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WP.No.26309 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.07.2024

PRONOUNCED ON : 19.07.2024

CORAM

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

WP.No.26309 of 2015

The Management,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Vellore Division,
Vellore-9.
Represented by its General Manager

... Petitioner

Vs.

1. M.Jayashankar

2. The Special Deputy Commissioner of Labour (Conciliation),
DMS Compound,
Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of Certiorari, to call for the records passed by the 2nd respondent in AP.No.158/2012 on 18.11.2014 and to quash the same.

For Petitioner : Mr.M.Aswin
for Ms.S.Pavithra
For Respondents : Mr.S.John J.Raja Singh
AGP for R2
R1-No Appearance



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ORDER

The present writ petition has been filed by the Management as petitioner. According to the petitioner, the first respondent was a conductor, and that for a misconduct of misappropriation, he was served with a charge sheet on 17.02.2010. In pursuance of the same, the first respondent has submitted his explanation on 02.03.2010. Thereafter, the petitioner has ordered for a departmental enquiry. After completing enquiry proceedings, the Enquiry Officer has submitted his positive final report. The petitioner, on receipt of the enquiry report has called for the further explanation from the first respondent. Having considered the Enquiry report, further explanation and 23 past delinquency, the petitioner-Management awarded the capital punishment of dismissal from service against the first respondent.

2. It appears that since the dismissal order has been passed during the pendency of the other proceedings not connected to this delinquency, the petitioner has sought for the approval from the appropriate Authority qua the Commissioner of Labour under Section 33(2)(b) of “The Industrial Disputes Act” [hereinafter shall be referred to as “ID Act” for the sake of convenience].



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The appropriate Authority has dismissed the approval petition on 25.04.2012.

Aggrieved with the same, the petitioner has challenged the approval petition in the instant writ petition.

3. The learned counsel for the petitioner Mr.M.Aswin would contend that the Authority has overreached its jurisdiction. It is the further contention of the learned counsel for the petitioner that the Authority has acted like an Appellate Authority and has attempted to re-appreciate the evidence and document and not followed the mandatory principles as contemplated in ***Lalla Ram Vs. D.C.M. Chemical Works Ltd., and another*** reported in (1978) 3 SCC 1. It was also contended that the reason assigned by the Authority for dismissing the application is in contravention to the settled legal position and therefore, would contend that the rejection of approval petition is contrary to the ID Act.

4. Despite the name is printed in the cause list, no one is appeared on behalf of the first respondent. On behalf of the 2nd respondent, Mr.S.John J.Raja Singh, learned Additional Government Pleader appeared.



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5. It is an admitted fact that the petitioner has dismissed the first respondent from service. However, in view of the pendency of proceedings not connected to the issue, the petitioner sought an approval under Section 33(2)(b) of the ID Act. The Authority has considered such application in the backdrop of **Lalla Ram**'s case [cited supra]. Now the issue is, whether such consideration is in accordance to the above cited judgment.

6. Before going into the factual position, this Court deems it appropriate to see what are all the essential factor under **Lalla Ram**'s case. In paragraph 12 of the judgment, the Hon'ble Supreme Court has laid down the ratio. For ready reference, paragraph 12 is extracted hereunder:-

“12. The position that emerges from the abovequoted 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



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settled by the decisions of this Court in Bengal Bhatdee Coal Co. v. Ram Prabesh Singh [AIR 1964 SC 486 : (1964) 1 SCR 709 : (1963) 1 LLJ 291 : 24 FJR 406] , Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar [(1961) 1 LLJ 511 : (1960-61) 19 FJR 15] , Hind Construction & Engineering Co. Ltd. v. Their Workmen [AIR 1965 SC 917 : (1965) 2 SCR 85 : (1965) 1 LLJ 462 : 27 FJR 232] , Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management [(1973) 1 SCC 813 : 1973 SCC (L&S) 341 : AIR 1973 SC 1227 : (1973) 3 SCR 587] and Eastern Electric & Trading Co. v. Baldev Lal [(1975) 4 SCC 684 : 1975 SCC (L&S) 382 : 1975 Lab IC 1435] 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 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



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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.”

