



W.P.No.29966 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

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THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.P.No.29966 of 2014

and

M.P.No.1 of 2014

The Management,
Rep by its General Manager,
Tamil Nadu State Transport Corporation Villupuram Ltd,
Villupuram. ... Petitioner

Vs.

1.The Special Deputy Commissioner of Labour,
D.M.S. Compound,
Chennai.

2.P.Kaliyaperumal (Deceased)

3.K.Manimegalai

4.K.Prabu

5.K.Mathan

6.K.Vijay

... Respondents

(R3 to R6 are substituted as Lrs of deceased
as per order dated 25.04.2024 in
W.M.P.No.11471 of 2024 in W.P.No.29966 of 2014)

Prayer: Writ Petition filed under Article 226 of Constitution of India, for
issuance of a Writ of Certiorari, to call for the records of the 1st respondent



W.P.No.29966 of 2014

made in A.P.No.292 of 2011 dated 19.04.2013 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Mr.M.Aswin

For Respondents : Mr.V.Jeevagiridharan
Additional Government Pleader
for R1

M/s.V.Porkodi
for Mr.R.Krishnaswamy
for R2 to R6

ORDER

The short point placed for the consideration of this Court is whether the Authority namely the first respondent herein has exceeded the jurisdiction conferred upon it under Section 33(2)(b) of the Industrial Disputes Act, 1947. In order to appreciate, the grievance of the petitioner it is necessary to briefly allude to the facts of the case.

2. The second respondent was employed as a conductor in the petitioner's Corporation. He has joined the services of the petitioner's corporation on 01.08.1989. In the course of his employment, on 24.07.2009,



W.P.No.29966 of 2014

while he was assigned duty on the Kumbakkonam to Thiruvannamalai route, he had received a fare of Rs.8/- from two passengers, but had not issued them the tickets and when the ticket examiners had got into the bus he had hurriedly issued the tickets to the passengers. That apart, there was a shortage of the sum of Rs.17.50/- in the cash collection.

3. In the light of the above misconduct, the petitioner had issued a Charge Memo to the second respondent calling for his response for the above misconduct. A reply dated 19.08.2009 was received and thereafter an Enquiry Officer was appointed who had proceeded with the enquiry. The second respondent had been given opportunities to the second respondent to represent his case and he had also cross examined the management witness namely the petitioner's witnesses. Thereafter, the Enquiry Officer had submitted his report and a Show Cause notice was also issued on 12.04.2010 to the second respondent seeking his response to the Enquiry Officer's report. A reply was also received for the same. Thereafter, a Show Cause Notice was issued to the second respondent on 14.09.2010 calling for his response with reference to the provisional punishment that had been arrived at by the petitioner. A reply was received and since the same was not satisfactory, the



W.P.No.29966 of 2014

petitioner had proceeded to dismiss the second respondent by order dated 18.02.2011.

4. Thereafter, the petitioner had filed an Approval Petition before the first respondent under Section 33(2)(b) of the Industrial Disputes Act, 1947 as there was an industrial dispute pending before the first respondent. The petition was moved with all the attendant documents. The first respondent had proceeded to dismiss the Approval Petition contending that the petitioner had not established a *prima facie* case for the commissioning of the misconduct. Therefore, aggrieved the petitioner is before this Court.

5. Mr.Ashwin, learned counsel appearing on behalf of the petitioner would submit that the first respondent has exceeded his remit. The first respondent has to only consider, if there is a *prima facie* case made out and it cannot re-appreciate the evidence. The Authority has proceeded to find fault in the manner, in which, the evidence has been taken by the Enquiry Officer, which according to the learned counsel is not what is contemplated either under the provisions of Section 33(2)(b) or by various Judicial Pronouncement in this regard. He would further submit that the Authority



W.P.No.29966 of 2014

should only take into consideration whether there has been an Enquiry, whether the workman has been given an opportunity and whether the application for approval has been accompanied with one month salary.

