



W.P.No.7815 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.01.2024

Pronounced on : 08.02.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.7815 of 2015

and

M.P.No.1 of 2015

The Management,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Bharathipuram,
Salem Main Road,
Dharmapuri - 636 705.
Rep. by its General Manager

... Petitioner

Vs.

1. The Special Deputy Commissioner of Labour,
DMS Compound, Anna Salai,
Chennai.
2. S.Ilayaperumal

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for records in proceeding pursuant to the order passed in Approval Petition A.P.No.483/2012, dated 05.12.2013, on the file of the first respondent.

For petitioner	:	Mr.S.Aswin
For R1	:	Labour Court
For R2	:	Ms.Ramapriya Gopalakrishnan



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ORDER

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This writ petition is filed challenging the orders passed in the Approval Petition in A.P.No.483 of 2012 dated 05.12.2013 on the file of the first respondent, the Special Deputy Commissioner of Labour.

2. The facts in brief as per the affidavit enclosed in this writ petition are as follows:

2.1. The second respondent was employed as a Driver in the petitioner's Corporation. On 23.08.2013, the second respondent was directed to drive the bus bearing registration No.TN 29/N2323 from Salem to Trichy. When the bus was proceeding near Bommaikuttaimedu, Lakshmi Thirumana Mandapam at about 7:40 p.m. the said bus hit a pedestrian who sustained grievous injuries and subsequently, died while shifting him to the hospital.

2.2. A charge memo was issued to the second respondent on 26.09.2011 in respect of the said fatal accident. The second respondent submitted his explanations on 12.10.2011 which was found not



satisfactory by petitioner Corporation. Hence, an enquiry officer was appointed and the second respondent participated in the said enquiry proceedings. On completion of the enquiry the enquiry officer submitted his report on 05.03.2012, holding that the charges against the second respondent were proved. A show cause notice dated 11.06.2012 was issued calling for explanation but second respondent did not submit explanations and thereby, final orders have been passed on 09.08.2012 dismissing the second respondent from service.

2.3. The petitioner Corporation has filed Approval Petition No.483 of 2012 under Section 33(2) b of the I.D.Act,1947, seeking approval of dismissing the second respondent. The said Approval Petition was disposed of by an order dated 05.12.2023 declining to approve the dismissal of the second respondent. Aggrieved by the same the petitioner Corporation preferred this writ petition.

3. It is submitted by the learned counsel for the petitioner Corporation that the first respondent without considering the evidences as well as the documents marked by the petitioner Corporation, without analyzing the facts has erroneously passed the impugned order declining



the Approval Petition. It is further submitted that the first respondent having found that the enquiry conducted by the Corporation is fair and proper ought not to have concluded that the provision of 33 (2) b of the I.D.Act, 1947, have not been complied with. Further, the findings of the Labour Court are perverse and not supported by any material evidence and thereby, warrants interference by this Court. The learned counsel for the petitioner further submitted that the second respondent due to his negligent and rash driving has caused fatal accident resulting in death and also caused damages to the bus.

4. The learned counsel for the second respondent on the other hand submitted that the first respondent has rightly found that the enquiry was conducted without following the principles of natural justice, the conclusion of the enquiry officer was erroneous and thereby, rightly, approval was not given.

5. Heard both the sides and perused the materials available on record.



6. Now, the point for determining is whether the orders of declining to grant approval by the Labour Court/first respondent authority by way of impugned order can be set aside.

7. Under Section 33 (2) (b) of the I.D.Act, 1947 it is stated that:

" for any misconduct not connected with the dispute, , or discharge or punish, whether by 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."

8. This Court has gone through carefully the orders passed by the first respondent declining to give approval. The first respondent during the course of enquiry while referring the Lalaram case reported in *AIR 1978 SC 1004* formulated five following points: In respect of point as to whether domestic enquiry was conducted in accordance with principles of natural justice, the first respondent authority concluded that enquiry was conducted in accordance with law and by following principles of natural justice. In respect of the third point as to whether dismissal of the second respondent was an unfair labour practices, the first respondent has



concluded that no unfair labour practices were played while dismissing the second respondent. It is also concluded by the first respondent that the one month salary was paid to the second respondent and the approval application was filed as a part of the action taken by the petitioner Corporation against the second respondent workman.

