



W.P.No.31293 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.31293 of 2017 & 25456 of 2022

and W.M.P.Nos. 34374 of 2017 & 24456 of 2022

The Management,
Tamilnadu State Transport Corporation (Villupuram)
Limited,
Villupuram-605 602
Rep by its Managing Director

.. Petitioner
(in W.P.No.31293 of 2017)

K.Sathiyavel

.. Petitioner
(in W.P.No.25456 of 2022)

Vs.

1.K.Sathiyavel

..R1 in W.P.No.31293 of 2017

2.The Management,
Tamil Nadu State Transport Corporation Villupuram Limited,
Vazhuthareddy, Salamedu,
Villupuram Region,
Villupuram-605 602.

..R1 in W.P.No.25456 of 2022

3.The Special Deputy Commissioner of Labour,
DMS Compound,
Chennai-600 006.

.. R2 in both Petitions

Prayer in W.P.No.31293 of 2017: Writ Petition filed under Article 226 of



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the Constitution of India to issue a Writ of Certiorari or any writ, order or direction to call for the records of the 2nd respondent made in A.P.No.297 of 2014 dated 20.03.2017 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

Prayer in W.P.No.25456 of 2022: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate Writ, Order or direction in the nature of Writ, call for the records of the 2nd respondent pertains to the order passed in A.P.No.297 of 2014 dated 20.03.2017 and quash the finding in point No.4 and consequently direct the respondents to reinstate the petitioner with continuity of service along with all monetary and other benefits and back wages.

For petitioner : Mr.M.Aswin, Senior Counsel
(in W.P.No.31293 of 2017)

: Mr.K.Arunagiri for R1
(in W.P.No.25456 of 2022)

For Respondents : Mr.K.Arunagiri
(in W.P.No.31293 of 2017)

: Mr.M.Aswin, Senior Counsel
(in W.P.No.31293 of 2017)

COMMON ORDER

Both the management as well as the workmen had filed the respective Writ Petitions challenging the order dated 20.03.2017 passed by the 2nd respondent/Deputy Commissioner of Labour in Approval Petition No.297/2014. The Management filed the petition on the ground that the



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non-examination of the passenger who gave a statement against the employee is fatal to the case while the workman filed the petition on the ground that the finding rendered by the Commissioner of Labour that one month salary has been fully paid to the employee is erroneous.

2. For the sake of convenience, the parties in the Writ Petition will be referred to as workman. Management as Labour Commissioner.

3. The facts of the case is that the workman was working as a conductor in the Transport corporation. The allegation against the workman is that he has collected a fare of Rs.22/- on 07.02.2013 from two passengers but he has failed to issue tickets for the above sum. Hence a charge memo dated 20.02.2013 was issued on the ground that there was a commission of misconduct misappropriation of the corporation funds. Thereafter, the enquiry officer was appointed who, after affording an opportunity, submitted his finding. Thereafter, a second show cause notice has been issued to the workman seeking his response. After considering his reply, un-convinced by the same, the workman was dismissed from service.

4. Thereafter, approval was sought under Section 33(2)-(b) of the



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Industrial Disputes Act, 1947 before the Labour Commissioner who has framed five issues and finally disposed the approval petition holding that the payment of salary was done in a proper manner. While holding that the payment of salary was done in a proper manner, the 2nd respondent held that the complainant was not examined which has resulted in the enquiry being done in an improper manner. Aggrieved by the said finding, the workmen as well as the management are before this Court.

5. Learned counsel for the management submitted that the 2nd respondent has gone beyond his scope and it is not in consonance with the guidelines framed 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.

