



W.P.No.10438 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDER RESERVED ON : 13.03.2024

ORDER PRONOUNCED ON : 03.06.2024

CORAM

THE HON'BLE MRS. JUSTICE N.MALA

W.P.No.10438 of 2019

and

W.M.P.Nos.10968 of 2019, 7946 & 7949 of 2021

The Management,
Hyundai Motor India Limited,
Plot No. H1, SIPCOT Industrial Park,
Irunkattukottai, Sriperumbudur Taluk,
Kancheepuram District - 602 117
Rep. by its Deputy General Manager,
Mr.M.Sagadevan

...Petitioner

Vs.

Mr.K.Muthukumar

...Respondent

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari, call for records relating to the Order dated 25.01.2019 passed by the Industrial Tribunal, Chennai in A.P.No.44 of 2014 and to quash the same.

For Petitioner : Mr.Sanjay Mohan

for Mr.R.Jayaprakash

For Respondent : Mr.K.M.Ramesh, Senior Counsel

for Mr.V.Sivaraman



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ORDER

Writ petition is filed challenging the order dated 25.01.2019 in A.P.No.44 of 2014 on the file of the Presiding Officer, Industrial Tribunal, Tamil Nadu, Chennai.

2. The brief facts of the case are as follows:

The petitioner is a company incorporated under the Companies Act and is engaged in the business of manufacturing and sale of Hyundai range of passenger cars. The respondent was employed in the petitioner company as a Technician since 1999. It is the petitioners case that the respondent was unauthorisedly absent from 07.02.2014 to 09.04.2014 for a total period of 62 days. A show cause notice dated 09.04.2014 was issued to the respondent on the complaint given by his superior and domestic enquiry was conducted in accordance with the principles of natural justice. The respondent remained unauthorisedly absent even beyond 09.04.2014 till 29.05.2014 and therefore another domestic enquiry was conducted in accordance with the principles of natural justice. On 21.06.2014, the enquiry officer on the basis of the record held that the charges levelled against the respondent under Clause 21 (33) of the Certified Standing



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Orders were proved. Meanwhile the respondent continued his unauthorised absence and was unauthorisedly absent for about 200 days.

According to the petitioner, even in the past the respondent was thrice warned and thrice suspended from service for his unauthorised absence.

On 02.09.2014, a second show cause notice combining both the enquiry reports was served on the respondent directing him to submit his written explanation as to why proposed punishment of dismissal should not be imposed. The respondent sent his reply on 04.09.2014 and as the same was found unsatisfactory he was dismissed from service on 12.09.2014. The petitioner filed approval petition before the Industrial Tribunal, Chennai under Section 33(2)(b) of the Industrial Disputes Act, 1947 for grant of approval for the dismissal order passed against the respondent. The respondent was also paid one month salary as per Section 33(2)(b) of the Act. The approval petition in A.P.No.44 of 2014 was taken up by the Industrial Tribunal and on consideration of the entire materials on record, vide order dated 23.10.2018 passed an order on the preliminary issue holding that the enquiry conducted by the petitioner was fair and proper. Thereafter the Industrial Tribunal vide order dated 25.01.2019 dismissed the approval application. Aggrieved by the impugned order the petitioner



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has filed the above writ petition.

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3. The learned counsel for the petitioner submitted that the Industrial Tribunal having found favour with the petitioner on the preliminary issue regarding the fairness of the enquiry conducted by the petitioner erred in interfering with the punishment imposed by the petitioner. The learned counsel further submitted that the Industrial Tribunal had no jurisdiction to interfere with the punishment imposed by the petitioner under Section 11 A of the I.D. Act, which power was available only under Section 10 or 2(A)(2) of the I.D. Act. The learned counsel lastly submitted that assuming that the Industrial Tribunal interfered with the punishment on the ground that it was unduly harsh, severe or shockingly disproportionate, it ought to have seen that on the facts of the case, the said grounds for interference with the punishment were not available. The learned counsel therefore submitted that the impugned order of the Industrial Tribunal was erroneous and the same deserve to be set aside.

4. The learned counsel for the respondent on the other hand submitted that the order of the Industrial Tribunal was fair, just and



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proper and the Industrial Tribunal was well within its right to interfere with the quantum of punishment as the misconduct complained of was only unauthorised absence.

5. I have heard both the learned counsels and I have perused the materials placed on record.

6. The facts of the case are undisputed and the core issue that is to be decided is whether the Industrial Tribunal is justified in interfering with the quantum of punishment under Section 11 A of the I.D. Act while deciding the approval petition filed under Section 33(2)(b). Before embarking on the legal principles, the facts necessary for considering the issue are to be looked into.

