



W.P.No.21777 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P. No.21777 of 2019 and W.M.P. 14805 of 2020

The Management,
GVK Emergency Management and Research Institute,
Behind Labour Commissioner's Office,
DMS Compound, Teynampet,
Chennai 600 006.

... Petitioner

Vs.

1.The Deputy Commissioner of Labour
(Head Quarter),
DMS Campus, Teynampet,
Chennai 600 006.

2.R.Sureshkumar

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the order passed by the first respondent under Section 33 (2)(b) of Industrial Disputes Act bearing Ref.Na.Ka.No.B4/19377/2016 dated 07.05.2018 and quash the same.



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For Petitioner : Mr.K.Rajasekaran

For Respondents : Mrs.M.Jayanthi,
Additional Government Pleader for R1

Mr.K.Kathiresan for R2

ORDER

The writ petition has been filed, challenging the order of rejecting approval for the dismissal order issued against the second respondent by the petitioner/Management in Na.Ka.No.Pa4/19377/2016 dated 07.05.2018.

2.The second respondent has been charged for the offence that the ambulance van issued to him by the government is for the purpose of using it for the welfare of the people but, the second respondent did not do the same. The Petitioner/Management is also using 108 van for the help of its labourers. Therefore, charge has been framed against the second respondent and disciplinary proceedings have been initiated and he was found to be guilty for the charges and thereafter, he was removed from service.



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3.The one and only contention of the petitioner/Management is that Approval Authority did not consider the fact that there was a domestic enquiry fully complying principles of natural justice.

4.The learned Deputy Commissioner of Labour/Approval Authority had rendered a finding that principles of natural justice has not been followed in the enquiry proceedings initiated against the second respondent. Since there is no prima facie case and acceptable evidence available on record, the Approval Authority has chosen to dismiss the petition.

5.The learned counsel for the petitioner submitted that the Approval Authority did not consider the essential facts for granting approval. He also relied on the judgment of this Court in W.P.No.20535 of 2019 dated 26.11.2019 and the relevant Paragraph Nos.14 and 15 are held as under :-

“14. The writ petitioner has stated in their approval petition that 77 misconducts are stipulated in the Service Rules of the writ petitioner-organisation. However, in the said Service Rules, it is stated that ?”the list below is only an



illustrative and not conclusive”?. Relying on the said portion of the Service Rules, the first respondent-authority came to the conclusion that the list of misconducts numbering 77 enumerated in the Service Rules are only illustrative and not conclusive. The finding in this regard is arrived based on the mis-interpretation of the entire Service Rules. The misconduct with reference to the employees are to be interpreted constructively and pragmatically.

15. The mere usage of language that the list below is only an illustrative and not conclusive; cannot be interpreted as if those misconducts cannot be construed as misconducts. It is to be interpreted that beyond the list of misconducts numbering 77, the connected misconducts, if any, also to be construed as misconduct with reference to the disciplinary proceedings. In other words, the scope of the number of misconducts cannot be confined. Misconducts may be in several forms. Thus, such misconducts cannot be listed out ordinarily. In such circumstances, the writ petitioner listed out 77 misconducts and even with regard to the other misconducts, which all are not listed, then also the employees are liable for disciplinary proceedings.”



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6.By following the above judgment, it is submitted by the learned counsel for the petitioner that despite the second respondent's conduct is misconduct, the learned Approval Authority has over looked the same and has given a finding that there is no prima facie case or evidence against the second respondent. He would further submit that the petition has been rejected not only on the point of not complying principles of natural justice and also on the fact that prima facie case has not been made out on the evidence available.

7.After having recorded the reasons for not accepting the fact that prima facie case on the basis of acceptable evidence has been made out, the other point is about victimisation. So far as victimisation is concerned, the Approval Authority has recorded a finding against the Management that the probabilities of victimisation is also possible. So far as grounds 3, 4 and 5 are concerned, they are in favour of the petitioner/Management. As the petitioner/Management has not complied the essential conditions, the Approval Authority has rejected the approval.



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8.The learned counsel for the first respondent submitted that the Approval Authority has arrived at a right finding that the enquiry has not been conducted in the fair and proper manner. There is no dis-agreement on the basic proposition of law on the point of prima facie evidence to show the charges against the employee.

9.It is submitted by the learned counsel for the petitioner that while appreciating the evidence for a limited purpose of finding out a prima facie case on the basis of the evidence, the Approval Authority shall not make any roving enquiry and it needs to be done only for a limited purpose of finding out whether valid materials have been produced and whether allegations made against the employee have been proved.

10.In the impugned order, it appears that the Approval Authority had appreciated the validity of the procedure adopted by the petitioner while conducting the domestic enquiry. It is recorded by the Approval Authority that the Management did not produce any Standing Orders of the company. Unless those orders are produced, it is not possible for the Approval



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Authority to appreciate whether the domestic enquiry has been conducted in a fair and proper manner and in accordance with the principles of natural justice. As the petitioner had omitted to produce sufficient documents to convince the Court that the enquiry has been conducted only by observing the principles of natural justice, the Authority has recorded a finding that the said mandate has not been proved to the satisfaction. In order to get the approval for dismissal, the petitioner has got the obligation to prove five essential requirements laid down by the Hon'ble Supreme Court in the Lalla's case. Even if one requirement is not complied, the Authority cannot be expected to pass the Approval order of dismissal. Even in the records produced before the Court, the petitioner did not produce any materials to show that the enquiry has been conducted in a fair and proper manner.

11.As the first respondent/Authority did not get satisfied with the compliance of the essential requirements, the authority had recorded a finding against the petitioner for non compliance of the conditions and had chosen to dismiss the petition stating that the petitioner had failed to utilise the opportunity granted to him while submitting his Approval Petition for



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seeking approval by producing relevant documents. Therefore, it cannot be now stated that the Court has to appreciate essential facts regarding the mandatory requirements. Hence, the Authority has rightly appraised the matter and held that the conditions are not complied with. It has no other option except to pass a order for denying the approval as requested.

12.With the above observation, this writ petition is dismissed.

Consequently, connected W.M.P. is closed. No costs.

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Index : Yes / No
Speaking / Non-speaking order
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To

The Deputy Commissioner of Labour
(Head Quarter),
DMS Campus, Teynampet,
Chennai 600 006.

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