



W.P.No.9264 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18/12/2023
Pronounced on	07 /6/2024

C O R A M

The Hon'ble Dr.Justice D.NAGARJUN

Writ Petition No.9264 of 2015
and M.P.No.1 of 2015

The Management,
Tamil Nadu State Transport Corporation Ltd,
No.12, Ramakrishna Road,
Salem-07,
Rep., by its General Manager

...

Petitioner

Vs

1. The Special Deputy Commissioner of Labour,
DMS Compound, Anna Salai,
Chennai-6.

2. A.Karunanithi

...

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorari, calling for records in proceeding pursuant to the order passed in Approval Application No.467/2011 dated 11.07.2013 on the file of the 1st respondent and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.



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For petitioner

... Mr.Ilamvaludhi
for Mr.R.Babu

For respondents

... M/s.C.Sangamithirai
Special Government Pleader for R1

... M/s.S.Girija for R.2

O R D E R

This Writ Petition is filed seeking for quashment of the proceeding pursuant to the order passed in Approval Application No.467/2011 dated 11.07.2013 on the file of the 1st respondent.

2. The second respondent was working as a Conductor in the petitioner's Corporation in Erumampalayam-2 Branch. Petitioner did not report for his duty continuously from 09.09.2010 without prior permission and prior intimation. Thereby, as per Clause 16(E) of the certified standing order of the petitioner corporation, the petitioner Management issued a charge memo dated 04.03.2011 to the second respondent. The explanation was submitted by the second respondent. Since, the said explanation was not satisfactory, Enquiry Officer was appointed and the same was also communicated to the second respondent through notice dated 23.07.2011 and the same was also acknowledgment by the second respondent. The second respondent participated



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in the enquiry on 12.08.2011. Sufficient opportunity was given by the second respondent to examine his witness and to cross examine the Management witness and to peruse the documents filed in the enquiry proceedings. The enquiry was conducted by following the principles of natural justice. On conclusion of enquiry, a report was submitted holding that charges leveled against the second respondent are proved.

3. The said enquiry report was circulated to the second respondent along with a memo calling for remarks. The second respondent submitted explanation on 07.09.2011 and on considering the said explanation and ultimately second respondent was dismissed from service as per proceedings dated 31.10.2011. Since, there was a wage dispute pending on the file of the first respondent in ref. No.C1/37589/2007, the petitioner Management sought for the approval of the first respondent with regard to the dismissal of second respondent under Section 33(2)(b) of the Industrial Dispute Act, 1947. The second respondent in all absent from 09.09.2010 till the date of dismissal, for 418 days, during which time he has not approached the Management either in person or through other communication for grant of leave for his absence. He has not tried to explain any valid reasons for his absence. The first respondent/ The Special Deputy Commissioner Labour, after conducting the enquiry under



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Section 33(2)(b) of the Industrial Dispute Act, 1947, held that the domestic enquiry conducted by the petitioner Corporation is not as per law and that the principles of natural justice have not been followed, thereby, the same was dismissed.

4. It is submitted by the learned counsel for the petitioner that the first respondent authority has failed to appreciate that the second respondent absence was wilful and without any permission or consent and during the course of domestic enquiry sufficient opportunities were given, he was allowed to peruse the documents, allowed to examine witnesses and was also allowed to cross examine Management witnesses, notices were properly and timely sent and entire enquiry was conducted by following due process and thereby, the approach of the first respondent that the principles of natural justice was not followed is erroneous and devoid of merit. The learned counsel for the petitioner has cited many judgment in support of his contentions.

5. No counter has been filed by the second respondent workmen.

6. Heard both sides and perused the records.



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7. The law and procedure to be followed while considering an application for approval under Section 33 (2)(b) of the Industrial Dispute Act has clearly laid down in the bench mark judgment in **Lalla Ram vs. D.C.M. Chemical Works**, reported in A.I.R. 1978 (S.C) 1004, wherein the the Hon'be Apex Court has observed as under:

“12. The position that emerges from the above quoted decisions or 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 MANU/SC/0136/1963 : (1963)ILL J291SC , Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar [1961] 2 L.L.J. 511, Hind Construction & Engineering Co. Ltd. v. Their Workmen MANU/SC/0210/1964 , Workmen of Messrs Firestone Tyre & Rubber Co. of India (P) Ltd." v. Management and Ors. MANU/SC/0305/1973 : (1973)ILL



