



W.A.No.1061 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

AND

THE HONOURABLE MR. JUSTICE C. KUMARAPPAN

W.A.No.1061 of 2024

D.Krishnamurthy

... Appellant

Vs.

1.The Management,
Tamil Nadu State Transport
Corporation (Villupuram) Limited,
Rep. by its General Manager,
Cuddalore Region, Cuddalore District – 607 002.

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

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent,
praying to set aside the order dated 01.12.2023 in W.P.No.12701 of 2019
by allowing this Writ Appeal.

For Appellant	: Mr.A.V.Arun assisted by Mr.M.A.Arunesha
For R1	: Mr.M.Aswin for Mrs.S.Pavithra, Standing Counsel
For R2	: Mr.A.M.Ayyadurai, Government Advocate



W.A.No.1061 of 2024

JUDGMENT

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(Judgment of the Court was made by *M.S. RAMESH, J.*)

On the strength of certain proven charges in the domestic inquiry, the appellant herein, who was serving as a conductor in the first respondent/Corporation, was removed from service by the first respondent, through an order dated 10.10.2014. Since conciliation proceedings were pending, touching upon the conditions of service of the appellant, the Corporation had filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'I.D. Act') before the second respondent herein, seeking for approval of the action taken. The said application was rejected by the second respondent through an order dated 27.03.2017, predominantly on the ground that domestic inquiry against the appellant herein was not conducted in accordance with law and principles of natural justice and also that the Corporation had not paid the full one month salary to the appellant, in accordance with the requirement under Section 33(2)(b) of the I.D. Act. When the Corporation had challenged the rejection order of the second respondent before this Court in W.P.No.12701 of 2019, the learned Single Judge had reiterated



W.A.No.1061 of 2024

WEB COPY

the evidences in the domestic inquiry and had concluded that the charge, that the appellant had not issued a ticket after collecting the fare amount, was substantiated in the inquiry, since an irregularity was detected by the independent checking squad and further, that the appellant's track record has blemishes. Insofar as the shortage the of one month wage is concerned, the learned Single Judge had come to the conclusion that since the appellant himself did not raise any objections, the conclusion that there was shortage in the one month wage was incorrect and accordingly, had allowed the Writ Petition. Challenging the said order of the learned Single Judge, the present Writ Appeal has been filed.

2. It is a settled proposition of law that when an order of the Labour Court or an Authority is put under challenge, where punishments have been imposed based on the findings rendered in the domestic inquiry, the Writ Court, exercising its powers under Article 226 of the Constitution of India, cannot venture to re-appreciate the evidences or render its own opinions based on the evidences, but can only interfere into the same, on the ground of perversity or other illegality.



W.A.No.1061 of 2024

WEB COPY

3. The second respondent/Authority had applied the principles laid down by the Hon'ble Apex Court in the case of '**Lalla Ram Vs. D.C.M. Chemical Works Ltd. & another**' reported in '**(1978) 3 Supreme Court Cases 1**', wherein, the Apex Court had applied the yardsticks for consideration of an Approval Petition under Section 33(2)(b) of the I.D. Act. The second respondent, while undertaking this exercise, had found that the inquiry was not in accordance with law; was not conducted on the basis of any evidences; and that the one month wage was not fully paid to the appellant.

4. Insofar as the ground that there was no evidence in the inquiry is concerned, the second respondent herein had recorded that the ticket checker was examined during the course of inquiry, who had found that there was an excess of cash in the bag. However, it was also recorded that the independent passengers were not examined and therefore, had come to the conclusion that there was no legally admissible evidence in the domestic inquiry to prove the charges. Insofar as these two grounds are concerned, the second respondent himself had admitted that the ticket checker had found that the appellant had collected Rs.7/- from 12



W.A.No.1061 of 2024

WEB COPY

passengers, but had not issued tickets to them and he also had an excess amount of Rs.6 in his bag. When the ticket checker himself has been examined, on whose statement the charges itself have been levied, it cannot be said that the inquiry was conducted on the basis of no evidence at all. Therefore, the first two reasons assigned by the second respondent herein, to reject the Approval Petition, cannot be sustained.

5. However, the Hon'ble Supreme Court, in the case of ***Lalla Ram*** (*supra*), had also held that, when the punishment of removal from service is imposed and an Approval Petition is filed, there is a mandate on the part of the Management to pay one month full wage to the concerned workman.

6. The appellant herein had produced his salary receipt (Ex.R1), which evidences that his monthly salary was Rs.25,437/-, whereas the Corporation had issued a cheque for Rs.25,100/- dated 16.09.2014, as one month full wage. There is a shortage of about Rs.337/- in the one month wage, as per Ex.R1.



W.A.No.1061 of 2024

WEB COPY

7. The Hon'ble Supreme Court, in the case of '**Bharat Electronics Limited Vs. Industrial Tribunal, Karnataka, Bangalore & another**' reported in '**(1990) 2 SCC 314**', had held that as per the mandate under Section 33(2)(b) of the I.D. Act, the Management has to pay one month wages in full and paying even a paisa less than the month's wages due under Section 33(2)(b) of the Act, would be fatal to its permission sought. Since Ex.R1 and the one month wage paid by the Corporation, through a cheque, establishes a short payment of Rs.337, the payment cannot be termed as 'one month full wages' and by applying the principles laid down in **Bharat Electronics Limited (supra)**, the finding of the second respondent herein, with regard to non-compliance of the mandate under Section 33(2)(b) of the I.D. Act, stands well established.

8. The Hon'ble Supreme Court, in the case of **Lalla Ram (supra)**, has held that among the circumstances, which requires to be established before the Approving Authority, while considering the application under Section 33(2)(b) of the I.D. Act, even if one of the several requirements is violated, the Approval Petition deserves to be dismissed. Thus, we confirm the findings of the second respondent herein in rejecting the



W.A.No.1061 of 2024

Corporation's petition under Section 33(2)(b) of the I.D. Act on this ground.

9. The learned Single Judge, by holding that since the appellant herein himself has not raised the ground of shortage of one month wage and has not explained as to what was the deficit, had come to the conclusion that the finding of the second respondent was perverse. We do not endorse such a view for the reason that the second respondent had come to such a conclusion on the basis of Ex.R1 and the cheque issued by the Corporation towards the one month wage. This apart, even if the appellant had not raised a ground of shortage in the one month wage, it is a mandatory requirement for the Approval Authority to undertake the procedure contemplated by the Hon'ble Supreme Court in the case of **Lalla Ram** (*supra*). In the light of these findings, the order of the learned Single Judge reversing the order of the second respondent, cannot be sustained.

10. In the result, the Writ Appeal stands allowed and the order of the learned Single Judge dated 01.12.2023 passed in WP.No.12701 of 2019 is



W.A.No.1061 of 2024

WEB COPY

set aside. Consequently, the appellant herein is deemed to have continued in service from the date of dismissal, in view of the rejection of the Approval Petition filed by the Corporation before the second respondent herein. In view of the same, the first respondent/Corporation shall forthwith reinstate the appellant back into service, together with continuity of service and other attendant benefits. The appellant shall be entitled to receive 50% of the backwages from the date of dismissal till the actual reinstatement. The arrears of the wages, as well as the other retirement benefits, shall be disbursed to the appellant/workman, as expeditiously as possible, in any event, within a period of eight (8) weeks from the date of receipt of a copy of this judgment. No costs.

[M.S.R., J] [C.K., J]
09.09.2024

Index: Yes/No
Speaking/Non-speaking order
Internet: Yes/No
Neutral Citation: Yes/No

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W.A.No.1061 of 2024

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