
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