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W.P.No.12844 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2024

CORAM

THE HONOURABLE MRS. JUSTICE N.MALA

W.P.No.12844 of 2019 and
W.M.P.No.13046 of 2019

1. The Managing Director
Tamil Nadu State Transport Corporation
(Salem Division-1) Limited,
12, Ramakrishna Salai,
Salem – 636 007.

...Petitioner

Vs.

1. The Joint Commissioner of Labour
Chennai

2. Mr.K.Mathivanan

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the Order dated 25.07.2018 passed by the Joint Commissioner of Labour in I.D.No.47 of 2015 and to quash the same.

For Petitioner	: Mr.M.Aswin
For R1	: Mr.P.Sanjay Gandhi
For R2	: M/s. S.Girija



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ORDER

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The writ petition is filed challenging the order passed in Approval Application No.47 of 2015 dated 25.07.2018.

2. The respondent workman was employed as Assistant in Petitioner Corporation. From 14.01.2023 onwards, the respondent remained continuously absent without prior permission or leave application. The respondent was therefore issued with a charge memo dated 07.02.2013. The respondent received the charge memo and submitted his reply on 23.12.2023. As the reply of the respondent was unsatisfactory an enquiry was ordered. Several enquiry notices were sent to the respondent, some of which were returned and some were received, but the respondent did not participate in the enquiry. The enquiry was adjourned to several dates and finally the respondent was set ex-parte. The enquiry Officer submitted his enquiry report on 18.03.2014 holding that the charges against the respondent were proved. The entire enquiry proceedings were sent to the respondent on 17.04.2014 and the respondent submitted his reply to the same on 02.05.2014. The reply of the petitioner was not convincing to the petitioner Corporation. On the analysis of the enquiry proceedings, documents, findings of the enquiry Officer and the explanation submitted by the



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respondent, a show cause notice dated 18.09.2014 was issued to the respondent calling for explanation on the prescribed punishment of dismissal from service.

The respondent did not reply to the said show cause notices. Therefore the final order of dismissal from service was passed on 11.03.2015. Thereafter, Approval application was filed before the Joint Commissioner of Labour for approval. The Joint Commissioner of Labour dismissed the approval petition by order dated 25.07.2018. Therefore the petitioner Corporation filed the above writ petition challenging the same.

3. The counsel for the petitioner submits that the findings of the Joint Commissioner of Labour are perverse and hence deserve to be set aside. The learned counsel submits that in an approval application the Joint Commissioner Labour had no jurisdiction to intervene with the punishment imposed by the management.

4. The learned counsel for the respondent on the other hand submits that the 17B application filed by the respondent should be considered first before deciding the writ petition on merits. The learned counsel further submits that the findings of the Labour Court could not be interfered as the same were based



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on proper appreciation of the evidence on record. The learned counsel therefore submits that the writ petition is devoid of merits.

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

6. The preliminary objection of the learned counsel for the respondent is that the 17-B application should be heard and disposed and thereafter the writ petition should be heard on merits. It is undisputed that the order rejecting the approval application was passed on 25.07.2018 and the same was challenged before this Court on 16.04.2019. The respondent entered appearance on 24.09.2019. From 24.09.2019 the matter has been pending. It is only on 23.02.2024 that the 17-B application was filed by the respondent. There is no explanation by the respondent's counsel as to why the 17-B application was filed after the matter was listed for final hearing. No doubt that the provisions of Section 17-B of the ID Act are beneficial in nature. But in my view the respondent having slept over his right for over 4 years cannot insist that the application should be heard before final disposal.