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J278SC ., and Eastern Electric and Trading Co. v. Baldev Lal [1975] Lab. I.C. 1435 (S.C.) 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 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; (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 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 month to the employee and the employer had within the time indicated above applied to the



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

8. As per the judgment referred above, in order to consider whether five points have been followed while conducting domestic enquiry, the report of the Enquiry Officer will have to be looked into. The Enquiry Officer by name Thiru. R. Chandramohan has submitted enquiry report after conducting disciplinary proceedings. On perusal of this report, it is clear that enquiry was conducted against the second respondent the workmen a Conductor in Erumapalayam-2 Branch in the petitioner corporation in respect of the charges framed against him in respect of his continuous absence from duty with effect from 09.09.2010. The delinquent/ second respondent was informed that at 10.00 a.m., on 12.08.2011 the enquiry will be conducted wherein Thiru.R.Balasubramanian, Assistant Manager (Training Institute) will be examined. On 12.08.2011, the second respondent the delinquent was present. On that day, oral and documentary evidence was adduced on behalf of the Management and that the second respondent has informed the Enquiry Officer that he has no oral or documentary evidence. It is mentioned in the enquiry report that prior to the commencement of the enquiry, the second respondent was given an opportunity to peruse all the documents relating to the charge



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leveled against him. The delinquent was informed that he will be allowed to participate fully in the enquiry. Accordingly, the delinquent has participated in the enquiry in all aspects right from the beginning until its closure. It is also recorded by the Enquiry Officer that the charges framed against him were read out to the second respondent. The Management witness was examined in the presence of delinquent. He was given an opportunity to cross examine the Management witness.

9. During the course of enquiry, Thiru. R.Balasubramanian, the Management witnesses has deposed that the second respondent who was working as a Conductor was absent from his duty continuously from 09.09.2010 without any prior intimation or permission, on account of which, the department has gone through lot of trouble in arranging substitute, in order to see that work assigned to the second respondent is completed. The second respondent delinquent however stated that he was having a health issues like Blood Pressure, Diabetes, and heart ailments and he was fainting often and while he was taking treatment, he also got paralysis, thereby, he was unable to report for duty from 09.09.2010. Second respondent has also stated that he is taking treatment continuously. He was cross examined on behalf of the Management wherein the second respondent has stated that he has no evidence



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to that extent. Second respondent has also stated that he was absent from duty from 09.09.2010 without prior permission.

10. The Labour Court having analyzed the oral and documentary evidence has observed that there is no dispute that second respondent was absent from 09.09.2010 without any prior permission or intimation. The explanation offered by the second respondent was that he was suffering from health issues like Blood Pressure, Diabetes, and heart ailments and also got mild paralysis, however admittedly no documentary evidence was filed to prove his medical issues. Even otherwise, if at all the second respondent was suffering from any health issues, he has got every right to apply for Medical Leave by providing evidence to show that he has been suffering from health issues. From the date of his absence until he was terminated, he has not made any attempt to file any application for grant of leave. Even during the course of enquiry also he should have filed some application with proof that he is suffering from health issues, thereby, he could not attend the office. Considering all the above facts, the Enquiry Officer has concluded that all the charges framed against the second respondent are proved.

11. On going through the report of the Enquiry Officer, it appears to



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this Court that enquiry was conducted in a free and fair manner by giving full opportunity to the second respondent to cross examine the Management witnesses, to examine second respondent and to peruse the records filed during the enquiry proceedings etc. However, the first respondent the Commissioner of Labour has strangely has observed that principles of natural justice have not been followed and the reasons given by him are totally unacceptable.

12. Out of five requirements to be proved as per ***Lalla Ram vs. D.C.M. Chemical Works***, case, in respect of the first aspect, it is clear that enquiry was conducted in accordance with relevant rules and standing orders by following the principles of natural justice. As already observed, in respect of this aspect though the Commissioner of Labour has given different opinion, same is erroneous, considering the enquiry report as analyzed above. The second aspect has to be analyzed as per **Lalla Ram's case** cited supra is whether prima facie case is made out for dismissal basing on the legal evidence adduced before the domestic Tribunal. It is to be noted that the Enquiry Officer has examined Management witness and also examined the second respondent delinquent and considered all the documents and basing on the fact that the second respondent was unauthorizedly absent from 09.09.2010 and that he has not filed any application for Medical Leave or any other leave and that



