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W.A.No.279 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	14.08.2024
Pronounced on	23.08.2024

CORAM

THE HONOURABLE Mr.JUSTICE **M.S. RAMESH**

AND

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN****W.A.No.279 of 2020**

C.Shanmugam

... Appellant

Vs.

1. The Labour Officer-I,
Office of the Labour Office,
No.10, Thiyagarajapuram,
Vellore-632 001.
2. M/s.Balaji Oil Industries (P) Ltd.,
No.39, 2nd Main Road,
SIPCOT,
Ranipet-632 403.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the impugned order of the learned Judge dated 24.10.2019 in W.P.No.17499 of 2008.



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For Appellant : Mr.R.Rajaram

For Respondents : Mr.P.Raghunathan
for M/s.T.S.Gopalan & Co
Mr.S.John J.Raja Singh
Additional Government Pleader for R1

J U D G M E N T

C.KUMARAPPAN, J.

The instant Writ Appeal has been filed assailing the order of the learned Single Judge dated 24.10.2019 made in WP.No.17499 of 2008, by and in which, the learned Single Judge has set aside the order of the first respondent in withholding the approval under Section 33(2)(b) of “The Industrial Disputes Act, 1947” [hereinafter shall be referred to as “ID Act”].

2. The brief facts which give rise to the instant writ appeal is that, the petitioner-Balaji Oil Industries (P) Limited is engaged in the manufacture of refined edible oil and vanaspati. The industry has installed two boilers and there were about 34 workers in their industry at the relevant point of time. The cadre of the workers are classified as operators, firemen and helpers. According to the petitioner, the 2nd respondent was a fireman and was working in VTA-10 thermic heater boiler and his job was to ensure



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replenishment of firewood, heating the boilers to maintain adequate generation of steam for production activity. While replenishing, the 2nd respondent was also required to remove the ashes to maintain the required heat and to avoid the possibility of damages to the machinery. It is the further case of the petitioner that on 03.08.2007, when the 2nd respondent was in the second shift in the thermic heater plant, in spite of his Superior's instruction to remove the ashes, the 2nd respondent refused to heed his instructions and left the shift without removing the ashes. In this regard, a complaint was given against the 2nd respondent/workman. Consequently, the petitioner-Management had initiated disciplinary proceedings, as the conduct of the 2nd respondent come within the definition of misconduct. The disciplinary proceedings was conducted in accordance with Rule 16(a) of the Tamil Nadu Model Standing Orders Act, 1947.

3. The 2nd respondent participated in the process of domestic enquiry and has also cross examined the Management witnesses. On behalf of the 2nd respondent, a co-worker was also examined and documents were marked. The Enquiry Officer, after enquiry, had found that the charge proved against the 2nd respondent and ultimately imposed the punishment of dismissal from service. While so, since there was an industrial dispute pending, which was



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not connected to the disciplinary proceedings, the petitioner-Management has sought for an approval of their action under Section 33(2)(b) of the ID Act. It was the further case of the petitioner that all the pre-conditions enumerated under Section 33(2)(b) of ID Act have been fulfilled.

4. It appears that the approving authority has withheld the approval on the ground that removal of ashes is not the duty of the 2nd respondent-workman and that the punishment was disproportionate to the gravity of the charges. Aggrieved with the same, when the Management preferred the writ petition, the learned Single Judge, after dealing with the various aspects of this case and precedents relied by either parties, has ultimately set aside the order of the authority and granted the approval. Not being satisfied with the order of the learned Single Judge, the appellant/workman has preferred the instant Writ Appeal.

5(a). The learned counsel for the appellant/workman would vehemently contend that the learned Single Judge has not gone into the aspect of perversity in the domestic enquiry report as the Enquiry Officer did not consider the documents submitted by the workman to establish that he was only a boiler attender and that he has no responsibility to remove the ashes. Therefore, the learned counsel for the appellant/workman contended



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that the domestic Enquiry report is perverse and that such perversity is amenable to the jurisdiction of the approving authority.

5(b). It is also contended by the learned counsel for the appellant that the finding rendered by the approving authority that the punishment is disproportionate to the gravity of the charges is also rational, as the order of dismissal was passed on the first delinquency of the appellant, and that he has never been punished previously. It is the further contention of the learned counsel for the appellant that the learned Single Judge did not go into the perversity in respect of the enquiry report, and has discussed only in respect of the proportionality of the punishment. Therefore, it is the contention of the learned counsel for the appellant that the order of the learned Single Judge is liable to be interfered with, as it did not deal with the perversity of the domestic enquiry report.

