



W.P.Nos.12445 & 5252 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.08.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.Nos.12445 & 5252 of 2010

M.P.No.4 of 2010 and

M.P.No.1 of 2011

W.P.No.12445 of 2010

The Management,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Vellore Region, Rangapuram,
Vellore - 632 009,
Rep by its General Manager.

... Petitioner

Vs.

1.The Joint Commissioner of Labour (Conciliation),
D.M.S.Compound, Teynampet,
Chennai 600 018.

2.Thiru.K.Shanmugam

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records made in Approval Petition No.224 of 2004 dated 09.05.2009 on the file of the Joint Commissioner of Labour (Conciliation), Chennai, the first respondent herein and quash the same.

For Petitioner : Ms.S.Pavithra
For Respondents : Ms.M.Jayanthi, AGP for R1
Mr.V.Ajoy Khose for R2

W.P.No.5252 of 2010



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K.Shanmugam

... Petitioner

Vs.

1.Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Rep by its Managing Director,
Vazhudareddy, Villupuram.

2.The General Manager,
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Vellore Region,
Rangapuram, Vellore - 9.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents to implement the order dated 09.05.2009 of the Joint Commissioner of Labour, passed in Approval Petition No.224/2004 by reinstating the petitioner with continuity of service, backwages and all other attendant benefits and also to make the petitioner permanent from the date of completion of 240 days with all arrears and consequential benefits.

For Petitioner : Mr.V.Ajoy Khose

For Respondents : Ms.S.Pavithra

COMMON ORDER

The issue raised in these Writ Petitions is that the workman has been dismissed from service in pursuant to certain disciplinary action on the allegation that the workman has produced bogus certificate. When



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approval for dismissal was sought from the first respondent / Joint Commissioner of Labour in accordance with Section 33(2) of the Industrial Disputes Act, the same was rejected. Aggrieved over that, the Management has filed a Writ Petition in W.P.No.12445 of 2010 by challenging the order of denial of approval. W.P.No.5252 of 2010 has been filed by the workman against the Management claiming reinstatement consequent to the denial of approval for dismissal.

2. Since the issue raised in both the Writ Petitions are connected to each other, I feel it is appropriate to have a common discussion. The rank of the parties are mentioned through out the order as per W.P.No.12445 of 2010.

3. So far as granting approval for dismissal is concerned, it is governed under Section 33(2)(b) of the Industrial Disputes Act which would read as under:

“33(2)(b) -- for any misconduct not connected with the dispute, discharge or punish, whether by



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dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer”

4. The learned counsel for the petitioner Management submitted that all the conditions contemplated in the above provision has been complied, but, the first respondent / Joint Commissioner of Labour had denied approval which is not correct.

5. The learned counsel for the Management further submitted that the first respondent has also gone into the merits of the order with regard to proving of the charges and thereby, has exceeded his authority.

6. The learned counsel for the workman submitted that in order to accord approval for dismissal under Section 33(2)(b) of Industrial Disputes Act, the elements mentioned in the judgment of the Hon'ble Supreme Court in the case of ***Lalla Ram Vs. D.C.M.Chemical Works Ltd., and Another, reported in (1978) 3 SCC 1*** should be present. In the



said judgment, it is observed as follows:

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"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) 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



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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



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applied to the authority before which the main industrial dispute is pending for approval of the action taken by him."

7. The main aspects that are required to be considered are whether materials have been placed to show that the Management has not done any unfair labour practice in the matter of dismissal and whether one month wages have been paid along with the application seeking approval. Hence, the argument of the learned counsel for the Management that the approval granting authority shall not go into the merits of the matter, cannot be strictly accepted for the reason that without a slight touch upon the merits of the matter and the materials placed before the approval authority, the approval authority cannot pass any order about the relevancy of the materials and other facts on which the workman's dismissal can be considered as rightly proved and that there is no unfair labour practice adopted.

8. As the dictum laid down by the Hon'ble Supreme Court in this regard has given an incidental power to the appropriate authority to



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slightly go into the merits of the matter for the purpose of granting or rejecting approval for dismissal, I do not find that the first respondent has exceeded his powers.

9. On perusal of the order rejecting the approval, it is seen that the first respondent has recorded that there is 26 days delay and it is against the conditions contemplated in the provision of law. Despite the workman is said to have been dismissed on 20.05.2004, the application seeking approval was received by the first respondent only on 15.06.2004 with a delay of 26 days. As the delay has been recorded by the first respondent in pursuant to the communication received by him, the same cannot be denied by the Management as well.