6. In this regard, he would rely upon the Judgment of the Hon'ble Supreme Court in the case of **Lalla Ram Vs. D.C.M.Chemical Works Limited and another** reported in 1978 3 SCC 1. He would further refer to another Judgment of the Hon'ble Supreme Court in the case of **Management of Tamil Nadu State Transport Corporation (Coimbatore) Limited Vs. M.Chandrasekaran** reported in 2016 16 SCC 16, where the Hon'ble Supreme Court had relied on the other earlier Judgments including the case of **Cholan Roadways Limited Vs. G.Thirugnanasambandam** reported in 2005 3 SCC 241 and discussed the jurisdiction of the Joint Commissioner of Labour (Conciliation), Chennai, while considering an application for approval of order of punishment under Section 33(2)(b) of the Act. The learned Judges had observed that the Jurisdiction of the Commissioner is limited to examining as to whether a *prima facie* case has been made out as regards the validity or otherwise of the domestic enquiry held against the delinquent. The discharge or dismissal of the workman pursuant to the



W.P.No.29966 of 2014

approval being granted is always subject to the challenge in the appropriate proceedings before the appropriate forum.

7. He would also draw the attention of this Court to a Judgment of the learned Single Judge of this Court in W.P.No.24613 of 2019, in which, the learned Single Judge has held that while considering an application for approval, it is well open to the Authority concerned to go into the validity of the evidence that has been let in by the management. This judgment has however been overturned and remitted by the Hon'ble Division Bench of this Court. Ultimately, the action of the Deputy Commissioner of Labour rejecting the Approval Petition has been set aside. He would therefore submitted that the above order has to necessarily be quashed and approval be granted.

8. Per contra, Ms.V.Porkodi for Mr.R.Krishnaswamy, learned counsel appearing on behalf of the respondents 2 to 6 submitted that while considering the *prima facie* case, the Authority can very well examine the evidence that has been let in. Since the Authority could grant approval only if it is convinced that the action initiated has been done in a fair manner. She



W.P.No.29966 of 2014

would rely upon the Judgment of the Hon'ble Supreme Court in the case of

John D'Souza Vs. Karnataka State Road Transport Corporation reported

in 2019 18 SCC 47 and also relied upon the observations of the learned Judges that in the light of the Judgment in *Lalla Ram's* case reported in 1978 3 SCC 1, wherein, the Hon'ble Supreme Court had gone one step further and said that the parties can adduce evidence in the approval petition proceedings if it finds that the domestic enquiry suffers from any defect or was violative of the principles of natural justice or was barred by unfair labour practice. It may, in such circumstances, independently examine the evidence led before it to answer the question whether or not the punitive action deserves to be accorded approval.

9. The Hon'ble Division Bench had also observed that the Authority could look into the evidence adduced by parties for the purpose of formation of the *prima facie* opinion. She would further submit that in the instant case it is only done by the Authority and the Authority has not entered into a fresh enquiry and therefore the order does not required any re-consideration.



W.P.No.29966 of 2014

10. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

11. The issue in the instant case involves the Authority of the appropriate Authority in considering an application under Section 33(2)(b) of the Industrial Disputes Act. Section 33(2) of the Act reads as under:-

“33(2).During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman,

(a)alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b)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.”



W.P.No.29966 of 2014

WEB COPY 12. In the judgment of the Hon'ble Supreme Court in the case of **Lalla**

Ram Vs. D.C.M.Chemical Works Limited and another reported in 1978 3 SCC 1, the Hon'ble Supreme Court had after discussing the various judicial pronouncement with reference to this provisions summarized all of them as follows:-

“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 (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.”



W.P.No.29966 of 2014

13. This judgment has been followed in a later judgment of the Hon'ble Supreme Court in the case of ***Management of Tamil Nadu State Transport Corporation (Coimbatore) Limited Vs. M.Chandrasekaran*** reported in 2016 16 SCC 16 as well. Therefore, from the above, it is clear that the Tribunal below cannot re-appreciate the evidence that has been let in or Act as an Appellate Court. The Authority is only given the power to verify if the enquiry has been conducted as per the relevant Rules or Standing Orders or in case there is no Rules then the principles of natural justices has been followed and whether a *prima facie* case for dismissal is made out of from the evidence let in, whether the employer come to a bonafide conclusion that the employer was guilty and the dismissal is not an unfair labour practice or intended to victimise the employee.