6(a). Per contra, the learned counsel for the 2nd respondent/ Management would contend that the withholding of the approval by the appropriate authority was on two grounds that the punishment was disproportionate to the charge and also on the ground that the workman is a protected workman, and that no prior approval was obtained, before issuing the order of dismissal. Whereas, the learned counsel would submit that when



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the approving authority has not disputed the finding of the Enquiry Officer cannot go into the proportionality of the sentence. It was also the contention of the learned counsel for the 2nd respondent/Management that the Enquiry Officer has gone into all the aspects and has proceeded to conclude against the workman on the basis of the available evidence qua the admission of the delinquent/workman. Therefore, there is no perversity in the order of the Enquiry Officer.

6(b). It was also the contention of the learned counsel for the 2nd respondent/Management that in the approval petition, the duties and responsibilities of a person cannot be adjudicated, as it left to the jurisdiction of the Labour Court. It is the further contention of the Management that the charge against the workman qua that, he has not removed the ashes, was admitted by him. Therefore, in the approval proceedings, the workman cannot take a defence that it was not his responsibility, and what is essential under Section 33(2)(b) is, only *prima facie* material to decide *bona fides* of the disciplinary proceedings. Thus, it is his contention that the rejection of approval is erroneous, which was rightly interfered by the Writ Court and hence, there are no grounds to interfere in the present Writ Appeal.



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7. We have given our anxious consideration to either side submissions.

8. The issue to be considered is whether the approving authority has dealt the issue in accordance with the ratio laid down in the well celebrated judgment of *Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd.*, reported in *1978 AIR 1004*. According to the above judgment, it is the duty of the approving authority to find out (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 employees, regard being had to the position settled by the decisions of this Court by holding 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 punishable 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,**



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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 for approval.

9. In this case, while withholding the approval, the approving authority has held that there was a perversity in the domestic enquiry report as the enquiry officer did not consider the factum that the workman was only a boiler attender and not a fireman. Further, the approving authority has also erroneously found that the workman was a protected workman, besides dealing with the proportionality of the punishment. Let us now consider the correctness of the above findings.

10. Firstly, coming to the perversity of the enquiry proceedings, the learned counsel for the 2nd respondent/Management would invite the attention of this Court in respect of the enquiry proceedings, wherein the employee/appellant has admitted his delinquency. Though he admits his delinquency, it is his contention that it was not his responsibility to perform



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such duties. According to **Lalla Ram's** case [cited supra], what is essential is whether a proper domestic enquiry was conducted, and whether the order of dismissal is *prima facie* based on a legal evidence. In this case, though the workman contends that he is not responsible to remove the ashes, according to the enquiry report, he was instructed by the superior to remove the ashes, which he disregarded. More so, such factum was admitted by the workman. In such a background, this Court is of the firm view that the findings rendered by the Enquiry Officer is *prima facie* based upon the available legal evidence. Therefore, the finding regarding perversity of enquiry proceeding is contrary to law.

11. Secondly, coming to the proportionality of the punishment, even according to the approving authority, he has not disputed the proof of charge, but, had found that the punishment was disproportionate since this was the first delinquency of the workman. In this regard, according to **Lalla Ram's** case, what is essential is, to find out an inference of *mala fide* while imposing the punishment. Here, as rightly contended by the learned counsel for the Management, there was a misconduct, which has been proved through the domestic enquiry. When there are no traces for *mala fide*, going into the



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proportionality of sentence would nothing but usurping the power of the Labour Court, which is contrary to the principle in **Lalla Ram**. Further, merely on the ground that it is not the petitioner's responsibility to do such work, cannot be a ground to interfere with the punishment imposed.

12.Thirdly, regarding the finding that the 2nd respondent/workman is a protected workman, the learned counsel for the workman would fairly concede that such finding is erroneous, as he was not a protected workman.

13. In the light of the above findings, this Court is of the affirmed view that as rightly held by the learned Single Judge, by placing reliance upon the judgment of the Hon'ble Supreme Court in **Tamil Nadu State Transport Corporation (Coimbatore) Limited Vs. M.Chandrasekaran** reported in **(2016) 16 SCC 16**, the Management cannot be expected to prove the misconduct upto its hilt before the approving authority.

14. It would also be relevant to refer to the judgment of the Hon'ble Supreme Court in **John Dsouza Vs. Karnataka State Road Transport Corporation [Civil Appeal No.8042 of 2019]** dated 16.10.2019, wherein it



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has been held that the approving authority cannot go into the proportionality of the punishment, when there are no *mala fide* on the face of the imposition of the punishment.

15. In fine, and as rightly contended by the learned counsel for the Management/writ petitioner, the Writ Court has rightly applied the principles laid down in **Lalla Ram**'s case [cited supra] and has set aside the order of the approving authority. Thus, there is no infirmity in the order of the learned Single Judge and no grounds have been made out for interference.

16. In the result, this Writ Appeal stands dismissed. No costs.

[M.S.R., J.] [C.K., J.]
23.08.2024

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Index : Yes

Speaking order : Yes

Neutral Citation : Yes

To

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Pred-delivery judgment in
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