10. It is learnt that the workman has not been given with full one month salary and there is a shortfall of Rs.52/-. Hence, it is observed by the first respondent that the conditions contemplated under the relevant provisions has not been complied in letter and spirit. Since the impugned order of the first respondent has been passed only on the thorough appreciation of the facts and law and after recording the reasons for



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rejection in accordance with law, I do not find any grounds made out to allow the Petition filed by the Management.

11. So far as the other Writ Petition filed by the workman in W.P.No.5252 of 2010, claiming reinstatement consequential to the rejection of approval for dismissal is concerned, the learned counsel for the workman submitted that the rejection of approval would amount to deemed continuation in service and hence, the workman ought to have been allowed to continue to serve and to that effect, he filed the said Writ Petition seeking directions.

12. The learned counsel for the Management submitted that so far the relief claimed by the workman is concerned, this Court has got no jurisdiction and the workman can seek his recourse only before the Labour Court by way of raising an industrial dispute against the dismissal.

13. However, the learned counsel for the workman in support of his contention has cited a decision of the Hon'ble Supreme Court in the case of *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., Vs. Ram Gopal*



Sharma and Others, reported in 2002 2 SCC 244, wherein, it is held as

under:

“14. Where an application is made under [Section 33\(2\)\(b\)](#) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not, etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking [Section 33\(2\)\(b\)](#) dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for



his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under Section 33A challenging the order granting approval on any of the grounds available to him. Section 33A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint under Section 33A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33A and that till such time he should suffer misery of unemployment in spite of statutory protection given to him by the proviso to [Section 33\(2\)\(b\)](#). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to [Section 33\(2\)\(b\)](#), Section 33A would be meaningless and futile. The said Section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted.



15. *The view that when no application is made or the one made is withdrawn, there is no order of refusal of such application on merit and as such the order of dismissal or discharge does not become void or inoperative unless such an order is set aside under Section 33A, cannot be accepted. In our view, not making an application under Section 33(2)(b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to Section 33(2)(b). An employer who does not make an application under Section 33(2)(b) or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. If it is so done, he will be happier or more comfortable than an employer who obeys the command of law and makes an application inviting scrutiny of the authority in the matter of granting approval of the action taken by him. Adherence to and obedience of law should be obvious and necessary in a system governed by rule of law. An employer by design can avoid to make an application after dismissing or discharging an employee or file it and withdraw before any order is passed on it, on its merits, to take a position that such order is not inoperative or void till it is set aside under Section 33A notwithstanding the contravention of Section 33(2)(b) proviso, driving the employee to have recourse to one or more proceeding by making a complaint under Section 33A or to raise another*



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industrial dispute or to make a complaint under [Section 31\(1\)](#). Such an approach destroys the protection specifically and expressly given to an employee under the said proviso as against possible victimization, unfair labour practice or harassment because of pendency of industrial dispute so that an employee can be saved from hardship of unemployment.”

14. The above judgment makes it clear that if approval is not given, nothing more is required to be done by the employee as it would be deemed that the order of discharge or dismissal have never been passed. It is further held that if the approval is granted, the workman can straight away file a complaint under Section 33A, without raising any industrial dispute.

15. With regard to the question of whether the workman should approach the Labour Court once again by raising industrial dispute for dismissal, the answer would be very simple. Denying the approval for dismissal, would only amount to no dismissal. hence, it has to be presumed that the workman is continuing in service. In such case, it is unreasonable to expect that the workman should once again go to the



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concerned authorities and file a litigation for claiming reinstatement as though he has been dismissed from service. Since the dismissal of the workman has not been approved and his service is deemed to be continuing with the Management, it is unlawful for the Management to stop the workman from engaging with his work. Hence, the direction as sought by the workman in general deserves to be granted.

16. But in the instant case, it is learnt that the workman has attained the age of superannuation in the year 2016 itself. Hence, there cannot be any specific order to allow the workman to perform his duty. On the other hand, it can be presumed that the workman had been continuing in the service and that he has attained the age of superannuation.

17. In view of the above observations, the Writ Petition in W.P.No.12445 of 2010 is dismissed and the Writ Petition in W.P.No.5252 of 2010 is allowed and the Management is directed to allow the workman to retire on his attaining the age of superannuation and settle his backwages and all other terminal benefits and other service benefits which he would have enjoy, had he been in the actual service, within a



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period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes / No
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R.N.MANJULA, J.

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To

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D.M.S.Compound, Teynampet,
Chennai 600 018.

2.The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Vazhudareddy, Villupuram.

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