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7. The facts of the case are undisputed and they are as stated above. The issue is whether the award of the Joint commissioner of Labour rejecting the Approval application of the petitioner Corporation is justified or not. On perusal of records, it is seen that the charge memo was issued to the respondent on 07.02.2013 and the explanation was submitted by the respondent on 23.12.2013. The enquiry notice was sent on 16.11.2013 and the same was returned. Thereafter enquiry notice were sent under Ex.P-6, Ex.P-8 and Ex.P-10. Ex.P-6 and Ex.P-10 and they were acknowledged by the respondent. Even though, respondent received the enquiry notice, he did not participate in the enquiry proceedings and therefore an exparte order was passed on 18.03.2014. Thereafter, the enquiry report of the Enquiry Officer was sent to the respondent and the respondent also submitted his reply on 02.05.2014. The second show cause notice was issued on the proposed punishment and thereafter, as the respondent did not reply, the dismissal order dated 11.03.2015 under Ex.P-18 was passed.

8. The short ground on which the order of the Labour Court needs to be set aside is that the Labour Court in an application for approval under Sec. 33(2)(b) had no jurisdiction to interfere with the punishment imposed by the



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petitioner/Management. The scope of approval petition and the parameters to be

followed while considering the same were laid down by the Hon'ble Supreme

Court as early as in 1978 in ***Lalla Ram v. DCM Chemical Works Ltd., 1978 (3)***

SCC 1. The Hon'ble Supreme Court issued the following guidelines.

“12. 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 victimize the employee regard being had to the position 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 Workman [AIR 1965 SC 917 : (1965) 2 SCR 85 : (1965) 1 LLJ 462 : 27 FJR 232], Workmen of Messrs Fire Stone Tyre & Rubber Company of India (P) Ltd v. Management



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[(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 malafides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscious able 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 sort 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 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



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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”.

9.The Labour Court has to consider whether approval application should be allowed or not on the basis of the aforesaid guidelines. At the stage of approval application the Labour Court has no jurisdiction to interfere with quantum of punishment. I am fortified in my view by the judgment of the Hon'ble Supreme Court in ***John D' souza -vs- Karnataka State Road Transport Corporation***, reported in ***2019 (14) Scale 57***. The relevant portion is extracted as follows:

“38. The Labour Court or Tribunal, therefore, while holding enquiry under Section 33(2)(b) cannot invoke the adjudicatory powers vested in them under Section 10(i)(c) and (d) of the Act nor can they in the process of formation of their prima facie view under Section 33(2) (b), dwell upon the proportionality of punishment, as erroneously done in the instant case, for such a power can be exercised by the Labour Court or Tribunal only under Section 11A of the Act”.

Hence, I am of the view that the order of the Labour Court cannot be sustained on this ground.



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10. Even on merits, I find that the Labour Court on mere sympathy for the Workman dismissed the application. The Labour Court failed to note that absolutely no documents were filed by the respondent to prove that he abstained from work on medical grounds. In my view, in the absence of even a single document to show that the respondent was medically unfit to report for duty, the finding of the Labour Court that the respondent ought to have been referred to the medical board to establish his medical condition is perverse.

11. On victimisation also I find that the Labour Court erred in its view. It is seen that only after the enquiry proceedings concluded and the Ex-parte enquiry order was passed on 18.03.2014 that the Respondent submitted his VRS application under Ex.R6 on 02.05.2014 and the same was rejected on 25.06.2014. The respondent waited for the enquiry proceedings to conclude and only then filed his VRS application. The enquiry report was sent to the respondent on 17.04.2014 and he sent his reply on 02.05.2014. It is pertinent to note that on the same day he sent his VRS application. The second show cause notice on the proposed punishment was issued on 18.09.2014, but the respondent did not reply. Thereafter, on 11.03.2015 the dismissal order was



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passed. From the aforesaid facts, I do not find that there was any victimisation by the petitioner. The fact that the VRS application was filed after receipt of the enquiry report shows that the respondent's intention in submitting the VRS application was to avoid the adverse orders of the Disciplinary Authority.

12. For all the above reasons, I find that the order rejecting the Approval application cannot be sustained and hence the same is set aside. The writ petition is accordingly dismissed. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

22.03.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1. The Joint Commissioner of Labour
Chennai



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N.MALA,J.

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