



W.P.(MD).No.7606 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED : 26.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.7606 of 2022
and W.M.P(MD)No.5754 of 2022

The Management,
Tamil Nadu State Transport Corporation Madurai Ltd.,
Rep. By its General Manager, Virudhunagar Region,
Madurai Road,
Virudhunagar – 626 001.

... Petitioner

Vs

1. The Special Deputy Commissioner of Labour,
O/o. Commissioner of Labour, Chennai - 600 006.

2. K.Periyasamy

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order, dated 15.04.2021 passed by the 1st respondent in A.P.No.38 of 2020 as illegal and quash the same.

For Petitioner : Mr.J. Senthil Kumaraiah

For Respondents : Mr.S.Shaji Bino(R1)
Special Government Pleader

Mr.D.Anbarasu (R2)



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ORDER

The present writ petition has been filed challenging the impugned order, dated 15.04.2021 passed by the 1st respondent in A.P.No.38 of 2020 as illegal and quash the same.

2.(i)The petitioner is the employer of the second respondent, Conductor. The second respondent was employed as Conductor at the petitioner Corporation. On 18.03.2018, the second respondent while he was performing duty in bus bearing registration No.TN 67 N 0822, at the time of secret checking, the Checking Inspector found that he misappropriated a sum of Rs.20/-. Thereafter, while the Checking Inspector was still pursuing his inspection in the said bus, the second respondent Conductor handed over the cash collection bag along with pre-printed ticket bundles, ETM machine to the Driver and left the bus without any intimation. Therefore, the petitioner Management issued a charge memo along with suspension order. Following which, a domestic enquiry was conducted, after affording fair opportunity to the second respondent. On conclusion of the enquiry, the charges leveled against the second respondent was held proved and after consideration of his



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previous conduct, it was found that he had totally 8 previous misconducts, out of which, 5 were similar in nature, for which, he had undergone several punishments. In view of the same, the Management lost confidence reposed on him. Hence, on 10-06-2020, he was dismissed from his service by considering his previous misconduct and gravity of charge.

(ii).Thereafter, the petitioner Corporation approached the first respondent for want of approval to dismiss the second respondent from service, by way of filing Approval Petition No.38/2020 under Section 33(2)(b) of the Industrial Disputes Act. The petitioner had produced all the relevant and supporting documents including the details of the catena of punishments, inflicted on the second respondent for similar and various misconducts. However, vide order, dated 15.04.2021, the first respondent had refused to grant approval. Challenging the said rejection order, dated 15.04.2021 passed in Approval Petition No.38/2020, this petition came to be filed by the petitioner on behalf of the Transport Corporation.

3.(i).The learned counsel for the petitioner submitted that the first respondent had only right to validate certain criteria in an Approval Petition. The first respondent has no right to look into the veracity of evidence of the



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case rather the first respondent has to verify only whether any prima facie case has been made out or not. To show cause the prima facie case to dismiss the second respondent from service, the Management had produced all the material evidence before the first respondent. The second respondent also duly participated in the enquiry proceedings. He also cross examined the Management witnesses. The first respondent rejected approval by citing reason that eyewitness and the concerned passengers were not examined during disciplinary proceedings. However, it is a settled principle that in the domestic enquiry, the pre-ponderance of probabilities is sufficient to prove the misconduct. But the first respondent without considering the elaborate domestic enquiry documents passed the impugned rejection order and the same is illegal and is liable to be set aside.

(ii).The learned counsel for the petitioner vehemently contended that the first respondent failed to consider the second respondent's previous bad antecedents. Therefore, the impugned order passed by the first respondent is liable to be quashed and pressed for allowing the writ petition.

