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W.P.No.4840 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.4840 of 2023 and WMP No.4874 of 2023

The Management of Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Kancheepuram Zone,
Ponnerikarai, Bangalore-Chennai
National Highway,
Kancheepuram District-631 552

...Petitioner

Vs

M.Vijayakumar (deceased)
Assistant Engineer

1. R.Shymala
W/o Late M.Vijayakumar
2. Special Joint Commissioner of Labour,
Teynamet, Chennai
(Cause Title amended as per order dated
22.02.2023 in WMP No.4942 of 2023)

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the Rejection Order dated 26.07.2018 made in A,P.No.591 of 2011 passed by the 2nd respondent and quash the same.

For Petitioners : Mr.T.Chandrasekarn



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ORDER

The first respondent was dismissed from service on 01.02.2011 based on certain proven charges. An application under Section 33(2)(b) of Industrial Disputes Act, 1947 was filed on 19.01.2012 after a lapse of 11 months. Through the impugned order dated 26.07.2018, the petitioner's application came to rejected predominantly on the grounds that the enquiry was in violation of principles of natural justice and there was no prima facie evidence before the enquiry officer and the respondent was not paid one month salary along with the order of dismissal and that the approval petition was belatedly filed after 11 months.

2. The Hon'ble Supreme Court of India in the case of '**Lalla Ram Vs. D.C.M. Chemical Works Ltd. & another**' reported in '**(1978) 3 Supreme Court Cases 1**', had culled out the scope of jurisdiction of the Industrial Tribunal in dealing with proceedings under Section 33(2)(b) of the Act under five heads, in the following manner:-

.....

“12. The position that emerges from the above quoted decisions of this Court may be stated 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



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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 regard being had to the position settled by the decisions of this Court in Bengal Bhatdee Coal Co, v. Ram Probesh Singh(1), Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar(2), Hind Construction & Engineering Co. Ltd. v. Their Workmen(3), Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management & Ors(4), and Eastern Electric and Trading Co. v. Baldev Lal(5) that 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 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 game 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.”

3. The aforesaid extract is self-explanatory. As such, when the Industrial Tribunal/Authority renders a finding that there was no *prima facie* case for dismissal based on the evidence adduced before the domestic inquiry, such an order would be justifiable.

4. In the light of the findings as well as the decision of the Hon'ble Supreme Court, I do not find any infirmities in the impugned order of rejection.

5. Accordingly, the Writ Petition stands dismissed. In view of the dismissal of the present Writ Petition, the first respondent herein, is deemed to have been in service from the date of his dismissal and hence, the petitioner/Corporation, shall pass appropriate orders, extending all service and



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monetary benefits to the first respondent, including the pensionary benefits.
Such an order shall be passed atleast within a period of six weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

22.02.2023

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Index:Yes/No

Speaking order/Non-speaking order

sr

To

Special Joint Commissioner of Labour,
Teynamet, Chennai



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M.S.RAMESH,J.

sr

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