7. Therefore, as per the above ratio, while adjudicating an application under Section 33(2)(b) of the ID Act, it is mandatory on the part of the Authority to consider the following aspects:-

- (i) whether the domestic enquiry conducted by the Management was fair and proper;
- (ii) whether there is a *prima facie* case made out against the delinquent for conducting an enquiry to establish the charge;
- (iii) whether the order of termination was tainted with malafide;
- (iv) whether the workmen were paid one month wages and;
- (v) whether the application filed before the second respondent immediately after dismissal.

8. It is pertinent to mention here that though the Authority has considered the factual position, in the background of the above principle, has



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wrongly attempted to re-appreciate the evidence of the Enquiry Officer like an Appellate Authority. Let us consider **Lalla Ram's** principle one after another.

Under the **Lalla Ram's** case, what is essential is to find out, whether the domestic enquiry was conducted in a fair and proper manner. In this regard, the Authority, while considering the said aspect, has found that the petitioner did not examine the necessary witness, and has arrived at a conclusion that no natural justice was followed. Even while perusing the counter statement of the respondent, the only objection raised by the respondent was that, he did not commit any misconduct and that the petitioner did not prove the charges. In his counter statement, he never objected against the fairness of the enquiry. Therefore, the findings recorded by the Authority that in view of the non-examination of certain witnesses, there is an infraction in following the natural justice, is perverse finding, and the same is nothing, but an attempt to re-appreciate the evidence. Which can be done only by the Appellate Authority and not by approving Authority. To put it differently, the Authority has exceeded his jurisdiction.

9. It is also pertinent to mention here that while considering the second aspect of **Lall Ram's** principle qua whether is there any *prima facie* case,



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upon the same reason mentioned hereinabove for the first aspect, the Authority has arrived at a conclusion that there is no *prima facie* evidence to initiate the disciplinary proceedings. Here, again such approach of the Authority is nothing, but re-appreciation of evidence, which cannot be done while exercising jurisdiction under Section 33(2)(b) of the ID Act.

10. However, while answering the other points qua whether such disciplinary proceeding was initiated as a victimization, and whether filing of the application under Section 33(2)(b) of the ID Act is immediately after passing of the order of termination, the Authority has given affirmative finding in favour of the petitioner.

11. On the other hand, in respect of the mandatory pre-condition of payment of one month pay, the Authority has found that the petitioner did not pay the enhanced DA of 65%. It is pertinent to mention here that in the counter statement, the first respondent did not raise such contention.

12. According to Section 33(2)(b) of the ID Act, what is essential is, the payment of one month salary. Here, in this case to substantiate the quantum of one month salary, the petitioner has filed the salary slip. On perusing the approval petition, it appears that the petitioner has paid a sum of Rs.19,076/- by way of a cheque. But, the issue here is non payment of enhanced DA. But,



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to substantiate such contention, there are no materials available before this Court except the *ipsi dixit* of the Authority. More curiously, the petitioner also did not take such defence.

13. Therefore, I am of the unswerving view that the findings recorded by the Authority in respect of fairness of the domestic enquiry, *prima facie* material to initiate the disciplinary proceedings, and in respect of payment of one month salary are in contravention to the settled legal principles and by exceeding the jurisdiction conferred upon the Authority under Section 33(2)(b) of the ID Act. Therefore, this Court is of the view that there are merits to interfere with the order of the approving Authority, by allowing the writ petition.

14. In the result, this writ petition is allowed by setting aside the impugned order dated 18.11.2014 passed in AP.No.158/2012 by the Authority. No costs.

19.07.2024

kmi

Index : Yes /No

Speaking order : Yes/No

Neutral Citation : Yes/No

To

The Special Deputy Commissioner of Labour (Conciliation),
DMS Compound,



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C.KUMARAPPAN, J.

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