4.(i).The Second respondent has filed a counter affidavit and the learned counsel for the second respondent submitted that the dismissal of the



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second respondent is a clear case of unfair labour practice on the part of the petitioner and the same has been exercised with ulterior motive. After referring to the Provisions of Section 32(2)(b) of the Industrial Disputes Act, the learned counsel submitted that the first respondent Tribunal has proceeded to conduct the case as per the guidelines of the judgment of the Hon'ble Apex Court in the case of ***Ram Lalla Vs D C M Chemical Works Ltd., reported in AIR 1978 SCC 1004***. In terms of the said judgment the first respondent proceeded to conduct the case on five heads.

- Whether the domestic inquiry conducted against the second respondent was violative of the principles of natural justice.
- Whether the prima facie inquiry of the disciplinary proceeding was based upon evidence or the same was perverse.
- Whether the employer had come to a *bonafide* conclusion that the employee was guilty, pending dismissal from service and the said decision has been taken without intending to victimize the employee and without bias.
- Whether the employer has paid one month's wages to the employee.



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- Whether the employer has simultaneously made an application to the specified authority for grant of approval of dismissal of the employee.

(ii).He further submitted that the relationship of the employer and employee cannot be terminated till approval of discharge or dismissal is given by the first respondent. In case, when the Tribunal refuses to accord approval to the action taken by the employer and rejects the petition filed under Section 33(2)(b) of the Industrial Disputes Act. The employer has to necessarily treat the employee as continuing in service and provide him with all consequential benefits. But in the present case after the dismissal of approval application, dated 15.04.2021, the petitioner did not provide job to the second respondent though the petitioner is duty bound to provide him with employment as per the relevant Act and as per the various judgments of the Hon'ble Apex Court. Therefore, he pressed for dismissal of the writ petition.

5.Heard the learned counsel for the petitioner, the learned counsel for the first respondent and the learned counsel for the second respondent and



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carefully perused the materials available on record.

6.As rightly pointed out by the learned counsel for the second respondent, the learned Tribunal has proceeded to conduct the Approval Petition on five heads.

(i).For the question as to whether the principles of natural justice has been followed in the conduct of inquiry in disciplinary proceedings conducted by the petitioner, the learned Tribunal after perusal of the inquiry notice and inquiry proceedings observed that though the second respondent was duly given opportunity to cross examine the witnesses produced by the first petitioner. The basis of the counter filed by the second respondent in the said Approval Petition and also on the basis of the available records before the Tribunal, the learned Tribunal proceeded to observe that the second respondent was not duly provided with opportunity by the inquiry officer either to produce his witnesses or to produce his documents to defend his case and on that basis concluded that the inquiry was not conducted without violating the principles of natural justice.

(ii).While deciding the question as to whether the inquiry officer's proceeding was based on evidence or the same was perverse, the learned



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Tribunal considered the entire facts and circumstances of the case. The matter in issue was on 18.03.2018, while the second respondent was performing his duty as a Conductor in the bus travelling in the route Tenkasi to Madurai, a sudden inspection of the Checking Inspector was made. The allegation of the Checking Inspector is that the second respondent having received a sum of Rs.10/- from the passenger had not issued proper tickets to them. That apart the other allegation is that having received Rs.20/- from the passengers, the second respondent had issued ticket of value Rs.10/-. Hence, the petitioner Corporation initiated disciplinary proceedings against the second respondent on the allegation that the second respondent had misappropriated a sum of Rs.10/-. Following which, the second respondent was suspended on the very next day on 19.03.2018. The second respondent had defended his case before the learned Tribunal submitting in his additional counter affidavit that the passengers, who were alleged to have involved in the said allegations as against the second respondent were not examined as witnesses by the petitioner. That apart, two Rs.10/- bus tickets, which were not punched has been marked before the learned Tribunal for the purpose of proving the delinquent activity of the second respondent. The learned Tribunal observed the fact that the unpunched ticket was marked as exhibit P6H. The Checking Inspector's report has been



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marked as exhibit P6B and the Passenger's report has been marked as exhibit P6D and the Driver's report has been marked as exhibit P6E. In view of the reports of the Checking Inspector, Passengers and the Driver of the said bus, the learned Tribunal found it necessary that the petitioner Corporation ought to have examined all those persons including the Driver, Checking Inspector and the involved passengers as witnesses to prove the delinquency of the second respondent. Having not done the same, the petitioner's case was not supported by ample evidence. It was also recorded by the learned Tribunal that not even a single eyewitness has been examined as witness to prove the delinquency of the second respondent. On that basis, the Tribunal proceeded to conclude that the departmental enquiry was not based on appropriate and probable evidence.