9. During the course of enquiry, the conductor and the Branch Manager were examined to prove the charges against the second respondent. According to the evidence of the Conductor, the accident took place as the pedestrian has suddenly crossed the road on which though the second respondent applied brakes suddenly, even then the accident has taken place. The Branch Manager though was examined, he was not an eye witness of the accident. However, basing on the evidence of the Conductor and the Branch Manager the enquiry officer came to a conclusion that the second respondent was rash and negligent and thereby, charges against him were recorded as proved. The first respondent observed that basing on the evidence it is not possible to conclude that the second respondent is solely responsible for the accident.



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10. The learned counsel for the petitioner has submitted vehemently that under Section 33 (2) (b) of the I.D. Act, 1947, the scope of the first respondent is very limited. The first respondent is expected to see whether the enquiry was done by following the principles of natural justice, whether one month salary was paid to the second respondent as required and that the first respondent cannot analyze the evidence as an appellate Court and conclude that the findings given by the enquiry officer are erroneous.

11. The learned counsel for the petitioner has relied on the judgment reported in **(2019) 18 SCC 47** in John D'Souza vs. Karnataka SRTC wherein it is held that:

"21. The legislature has, thus, provided a self-contained mechanism through Section 10 read with Sections 11(3) and 11-A of the Act, for adjudication of an "industrial dispute" stemming out of an order of discharge or dismissal of a workman. Having done so, it can be safely inferred that neither the legislature intended nor was there any legal necessity to set-up a parallel remedy under the same statute for adjudication of the same "industrial dispute" by the same forum of Labour Court or Tribunal via Section 33(2)(b) of the Act. To say it differently, Section 33(2)(b) has been inserted for a purpose other than that for which Sections 10(1)(c) and (d) have been enacted. Section 33(2)(b), thus, is neither meant for nor does it engender an overlapping procedure to adjudicate the legality, propriety, justifiability or otherwise sustainability of a punitive action taken against a workman.

23. Section 33(2)(b) of the Act, thus, in the very



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nature of things contemplates an enquiry by way of summary proceedings as to whether a proper domestic enquiry has been held to prove the misconduct so attributed to the workmen and whether he has been afforded reasonable opportunity to defend himself in consonance with the principles of natural justice. As a natural corollary thereto, the Labour Court or the forum concerned will lift the veil to find out that there is no hidden motive to punish the workman or an abortive attempt to punish him for a non-existent misconduct.

24. *The Labour Court/Tribunal, nevertheless, while holding enquiry under Section 33(2)(b), would remember that such like summary proceedings are not akin and on a par with its jurisdiction to adjudicate an "industrial dispute" under Sections 10(1)(e) and (d) of the Act, nor the former provision clothe it with the power to peep into the quantum of punishment for which it has to revert back to Section 11-A of the Act. Where the Labour Court/Tribunal, thus, do not find the domestic enquiry defective and the principles of fair and just play have been adhered to, they will accord the necessary approval to the action taken by the employer, albeit without prejudice to the right of the workman to raise an "industrial dispute" referable for adjudication under Section 10(1)(c) or (d), as the case may be. It needs pertinent mention that an order of approval granted under Section 33(2)(b) has no binding effect in the proceedings under Sections 10(1)(c) and (d) which shall be decided independently while weighing the material adduced by the parties before the Labour Court/Tribunal.*

25. *The scope of enquiry vested in a Labour Court or Tribunal under Section 33(2)(b) has been the subject-matter of a catena of decisions by this Court. In Martin Burn Ltd. v. R.N. Bangerjee, a three-Judge Bench of this Court considered the scope of enquiry under Section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950 whereunder also permission to discharge a workman was required to be obtained in the manner which was somewhat similar to Section 33(2)(b) of the 1947 Act. This Court, thus, held:*

(AIR p. 85, para 27)



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"27. The Labour Appellate Tribunal had to determine on these materials whether a prima facie case had been made out by the appellant for the termination of the respondent's service. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion.

It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record."

26. A three-Judge Bench of this Court in Punjab National Bank Ltd. V. Workmen', considered and interpreted the scope of Section 33 to lay down that the jurisdiction of the Tribunal in dealing with such applications is limited. It was held that: (AIR p. 170, paras 24-25)

"24. Where an application is made by the employer for the requisite permission under Section 33 the jurisdiction of the Tribunal in dealing with such an application is limited. It has to consider whether a prima facie case has been made out by the employer for the dismissal of the employee in question. If the employer has held a proper enquiry into the alleged misconduct of the employee, and if it does not appear that the proposed dismissal of the employee amounts to victimization or an unfair labour practice, the Tribunal has to limit



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its enquiry only to the question as to whether a prima facie case has been made out or not. In these proceedings it is not open to the Tribunal to consider whether the order proposed to be passed by the employer is proper or adequate or whether it errs on the side of excessive severity; nor can the Tribunal grant permission, subject to certain conditions, which it may deem to be fair. It has merely to consider the prima facie aspect of the matter and either grant the permission or refuse it accordingly as it holds that a prima facie case is or is not made out by the employer.