14. With reference to this guidelines, a perusal of the impugned order passed by the first respondent would show that the appropriate Authority has proceed to sit an appeal, in as much as the first respondent has opined that the examination of only one ticket examiner was not sufficient and that the non examination of the passengers to whom the ticket was not first issued is fatal to the case. This is contrary to the guidelines laid down in *Lalla Ram's*



W.P.No.29966 of 2014

case. The Enquiry Officer has tabled his report on consideration of the evidence before him. There has been no violation of principles of natural justice in as much as the second respondent has been permitted to cross examine the Management witnesses and the Management has proved the charge by examining the ticket examiner who has entered into the bus on the given date. Is *prima facie* sufficient, to prove that the petitioner herein as conducted a proper enquiry and has come to a *prima facie* conclusion for dismissal based on the evidence that was placed before the Enquiry Officer. The second respondent himself has not alleged that the action has been initiated to victimise him.

15. The next point for consideration is whether the employer has been paid the one month salary. Even here the Tribunal has proceeded to reject the documentary evidence let in by the petitioner herein to show that the monthly salary of the second respondent was a sum of Rs.13,336/-. Based on the oral evidence of the second respondent that his monthly salary was Rs.13,336/- but he was paid a sum of Rs.13,726/-. Therefore, there is a shortage of Rs.390/-. In the one month salary deposited before the Authority.



W.P.No.29966 of 2014

16. The learned counsel appearing for the first respondent would explain that the excess amount, is the amount paid during the festival times and in support of this, had produced the salary certificate issued to the petitioner in the month of January 2011 where a sum of Rs.422.55 has been paid towards Festival Allowance. Therefore, he would submit that these amounts are given only occasionally at the time of the festivals, whereas, the petitioner's salary is only a sum of Rs.13,336/- and Ex.P13 would prove the same.

17. It is also seen that the petitioner has moved the application for Approval as soon as the Enquiry Officer had submitted his report. On the same day, as the dismissal order had been issued. Therefore, all the five criteria set out in *Lalla Ram's* case has been followed by the petitioner and the first respondent has exceeded his authority in reconsidering the evidence on record. The Hon'ble Supreme Court in the case of ***Management of Tamil Nadu State Transport Corporation (Coimbatore) Limited Vs. M.Chandrasekaran*** reported in 2016 16 SCC 16 has observed as follows:-

“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



W.P.No.29966 of 2014

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.”

18. Even in the judgment which has been relied upon by the learned counsel for the respondents 2 to 6 in the case of **John D'Souza Vs. Karnataka State Road Transport Corporation** reported in 2019 18 SCC 47, the learned Judges have made it clear that the Tribunal in an application under Section 33(2)(b) of the Act was required to see only whether the *prima facie* case has been made out as regards to the requirement of domestic enquiry. Relevant portion reads as under:-



W.P.No.29966 of 2014

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“37.The Labour Court or Tribunal, therefore, while holding enquiry under Section 33(2)(b) cannot invoke the adjudicatory powers vested in them under Sections 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 11-A of the Act.”

19. Therefore, in the light of the above, the impugned order suffers from an manifest error and is therefore quashed and consequential Approval Petition in A.P.No.292 of 2011 is ordered.

20. Accordingly, this Writ Petition is allowed. No costs.
Consequently, connected miscellaneous petition is closed.

03.07.2024

Index : Yes / No
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Neutral Citation : Yes / No
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W.P.No.29966 of 2014

To

The Special Deputy Commissioner of Labour,
D.M.S. Compound,
Chennai.



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W.P.No.29966 of 2014

P.T.ASHA, J.

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W.P.No.29966 of 2014
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M.P.No.1 of 2014

03.07.2024