



W.P.No.29384 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.08.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.29384 of 2014 and
M.P.No.1 of 2014

The Management,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Regional Office,
Bye pass Road, Venkikkal - 606 604,
Tiruvannamalai.

... Petitioner

Vs.

1.Thiru N.Gnanasekar

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

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records passed by the second respondent in A.P.No.69 of 2010 dated 31.10.2013 and to quash the same.

For Petitioner : Mr.M.Aswin

For Respondents : Ms.Jayanthi, AGP for R2



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ORDER

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This Writ Petition has been filed for the issuance of a Writ of Certiorari, to call for the records passed by the second respondent in A.P.No.69 of 2010 dated 31.10.2013 and to quash the same.

2. Heard Mr.M.Aswin, learned counsel for the petitioner, Ms.Jayanthi, learned Additional Government Pleader for R2 and perused the materials available on record.

3. The petitioner has filed this Petition challenging the orders of the appropriate authority in refusing the approval for punishment of dismissal imposed against the first respondent for the alleged misconduct. The first respondent who was working as a conductor with the petitioner Management, has been subjected to disciplinary action on the allegation that the first respondent collected fare from the passenger and he did not issue ticket to the passenger.

4. The learned counsel for the petitioner Management submitted that despite essential aspects for granting approval has been present in



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the order of dismissal, the authority concerned has gone beyond the scope and re-appreciated the merits of the order and ultimately disinclined to grant the approval. He further submitted that in order to accord approval for dismissal under Section 33(2)(b) of Industrial Disputes Act, certain essential conditions as mentioned in the judgment of the Hon'ble Supreme Court in the case of ***Lalla Ram Vs. D.C.M.Chemical Works Ltd., and Another, reported in (1978) 3 SCC 1*** should be present. In the said judgment, those conditions are enumerated as under:

"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



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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](#)(1), [Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar](#)(2), [Hind Construction & Engineering Co. Ltd. v. Their Workmen](#)(3), [Workmen of Messrs Firestone Tyre & Rubber Company of India \(P\) Ltd. v. Management & Ors](#)(4), and [Eastern Electric and Trading Co. v. Baldev Lal](#)(5) 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 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 game 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



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

5. The learned counsel for the petitioner Management submitted that all those essential aspects that have been found to be in favour of the petitioner Management, but the authority did not give approval.

6. On perusal of the impugned order, it is seen that the authority has observed that during the domestic enquiry, on behalf of the first respondent, it has been stated that when the passenger did not purchase



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the ticket due to his own forgetfulness and for which, the first respondent should not be dismissed from service. The submission of the learned counsel for the petitioner that the approving authority has gone beyond the scope of Section 33(2)(b) of the Industrial Disputes Act and has re-appreciated the evidence, cannot be accepted. In fact, the very allegation against the first respondent is that he has committed gross misappropriation of funds by utilising the amount collected from the passenger towards ticket fare.

7. The first respondent had given an explanation that he had forgotten to issue ticket to one of the passenger and the said passenger also did not intend to get the ticket by demanding the same. If the passenger demanded the ticket for the money paid, but the first respondent refused to issue ticket, then the punishment of dismissal could have been an appropriate punishment.

8. It appears from the order that the approving authority has exercised his power in order to comply the condition by finding out whether the dismissal is based on legal evidence adduced before the



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Domestic Tribunal.

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9. Incidentally, the second respondent happened to deal with the evidence / materials that were available during the domestic enquiry. The authority concerned came to know from the evidence / materials that there is no motive in the mind of the first respondent for not issuing the ticket, but it was due to forgetfulness; unfortunately, the passenger also did not demand the ticket. The second respondent has appreciated the matter in a manner needed and had rightly rejected the approval sought for dismissal of the first respondent from service. Therefore, I do not find any merits in this Writ Petition.

10. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes / No
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To

The Special Deputy Commissioner
of Labour (Conciliation),
DMS Compound,
Chennai.



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R.N.MANJULA, J.

gsk

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