



WEB COPY



W.P.No.33269 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.33269 of 2017

and

WMP.Nos.36696 of 2017 & 6428 of 2022

The Management of MRF Limited,
P.B.No.5285,
Thiruvotriyur High Road,
Chennai – 600 019.

...Petitioner

Vs.

1. The Presiding Officer of II Additional Labour Court,
City Civil Court Compound,
Chennai – 600 104.

2. T.Maniazhagan

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to Approval Petition No.3 of 2014 on the file of the 1st respondent, the Presiding Officer, II Additional Labour Court, Chennai – 600 104 and quash the order dated 29.06.2017 made in Approval Petition No.3 of 2014.

For Petitioner : Mr.M.Vijayan

For Respondents : Mr.C.D.Sugumar for R2



W.P.No.33269 of 2017

WEB COPY

ORDER

This Writ petition has been filed seeking quashment of the order of the 1st respondent dated 29.06.2017 made in A.P.No.3 of 2014.

2. The case of the petitioner is that, the 2nd respondent / workman had been engaged as Apprentice from 01.04.2010 in the petitioner company and was put on probation with effect from 01.10.2012 as workman in Production Department. While so, for certain misconduct committed by the 2nd respondent, a show cause notice dated 17.05.2013 came to be issued and pursuant to the domestic enquiry, as the charges held against the workman were proved, he was terminated from service with effect from 28.09.2013 and the petitioner management, parallelly, sought approval under Section 33(2)(b) of the Industrial Disputes Act, 1947 from the 1st respondent in A.P.No.3 of 2014. However, the 1st respondent dismissed the above said approval petition. Challenging the said rejection order passed by the 1st respondent in the approval petition, the petitioner corporation has come up with this Writ petition.



W.P.No.33269 of 2017

3. Learned counsel for the petitioner submitted that, the 2nd respondent was allotted work as truck tyre splicer and after completion of work, though he reported that 221 tyres have been spliced by him, however, on verification, it was found that, only 193 tyres were spliced by him and the said act of the 2nd respondent amounts to tampering of machine and short cycling, which is a serious violation of Standing orders of the petitioner company, and thereby, the petitioner company initiated disciplinary proceedings as against the 2nd respondent, which ended in dismissal. However, the 2nd respondent was terminated from service, after taking into account the seriousness of the misconduct committed by the 2nd respondent, and only after affording opportunity to substantiate his side and after payment of one month salary. Parallely, the petitioner company, sought approval of the termination of the 2nd respondent from the 1st respondent under Section 33(2)(b) of the ID Act, in which, the 1st respondent, has to see whether the enquiry was prima facie properly held and has no authority to decide the fairness of the enquiry. In the present case, the petitioner management conducted enquiry by appointing Enquiry officer after issuing charge memo and only after affording opportunity to the 2nd respondent. Pursuant to the proven minutes drawn by the Enquiry officer, the 2nd show



W.P.No.33269 of 2017

cause notice was issued to the 2nd respondent and only thereafter, the termination order came to be passed as against the 2nd respondent. Further, the petitioner company paid the one month salary to the 2nd respondent by way of cheque and thereafter filed approval petition before the 1st respondent. After contest, though the petitioner corporation satisfied the procedure prescribed by the Apex Court in the case of ***Lalla Ram Vs. Managment of D.C.M. Chemicals Works Ltd. & Ors.*** reported in ***AIR 1978 SC 1004***, the Labour Court has rejected the approval petitions filed by the petitioner by present impugned order, which is not sustainable. Further, it is mandatory on the part of the Labour Court that, it has to consider the approval petition filed under Section 33(2)(b) of the ID Act, in terms of the law laid down by the Apex Court in the case of ***Lalla Ram (supra)***, in which, the Apex Court has prescribed the procedure to be followed while deciding the approval petitions. However, contrary to the said procedure, the Labour Court has rejected the approval petition filed by the petitioner, which is wholly unsustainable.