7. It is not disputed that the respondent was unauthorisedly absent for more than 200 days. The respondent was charge sheeted for unauthorised absence twice, one for a period of 62 days (i.e) from 07.02.2014 to 09.04.2014 and another for a period of 43 days from 10.04.2014 to 29.05.2014. A domestic enquiry was conducted and the



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respondent remained absent and so he was set ex-parte. It was only to the second show cause notice dated 02.09.2014, wherein both the enquiry reports were served on the respondent calling for his explanation on the proposed punishment that the respondent replied vide letter dated 04.09.2014 stating that he could not attend duty due to his poor health condition. The Industrial Tribunal while considering the fairness of the domestic enquiry, vide order dated 23.10.2018 held that sufficient opportunities were afforded to the respondent to defend his case and therefore the enquiry conducted was fair and proper.

8. The issue that is to be decided in this writ petition is whether the Industrial Tribunal was justified in interfering with the quantum of punishment by invoking Section 11A of the I.D. Act in 33(2)(b) petition. The law on the subject is succinctly laid down by the Hon'ble Supreme Court in the case of *John D'souza Vs. Karnataka State Road Transport Corporation* reported in MANU/SC/1428/2019. The Hon'ble Supreme Court in the aforesaid Judgment at Para 22 and 25 held as follows:

"22. The Legislature has, thus, provided a self-contained mechanism through Section 10 read with Sections 11(3) and



11A 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 Section 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.

25. The Labour Court/Tribunal, nevertheless, while holding enquiry Under Section 33(2)(b), would remember that such like summary proceedings are not akin and at par with its jurisdiction to adjudicate an 'Industrial dispute' Under Section 10(i) (c) 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 11A 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

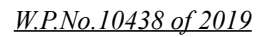
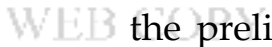


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prejudice to the right of the workman to raise an 'industrial dispute' referable for adjudication Under Section 10(1)(c) or (d), as the case may be. It needs pertinent mention that an order of approval granted Under Section 33(2)(b) has no binding effect in the proceedings Under Section 10(1)(c) and (d) which shall be decided independently while weighing the material adduced by the parties before the Labour Court/Tribunal."

9. The Hon'ble supreme Court in the aforesaid Judgment referred to a number of Judgments and held as above. It is clear that the Industrial Tribunal while exercising power under Section 33(2)(b) of the Act had no jurisdiction to interfere with the quantum of punishment by invoking Section 11 A of the Act, which jurisdiction is referable to an adjudication under Section 10(1)(c) or (d) of the I.D. Act. In view of the aforesaid binding precedent, I do not consider it necessary to further elaborate on the legal issue.

10. In the said Judgment the Hon'ble Supreme Court further held that in the event where no defect was detected in the domestic enquiry, the



11. The Industrial Tribunal relied on the Judgment in *Lalla Ram's* case to interfere with the proportionality of punishment. In the aforesaid Judgment, it is stated that "*though generally speaking the award of punishment of 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*". In my view, before applying the said Judgment the Industrial Tribunal ought to have



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appreciated the facts of the present case. In the present case, it is seen that the respondent was unauthorisedly absent for more than 200 days and his past conduct was also not above board. Even in the dismissal order marked as Ex.M51, it was clearly stated that the respondent in the past was thrice warned and thrice suspended from service for unauthorised absence. The Industrial Tribunal relying on the Standing Order No.22 found that the punishment was disproportionate to the misconduct. The punishment provided under the Standing Order No.22 for misconduct of unauthorised absence are Censure, Penalty under Act 1936, suspension (break-in service), stoppage of increment and dismissal. As already stated, the management had already imposed lesser punishment of warning and suspension on six occasions and therefore in the light of the facts of the case, the Industrial Tribunal ought not to have interfered with the quantum of punishment.

12. I therefore find both legally as well as factually that the Industrial Tribunal had no jurisdiction to interfere with the punishment imposed by



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the management and dismissing the approval petition. For all the above,

the writ petition is allowed. No costs. Consequently, connected WMP's are closed.

03.06.2024

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No

dsn/ah

To
The Presiding Officer,
Industrial Tribunal,
Chennai.



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N.MALA,J.

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PRE-DELIVERY ORDER IN
W.P.No.10438 of 2019

ORDER DELIVERED ON
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