6. Learned counsel for the workman contended that there is a shortfall in the payment of monthly wages and that the employee drew a sum of Rs.15,206/- as salary in October 2014. However, he was paid only Rs.14,497 vide Cheque dated 13.11.2014 along with the dismissal order. He



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further submits that it is mandatory under Section 33(2)-(b) of the Industrial Disputes Act that one month wages has to be paid to the employee and there should not be any shortfall. However, even though the pay slip shows the amount of Rs.15,206/-, the Cheque given by the management was only to the tune of 14,497/- leaving a shortfall of Rs.709/-. Hence, finding rendered by the Labour Commissioner that one month salary has been fully paid to the employee is not in order.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. The facts stated above are not in dispute. It is seen that the management has initially filed the Writ Petition in W.P.No.31293 of 2017 which came to be dismissed by this Court vide order dated 30.07.2021 on the ground that the employee has not been paid one month salary and that there is a shortfall in payment of wages. Aggrieved by the said dismissal, the management filed Writ Appeal in W.A.No.748 of 2022 which was allowed by the Division Bench of this Court vide order dated 19.07.2022 & remanded the matter to the learned Single Judge to decide the issues raised



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by the management and not by the workman who at that time has not filed the Writ Petition. Thereafter, on coming to know about the order passed in W.A.No.748 of 2022, the workman has filed the Writ Petition in W.P.No.25456 of 2022 challenging the finding at point number four (4) rendered by the Labour Commissioner in the Approval Petition.

9. A perusal of the order passed in the Approval Petition, reveals that the Labour Commissioner has framed the following issues :-

“1. Whether one month salary was paid?

2. Whether the action taken against the 2nd respondent was integral and simultaneously proceeded for seeking approval of the dismissal?

3. Whether the enquiry was conducted in a fair and proper manner following the principles of natural justice?

4. Whether the prima-facie of the case was made out on necessary evidences?

5. Whether the conclusion was bonafide and the action of the Management did not tantamount for unlawful labour practice?

10. The above issues were framed by the Labour Commissioner



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on the basis of the judgment of the Hon'ble Supreme Court in case of **Lalla Ram Vs. Management of D.C.M. Chemicals Works Ltd. & Ors.** reported in **AIR 1978 SC 1004**. While considering the appeal filed by the employee challenging the order of dismissal by the employer D.C.M. Chemicals Works Limited, on the ground that the employee was guilty of misconduct, the Hon'ble Supreme Court held as follows:-

*“12. The position that emerges from the above quoted decisions or 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 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 bonafide 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 MANU/SC/0136/1963 : (1963)ILL J291SC** , **Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar [1961] 2 L.L.J. 511**, **Hind Construction & Engineering Co. Ltd. v. Their Workmen MANU/SC/0210/1964** , **Workmen of Messrs Firestone Tyre & Rubber Co. of India (P) Ltd.**” v. **Management and Ors. MANU/SC/0305/1973 : (1973)ILL J278SC** ., and **Eastern Electric and Trading Co. v. Baldev Lal [1975] Lab. I.C. 1435 (S.C.)** that though generally*



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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 excessive or too severe yet an inference of malafides 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 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.

13. *Let us now see whether the aforesaid requirements are satisfied in the present case or not. As stated earlier, the Enquiry Officers had, after a regular enquiry properly made according to the requirements of the Standing Orders and principles of natural justice, come to a categoric and bona fide*



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conclusion that the appellant obstructed Shyam Singh in the execution of his legitimate official duties (of protecting the immovable property of the Company and preventing its improper and unauthorised use) by abusing, threatening and roughly handling him and thereby committed misconduct as contemplated by Standing Order 27(i). The Industrial Tribunal had itself also clearly found that the Enquiry Officers were not biased against the appellant; that the domestic enquiry held against the appellant was not violative of the principles of natural justice and that it could not be said that the findings of Enquiry Officers were not based upon evidence or were perverse. The material on record also disclosed that the employer paid one month's wages to the appellant and simultaneously made an application to the specified authority before which the main industrial dispute was pending, for grant of approval of the dismissal of the appellant. Further the misconduct for which the disciplinary action was taken against the appellant was undoubtedly directed against Shyam Singh to prevent him from investigating into a matter relating to immovable, property belonging to the Company which he was bound to protect in discharge of the duties which devolved upon him as a security officer. In face of all the aforesaid factors which make out a strong prima facie case against the appellant, it is difficult to understand how the Additional Industrial Tribunal could legitimately ignore the bonafide findings of the Enquiry Officers which it had itself endorsed by holding that there was no rational nexus between the appellant's misconduct and his employment and that of Shyam Singh and withhold its approval of the action taken by the management of respondent No. 1 On a careful consideration of the entire facts and circumstances of the case, we are therefore clearly of the view that the requisite nexus