4. Learned counsel appearing for the 2nd respondent submitted that, though departmental proceedings were initiated as against the 2nd



W.P.No.33269 of 2017

respondent, for the alleged misconduct instead of warning the workmen or imposing any other punishment, the petitioner company had imposed the maximum punishment of dismissal from service, which is highly disproportionate. Further, the 1st respondent has every authority to decide whether the enquiry was conducted in a fair and proper manner and in the present case, though enquiry was conducted and proven minutes were drawn, however, no sufficient opportunity was provided to the 2nd respondent and the entire enquiry proceedings were conducted in a biased manner and in favour of the petitioner company and the 2nd respondent was not allowed to cross examine the petitioner company's witness and the second show cause notice was not received by the 2nd respondent and without hearing the 2nd respondent, the petitioner company passed the dismissal order, which is a clear violation of principles of natural justice. Therefore, the 1st respondent, after considering all the above said facts, arrived a conclusion that the enquiry was not conducted in the manner known to law and thereby, rejected approval petition filed by the petitioner company, vide present impugned order, which does not warrant interference of this Court and accordingly, prayed for dismissal of this Writ petition.



W.P.No.33269 of 2017

5. Heard learned counsel on either side and perused the material documents available on record.

6. Admittedly, the 2nd respondent joined the service of the petitioner company in the year 2010 and for certain alleged misconduct committed by the 2nd respondent, the petitioner company dismissed him from service and simultaneously filed approval petition before the 1st respondent under Section 33(2)(b) of the ID Act. It is an undisputed fact that the approval petition has to be decided based on the law laid down by the Apex Court in the case of ***Lalla Ram Vs. Managment of D.C.M. Chemicals Works Ltd. & Ors.*** reported in ***AIR 1978 SC 1004***, wherein the Apex Court held as under:-

"(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;



W.P.No.33269 of 2017

(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."*

7. In the present case, the 1st respondent rejected the approval petition filed by the petitioner company solely on the ground that, the management has not made out a *prima facie* case by holding a fair enquiry. However, the fact remains that, while dealing with the approval petition filed under Section 33(2)(b) of the ID Act, the 1st respondent, has no such power to modify or question the punishment imposed by the petitioner corporation, unless the dismissal order is challenged in the manner known to law and in the said context, the observation made by the 1st respondent in the impugned order cannot be sustained. Hence, the order passed by the 1st respondent in the approval petition is liable to be interfered with as the same is perverse.



W.P.No.33269 of 2017

WEB COPY 8. At this point, the learned counsel appearing for the 2nd respondent sought liberty of this Court to challenge the dismissal order in the manner known to law.

9. In view of the above, the order impugned in this Writ petition is set aside, confirming the dismissal order passed by the petitioner company as against the 2nd respondent and the workman is at liberty to raise an industrial dispute, challenging the order of dismissal passed by the petitioner company, if so advised, within a period of four weeks from the date of receipt of a copy of this order and the period during which the case was pending before this Court shall stand excluded for the purpose of computation of limitation and it is made clear that the limitation prescribed under Section 2A(3) of the ID Act, shall start from the date of this order i.e., 04.09.2023. The Labour Court concerned shall dispose of the dispute, if any, raised by the 2nd respondent/workmen within a period of twelve weeks thereafter, without adjourning the matter beyond seven working days at any point of time.



W.P.No.33269 of 2017

WEB COPY 10. With the above observations and directions, this Writ petition stands allowed. No costs. Consequently, the connected Miscellaneous petition is closed.

04.09.2023

skt

NCC : Yes/ No
Speaking Order : Yes/ No
Index : Yes/ No

To

The Presiding Officer of II Additional Labour Court,
City Civil Court Compound,
Chennai – 600 104.



WEB COPY



W.P.No.33269 of 2017

M.DHANDAPANI., J.

skt

W.P.No.33269 of 2017
and
WMP.Nos.36696 of 2017 & 6428 of 2022

04.09.2023