(iii).The third question as to whether the second respondent has been subjected to victimization by the Management thereby dismissing him from service, the learned Tribunal made an observation that though the punishment of dismissal from service has been imposed on the second respondent after conducting an enquiry under the disciplinary proceedings, since the factum that during the disciplinary proceedings especially in the enquiry, the second respondent was not afforded opportunity to produce his



evidence and also documents, the Tribunal observed that the possibility of bias and victimization of the second respondent could not be ruled out.

(iv).As far as the fourth question as to whether the second respondent was duly paid with one month's wages, the learned Tribunal has concluded in favour of the petitioner.

(v).Regarding the fifth question as to whether an application has been made simultaneously on dismissal of the second respondent to the appropriate authority for grant of approval of dismissal, the first respondent duly concluded in favour of the petitioner.

7.Though the learned counsel for the petitioner relying upon the decision of ***Divisional Controller, KSRTC (NWKRTC) Vs AT Manne*** reported in ***2005-3 SCC page 254*** argued that the non-examination of the passengers of the vehicle from whom the said sum was collected by the second respondent was not essential to prove the delinquency of the second respondent. In the aforesaid case at the time of inspection by the Checking Inspector, the possession of excess sum of money on the part of the respondent was proved. However, in the instant case no such allegation has been made as against the second respondent by the Checking Inspector, other than the allegation that he



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had received Rs.20/- from the passenger and had despatched ticket for Rs.10/-.

However, at the time of conducting the A.P. proceedings before the learned Tribunal, only unpunched Rs.10/- tickets were produced before the learned Tribunal. Hence, the learned Tribunal rightly proceeded to conclude that unless and until punched tickets were marked before the learned Tribunal, the delinquent could not be held guilty. Hence, the said judgment relied upon by the petitioner is not applicable to the facts and circumstances of this case.

8.For better appreciation of facts section 33 of the Industrial Disputes Act is extracted as follows:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before 2 [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or



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(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(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 2 [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.

(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute—



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(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-section(3) shall be one per cent. of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, 1 [an arbitrator, a] labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, 2 [within a period of three months from the date of receipt of such application], such order in relation thereto as it deems fit:]



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9. Section 33 of the Industrial Disputes Act makes provision for ensuring that the conditions of service remain unchanged during pendency of certain proceedings. Bar under Subsection 1 is incorporated that no employer shall during the pendency of any conciliation proceeding before a Conciliation Officer or a Board or any proceeding before an Arbitrator or Labour Court or Tribunal in respect of an industrial dispute, in regard to any matter connected with a dispute, alter to the prejudice of the workman concerned with such dispute, conditions of service applicable to them immediately before the commencement of the proceedings. For any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise any workman concerned with such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

10. Thus, precisely the purpose of the prohibitions contained in Section 33 are twofold. They are designed to protect the workman concerned during the course of industrial conciliation, arbitration and adjudication against the employers harassment and victimization, on account of their having raised the industrial dispute or their continuing the pending proceedings. On the other hand, they seek to maintain status quo by prescribing Management conduct,



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which may give rise to fresh disputes, which further exacerbate the already strained relations between the employer and the workman. Though the section recognizes the right of the employer to take necessary action like discharge or dismissal on justified grounds, a bar has been imposed on the employer exercising his statutory right to terminate the services of his employees subject to certain conditions. Section 2 of the Act also places a bar in regard to matters not connected with the pending dispute, it leaves the employer free to dismiss a workman by paying wages for one month and making an application to the authority dealing with the pending proceedings for its approval of action taken. Thus, a balance between the interest of the workman and the employer is sought to be maintained in the provisions of Section 33 of the Act. The action taken under Section 33(2) of the Act will become effective only if approval is granted by the first respondent Tribunal. If the approval is refused, the order of dismissal will be invalid and inoperative in law. Partly in the absence of approval by the first respondent, the order of dismissal of the second respondent has to be treated as non-est and the second respondent will have to be considered as never to have been dismissed from service.



