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W.P.No.27828 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.27828 of 2017
and W.M.P.Nos.29821 of 2017 and 10995 of 2019

The Management,
Metropolitan Transport Corporation
(Chennai) Limited,
PalavanSalai, Chennai – 2,
Rep. by its Managing Director

... Petitioner

Vs.

1.M. Mahendran

2.The Special Deputy Commissioner of Labour,
D.M.S. Compound,
Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the 2nd respondent made in A.P.No.391/2013 dated 28.03.2017 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Mr.C. Gowthamaraj

For R1 : Mr.V. Balamurugan



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For R2

: Mr.P. Sathish,
Additional Government Pleader

ORDER

With the consent of both the parties, the Writ Petition is taken up for final disposal.

2. On charges of an unauthorized absence, the petitioner/Corporation had conducted a domestic inquiry and on the basis of the proven charges, the first respondent herein was dismissed from service through an order dated 19.04.2013. The application under Section 33(2)(b) of the Industrial Disputes Act, 1947, was made on 02.05.2013, before the concerned Authority, seeking for approval of the action taken. Through the impugned order dated 28.03.2017, the second respondent/Authority, had rejected the Approval Petition on five grounds, namely, the inquiry was not conducted in accordance with the principles of natural justice, there was no *prima facie* evidence before the Inquiry Officer, the punishment was by way of victimisation, full one month wages was not paid to the workman along with the order of



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dismissal and that the Approval Petition was filed belatedly after 13 days.

3. The Hon'ble Supreme Court in the case of '**Lalla Ram Vs. D.C.M. Chemical Works Ltd. & another**' reported in '**(1978) 3 Supreme Court Cases 1**', had set out the five circumstances under which an application under Section 33(2)(b) of the Industrial Disputes Act, 1947, can be rejected. While holding so, the Hon'ble Supreme Court has held that in case any one of the circumstances are violated, the Authority will have the power to reject the Approval Petition. The relevant portion of the order reads as follows:-

..... “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 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)*



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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



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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.”

4. In the instant case, though the learned counsel for the petitioner/Corporation attempted to submit that the reasons assigned by the second respondent/Authority in the impugned order are not correct,



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he was unable to substantiate, as to the maintainability of the Approval Petition, that was filed after a delay of 13 days.

5. Section 33(2)(b) of the Industrial Disputes Act, 1947, provides that when a punishment is imposed on the workman, when the Industrial Dispute or a conciliation proceedings are pending in service condition of such a workman, the petition is required to be filed simultaneously along with it on the date of the Approval Petition.

6. The Hon'ble Supreme Court in ***Lalla Ram's case (supra)***, had held that when any one of the condition mentioned therein, are violated, the Authority would be justified in rejecting the Approval Petition. In the instant case, the petitioner is unable to render justification on their part in belatedly filing the Approval Petition. Hence, by applying the ratio laid down in ***Lalla Ram's case (supra)***, I do not find any infirmity in the findings of the Authority.

7. It is now brought to the notice of this Court that the first respondent/workman, has reached the age of superannuation.



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8. In the light of the above findings and observations, the Writ Petition stands dismissed. In view of the dismissal of the present Writ Petition, there shall be a direction to the petitioner/Corporation, to forthwith disburse all the retirement benefits, including the pensionary benefits to the first respondent herein, from the date of dismissal i.e. from 19.04.2013, till the date of his superannuation, within a period of four (4) weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

19.04.2023

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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To



W.P.No.27828 of 2017

The Special Deputy Commissioner of Labour,
D.M.S. Compound,
Chennai.



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M.S.RAMESH,J.

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