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*was there and the Industrial Tribunal unauthorisedly assumed the role of an appellate authority and exceeded the well defined limits of its jurisdiction in refusing to accord its approval of the action taken against the appellant by holding not on the basis of any legal evidence but purely on the basis of conjectures and surmises that the present was a case of victimisation. We would like to call attention at this stage to the decisions of this Court in **Tata Engineering & Locomotive Co. Ltd. v. Prasad (S.C.) and Anr. [1969] 2 L.L.J. 799** and **Hamdard Dawakhana Wakf v. Its Workmen and Ors. [1962] 2 L.L.J. 772** and reiterate and re-emphasize that no question of victimisation or management having a bias against the appellant can arise once it is held that the findings of misconduct alleged against the workman were properly arrived at and the domestic enquiry was in no way vitiated. We would also like to emphasize that it is not necessary as stressed by the learned Counsel for the appellant that both the victim and the delinquent workman should be engaged in the performance of their official duties when the act which is the subject matter of misconduct is said to have been committed. It is sufficient if the victim and the delinquent workman are both employees of the same concern and the misconduct is directed against the former while he is acting in the discharge of the duties imposed him by virtue of his office. Thus the jurisdiction of the Industrial Tribunal being a limited one, as stated above and all the essential requisites of the proviso to Section 33(2)(b) of the Act being present in the instant case, the Industrial Tribunal was not, in our opinion, justified in withholding its approval and the High Court was perfectly right in passing the impugned judgment and order.*



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11. In the instant case, management has filed detailed documents to show that there was no demand for any documents and there was no rejection of the documents sought for. It is seen from Ex.P16 that the petitioner has been paid the entire salary. Hence, on appreciation of the entire evidence, the Labour Commissioner has come to the conclusion that the employee has been paid the entire salary. This Court sitting under Article 226 of the Constitution of India cannot re-appreciate the evidence already appreciated by the Labour Commissioner who is a fact finding authority. Further, it is seen that there is no violation of principles of natural justice, as both the parties have been heard by disciplinary authority as well as by the Labour Commissioner. The workman has not challenged the order but has merely challenged a portion of the finding rendered by the Labour Commissioner at point number four (4) with regard to one month wages alone. The said contention has been proved by Ex.P16 revealing that the petitioner has been fully paid one month wages. Hence, the contention of the employee that he was not paid one month wages is not established and there is compliance of payment as mandated under Section 33(2)-(b). Hence, the Writ Petition in W.P.No.25456 of 2017 filed by the petitioner stands dismissed.



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12. With regard to the Writ Petition in W.P.No.31293 of 2017 filed by the management, it is seen from the impugned order that a finding has been rendered that the documents as sought for by the workman have not been furnished by the Management. However, it is seen from the documents filed by the management that the workman has not made any demand seeking any particular documents. Further, it is not the case of the workman even that documents sought for by him have not been provided. Therefore, there is no violation of principles of natural justice and, therefore, the finding on that aspect by the Labour Commissioner deserves to be set aside.

13. In the light of the above discussion, W.P.No.31293 of 2017 filed by the management is allowed and W.P.No.25456 of 2022 filed by the workman stands dismissed. However, liberty is granted to the workman to challenge the dismissal order in the manner known to law. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes / No

Neutral Citation Case : Yes / No



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To

The Special Deputy Commissioner of Labour,
DMS Compound,
Chennai-600 006.



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M.DHANDAPANI, J.

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