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considering that he has not filed any documents to prove that he was suffering from ill health, it was concluded that charges are proved against him. Therefore, on going through the said enquiry report it is very difficult to conclude that there is no prima facie case in coming to the conclusion that the charges were proved against the second respondent. There is no complaint from the second respondent that unfair labour practices were played against him and was dismissed from service. Therefore, that aspect need not be emphasized in this case. The other aspect required is to see whether the second respondent was paid one month wages. It is an admitted fact that at the time of dismissal of one month wage were paid to the second respondent, therefore, this aspect also there is no dispute. Finally it is to be considered whether the Management has filed an application before the concerned authorities for approval. In respect of this there is no dispute from the second respondent.

13. The Hon'ble Apex Court, in ***Management of Tamil Nadu State Transport Corporation (Coimbatore) Limited vs. M.Chandrasekaran***, reported in 2016 SCC OnLine SC 894 has observed as under:

12. The moot question is about the jurisdiction of the Joint Commissioner of Labour (Conciliation) whilst considering an application for approval of order of punishment Under Section 33(2)(b) of the



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Industrial Disputes Act, 1947. It is well settled that the jurisdiction Under Section 33(2)(b) of the Act is a limited one. That jurisdiction cannot be equated with that of the jurisdiction Under Section 10 of the Industrial Disputes Act. This Court in the case of Cholan Roadways (Supra) observed thus:

18. The jurisdiction of the Tribunal while considering an application for grant of approval has succinctly been stated by this Court in Martin Burn Ltd. v. R.N. Banerjee (MANU/SC/0081/1957 : AIR 1958 SC 79). While exercising jurisdiction Under Section 33(2)(b) of the Act, the Industrial Tribunal is required to see as to whether a prima facie case has been made out as regard the validity or otherwise of the domestic enquiry held against the delinquent; keeping in view the fact that if the permission or approval is granted, the order of discharge or dismissal which may be passed against the delinquent employee would be liable to be challenged in an appropriate proceeding before the Industrial Tribunal in terms of the provision of the Industrial Disputes Act. In Martin Burn's case (supra) this Court stated:

“27.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. (See Buckingham and Carnatic Co. Ltd. v. The Workers of the Co. (1952) Lab. AC 490 (F). (Emphasis supplied)

13. *This judgment was relied by the Appellant before the Division Bench. The Division Bench, however, brushed it aside by observing that the principle of Res ipsa loquitur is not applicable to the case on hand. That approach, in our opinion is untenable. In that, the said decision not only deals with the principle of Res ipsa loquitur but also with the scope of jurisdiction of the Commissioner Under Section 33(2)(b) of the Act. It also delineates the extent of scrutiny to be done at this stage to ascertain whether prima facie case is made out for grant or non-grant of approval to the order of punishment. In doing so, the Commissioner could not substitute his own judgment but must only consider whether the view taken by the Disciplinary Authority is a possible view on the evidence on record.*



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14. *In the present case, the sole reason which weighed with the Commissioner was that no independent witness was produced-not even a single passenger of the bus was examined by the Department. The decision relied by the Appellant squarely deals even with this reasoning. It has been held that, in the case of State of Haryana and Ors. v. Rattan Singh MANU/SC/0332/1977 : (1977) 2 SCC 491 the Court held that mere non-examination of passenger does not render the finding of guilt and punishment imposed by the Disciplinary Authority invalid. Similar view has been taken in the case of Divisional Controller KSRTC (NWKRTC) v. A.T. Mane MANU/SC/0832/2004 : (2005) 3 SCC 254. Both these decisions have been noticed in the reported decision relied by the Appellant. The burden to prove that the accident happened due to some other cause than his own negligence, is on the employee, as expounded in the case of Thakur Singh v. State of Punjab (2003) 9 SCC 208 referred to in the reported decision. In the reported case relied by the Appellant, it has been noted as under:*

34.In the instant case the Presiding Officer, Industrial Tribunal as also the learned Single Judge and the Division Bench of the High Court misdirected themselves in law insofar as they failed to pose unto themselves correct questions. It is now well-settled that a quasi-judicial



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authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer. In this case, furthermore, the misdirection in law committed by the Industrial Tribunal was apparent insofar as it did not apply the principle of Res ipsa loquitur which was relevant for the purpose of this case and, thus, failed to take into consideration a relevant factor and furthermore took into consideration an irrelevant fact not germane for determining the issue, namely, the passengers of the bus were mandatorily required to be examined. The Industrial Tribunal further failed to apply the correct standard of proof in relation to a domestic enquiry, which in "preponderance of probability" and applied the standard of proof required for a criminal trial. A case for judicial review was, thus, clearly made out.