25. But it is significant that even if the requisite permission is granted to the employer under Section 33 that would not be the end of the matter.

It is not as if the permission granted under Section 33 validates the order of dismissal. It merely removes the ban; and so the validity of the order of dismissal still can be, and often is, challenged by the union by raising an industrial dispute in that behalf. The effect of compliance with the provisions of Section 33 is thus substantially different from the effect of compliance with Section 240 of the Government of India Act, 1935, or Article 311(2) of the Constitution. In the latter classes of cases, an order of dismissal passed after duly complying with the relevant statutory provisions is final and its validity or propriety is no longer open to dispute; but in the case of Section 33 the removal of the ban merely enables the employer to make an order of dismissal and thus avoid incurring the penalty imposed by Section 31(1). But if an industrial dispute is raised on such a dismissal, the order of dismissal passed even with the requisite permission obtained under Section 33 has to face the scrutiny of the Tribunal."



12. This Court is not in agreement with the learned counsel for the petitioner that the first respondent should not have questioned the non examination of eye witness to the accident by the enquiry officer. The findings of the first respondent are not solely on the basis of non examination of witnesses the Tribunal has observed that of the two witnesses examined the Branch Manager was not an eye witness to the accident and the Conductor who was in the bus at the time of accident has deposed that the deceased has suddenly crossed the road in front of the bus, on which the second respondent has applied brakes however the bus has hit the deceased. The first respondent has come to a conclusion that the enquiry officer should have concluded that the second respondent was not rash and negligent.

13. As per Section 33 2 (b) of the I.D. Act, whenever management imposes a punishment which requires approval, the management, after passing of orders of dismissal, shall take steps to pay one month salary and to file the petition before the Labour authority for approval under Section 33 (2) (b). All the three aspects, i.e., dismissal of workmen, payment of one month salary and filing of petition under Section 33 2 (b) shall be simultaneous.



14. The second respondent was dismissed from service on 09.08.2012. However, the request for the approval was received by the first respondent only on 16.08.2012, which means 7 days after dismissal of the second respondent the application was filed before the first respondent, under Section 33 (2) (b) of the I.D. Act.

15. The learned counsel for the second respondent has brought to the notice of judgment of this Court in W.P.No.11897 of 2016 on 09.08.2019, wherein delay of 10 days in filing the approval petition was concluded as fatal. Similarly, in of W.A.No.1112 of 2023 dated 10.07.2023, delay of 7 days in filing of the approval petition was found to be fatal to the management. In the case on hand there is a delay of 7 days in filing the approval petition, therefore, on this count also the orders of the Labour Court officer will not sustain.

16. The learned counsel for the petitioner submitted vehemently that this writ petition is filed by the Corporation challenging the orders passed by the first respondent declining to grant approval under Section 33 (2) (b) of the I.D. Act, and thereby, the second respondent/workmen cannot contend that approval should not have been granted on the ground



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of delay in filing of the approval petition.

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17. It is true that this writ petition is filed by the Corporation wherein there is no issue as to whether there is a delay in filing of the approval application. In fact the second respondent/workmen also did not question about the delay in filing the approval petition, though, there is a delay of 7 days in filing the approval petition. However, in the W.A.No.1112/2023 also the orders of the approval petition were challenged by the management wherein the workman has taken the plea of delay in filing the approval application, while considering the same the Division Bench has held that delay of 7 days in filing the approval petition is fatal. Though, the submissions of the learned counsel for the petitioner that the workman can not raise the issue of delay in filing the approval petition in the writ petition filed by the management, is convincing, still considering that the Division Bench of this Court has permitted such plea to be taken by the workmen in the writ petition filed by the management, the same can be applied in this case as well. The learned counsel for the petitioner has submitted that aggrieved by the orders of the writ appeal, the petitioner Corporation has has filed SLP, on the file of the Hon'ble Supreme Court of India.



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18. In view of the above, the findings of the first respondent in the impugned orders cannot be interfered with.

19. Accordingly, this writ petition is dismissed. Connected M.P. is closed. Costs made easy.

08.02.2024

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Index : Yes/No

Internet : Yes/No

Citation : Yes/No

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The Special Deputy Commissioner of Labour,
DMS Compound, Anna Salai,
Chennai.

DR. D.NAGARJUN,J.

vca

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