



W.P.No.28060 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.09.2024

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THE HON'BLE **MRS.JUSTICE R.N.MANJULA**

W.P.No.28060 of 2015
and M.P.No.2 of 2015

The Management,
Tamilnadu State Transport Corporation
(Villupuram) Ltd., Vellore Division,
Vellore-9, Rep. by its General Manager. ... Petitioner

Vs.

1.V.Srinivasan
2. The Special Deputy Commissioner of
Labour (Conciliation),
DMS Compound, Chennai. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Mandamus, to call for the records passed by the 2nd respondent in A.P.No.229 of 2012 on 27.06.2014 and to quash the same.

For Petitioner :Mr.G.Saravana Kumar
For Respondents :Mr.R.Govindasamy (for R1)
Mrs.Jayanthi (for R2)
Additional Government Pleader

ORDER

The writ petition has been filed challenging the order of the Approval



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Authority rejecting the approval for the proposal of imposing punishment of dismissal against the 1st respondent/workman dated 27.06.2014 made in A.P.No.229 of 2012.

2. The learned counsel for the petitioner submitted that the Approval Authority has exceeded his jurisdiction and he had appreciated the merits of the evidence like a Labour Court, despite the records produced to show that there are sufficient materials to prove the allegations of the 1st respondent, the Approval Authority, without appreciating the matter properly, had chosen to reject the approval. It is further submitted that the Approval Authority has arrived at a conclusion that there is a shortfall in paying the one month salary without giving any details as to what is the shortfall.

3. The learned counsel for the petitioner submitted that the Approval Authority has appreciated the evidence only for the purpose of complying with the mandatory requirements listed down by the Hon'ble Supreme Court in the case of ***Lalla Ram v. Management of D.C.M. Chemical Works Ltd. and another***, reported in **1978 AIR 1004**. It is needless to state that the Hon'ble Supreme Court has laid down the following points to be taken into consideration by the Approval Authority while granting the approval for dismissal. For the



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sake of convenience, the essential points made by the Hon'ble Supreme Court in

this regard in ***Lalla Ram's case [cited supra]*** are extracted hereunder.

“13. 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* (1963-I LL J 291), *Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar* (1961-ILLJ 511), *Hind Construction & Engineering Co. Ltd. v. Their Workmen* [(1963) 2 SCR 83], *Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management & Ors* (1973- ILLJ 278), and *Eastern Electric and Trading Co. v. Baldev Lal* ((1975) LIC 1435 (SC)) 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



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

4. The 1st respondent has been given a charge that he has misappropriated the funds by not issuing tickets to the passengers, despite having collected the charges. Even if the petitioner might have a grievance that the Approval Authority has reanalysed the merits of the evidence, the fact remains that he has



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given a categorical finding as to whether the petitioner has paid wages for one month to the 1st respondent in compliance with the requirements contemplated under Section 33(2)(b) of the Industrial Disputes Act.

5. While answering the above question, the Approval Authority has observed that a sum of Rs.5,954/- has been sent to the 1st respondent through Registered Post, but it is claimed by the 1st respondent that it was not his full salary. In such a case, the petitioner has got a duty to prove that the amount which has been sent to the 1st respondent represents the whole of one month's salary and that there is no deduction. Without adducing any evidence on this aspect or producing any materials in this regard, the petitioner cannot expect that the Approval Authority should record the shortfall in this regard.

6. The initial burden lies upon the petitioner management to prove that the amount sent by him to the 1st respondent represents his one month's salary and there is no deficit. Especially, when the 1st respondent claims that there is a deficit, the petitioner has to prove that there is no deficiency as stated by the 1st respondent. In the event of proving the said fact, then the 1st respondent would have the burden shifted and then he has to disprove by producing records from his side and show whether there is any deficit. Since the initial burden itself has



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not been discharged to the satisfaction of the Approval Authority, it is difficult to expect that the authority should record the shortfall of the one month's salary paid to the 1st respondent before rejecting the approval for the above reason. Since the petitioner could not establish that all essential requirements have been complied for getting a successful approval for the order of dismissal, I do not find any illegality in the impugned order of the Approval Authority. Hence, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Speaking / Non Speaking order
Index : Yes / No

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To

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



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R.N.MANJULA, J.

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