15. *Applying the principle stated in Cholan Roadways Ltd. (Supra), what needs to be considered is about the probative value of the evidence showing the extensive damage caused to the bus as well as motorcar; the fatal injuries caused to several persons resulting in death; and that the nature of impact raises an inference that the bus was driven by the Respondent rashly or negligently. The material relied by the Department during the enquiry supported the fact that the Respondent was driving the vehicle at the relevant time and because of the high speed of his vehicle the*



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impact was so severe that the two vehicles were extensively damaged and the passengers travelling in the vehicle suffered fatal injuries resulting in death of five persons on the spot and four persons in the hospital besides the injuries to nine persons. These facts stood established from the material relied by the Department, as a result of which the doctrine of Res ipsa loquitur came into play and the burden shifted on the Respondent who was in control of the bus to establish that the accident did not happen on account of any negligence on his part. Neither the Commissioner nor the High Court considered the matter on that basis nor posed unto themselves the correct question which was relevant for deciding the application Under Section 33(2)(b). On the other hand, the order of punishment dated 13th October, 2003, ex facie, reveals that the report of the Enquiry Officer referring to the relevant material established the factum and the nature of accident warranting an inference that the Respondent had driven the bus rashly and negligently. Further, the observation in the unreported decision of the Division Bench of the same High Court was not relevant for deciding the application Under Section 33(2)(b). Significantly, the order of punishment also adverts to the past history of the Respondent indicative of Respondent having faced similar departmental action on thirty two occasions, including for having committed minor as well as fatal accidents while performing his duty.



16. *In our opinion, the Commissioner exceeded his jurisdiction in reappreciating the evidence adduced before the Enquiry Officer and in substituting his own judgment to that of the Disciplinary Authority. It was not a case of no legal evidence produced during the enquiry by the Department, in relation to the charges framed against the Respondent. Whether the decision of the Disciplinary Authority of dismissing the Respondent is just and proper, could be assailed by the Respondent in appropriate proceedings. Considering the fact that there was adequate material produced in the Departmental enquiry evidencing that fatal accident was caused by the Respondent while driving the vehicle on duty, the burden to prove that the accident happened due to some other cause than his own negligence was on the Respondent. The doctrine of Res ipsa loquitur squarely applies to the fact situation in the present case.*

17. *Ordinarily, we would have remitted the matter back to the Commissioner for consideration afresh, but as the matter is pending for a long time and as we are satisfied that in the fact situation of the present case approval to the order of punishment passed by the Appellant against the Respondent should have been granted, we allow the application Under Section 33(2)(b) preferred by the*



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Appellant but with liberty to the Respondent to take recourse to appropriate remedy as may be available in law to question the said order of dismissal dated 13th October, 2003.

18. Accordingly, we set aside the impugned decisions of the High Court as well as of the Joint Commissioner. The appeals are allowed in the above terms with no order as to costs.”

14. Considering all above facts, the enquiry against the second respondent was conducted by following due process without violating the principles of natural justice by giving opportunity to the second respondent to go through documents to cross examine the Management witness and to examine himself. Therefore, the first respondent should have given an approval in stead of by misinterpreting the enquiry officers report, the approval was denied. Therefore the impugned award is perverse and thereby the impugned orders passed by the first respondent in A.P.No.467 of 2011 is required to be intervened.

15. In the result, this Writ Petition is allowed and the order passed by the first respondent in A.P.No.467 of 2011 dated 11.07.2013 is set aside. Consequently, Approval Application No. 467 of 2011 filed by the petitioner



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corporation is hereby allowed. No costs. Consequently, connected
miscellaneous petition is closed.

07.06.2024

Index : Yes / No
Speaking/Non-speaking Order
Neutral Citations: Yes/No
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Dr.D.NAGARJUN, J.

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To
1. The Special Deputy Commissioner of Labour,
DMS Compound, Anna Salai,
Chennai-6.

Pre-delivery order made in

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