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11.The Hon'ble Apex Court has dealt with a similar case in ***Tamil Nadu State Transport Corporation versus Neethi Vilangan Kumbakonam*** reported in ***2009 SCC page 99*** and the relevant portion which is applicable to the facts and circumstances of this case is extracted as follows:

16.From the conspectus of the views taken in the decisions referred to above the position is manifest that while the employer has the discretion to initiate a departmental inquiry and pass an order of dismissal or discharge against the workman the order remains in an inchoate state till the employer obtains order of approval from the Tribunal. By passing the order of discharge or dismissal de facto relationship of employer and employee may be ended but not the de jure relationship for that could happen only when the Tribunal accords its approval. The relationship of employer and employee is not legally terminated till approval of discharge or dismissal is given by the Tribunal. In a case where the Tribunal refuses to accord approval to the action taken by the employer and rejects the petition filed under section 33 (2)(b) of the Act on merit the employer is bound to treat the employee as continuing in service and give him all the consequential benefits. If the employer refuses to grant the benefits to the employer the latter is entitled to have his right enforced by filing a petition under Article 226 of the Constitution. There is no rational basis for holding that even after the order of dismissal or discharge has been rendered invalid on the Tribunals rejection of the prayer for approval the workman should suffer the consequences of such invalid order of dismissal or discharge till the matter is decided by the Tribunal again in an industrial dispute. Accepting this contention would render the bar contained in section 33(1) irrelevant. In the present case as noted



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earlier the Tribunal on consideration of the matter held that the employer had failed to establish a prima facie case for dismissal/discharge of the workman, and therefore, dismissed the application filed by the employer on merit. The inevitable consequence of this would be that the employer was duty bound to treat the employee as continuing in service and pay him his wages for the period, even though he may be subsequently placed under suspension and an enquiry initiated against him.

12. Fully fortified by the judgment of the Hon'ble Apex Court in the case discussed supra, I am of the considered opinion that the learned Tribunal in the Approval Petition has duly considered each and every aspect as propounded by the Hon'ble Apex Court in the decision of **Lalla Ram** reported in **1978 3 SCC page 1** and had concluded point wise in favor of the second respondent. Rightly appreciating the Tribunal's stand that the attitude of the petitioner to produce unpunched tickets of value Rs.10/- to prove the delinquency of the second respondent for having issued Rs.10/- tickets to the passengers on receipt of Rs.20/-, I concur with the finding of the learned Tribunal that the petitioner ought to have produced the proper punched tickets for proving the second respondent's delinquency. That apart the non-examination of the Checking Inspector and the Driver would also add to the disadvantage of the petitioner though the aspect of not examining the



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passengers would not go as against the petitioner Corporation at any point of time.

13. With such observations, I hold that the relationship of employer and employee between the petitioner and the second respondent has not been legally terminated, since his approval of dismissal has not been duly granted by the Tribunal in the Approval Petition No.38/2020 on the file of Special Deputy Commissioner of Labor Chennai. The second respondent is bound to be treated by the petitioner as continuing in service of the petitioner and the petitioner is entitled to give the second respondent all consequential benefits. Since the petitioner has failed to establish a prima facie case for the dismissal of the second respondent, inevitably the petitioner is duty bound to treat the second respondent, as continuing in service and pay him his wages for the entire period.



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14. Accordingly the writ petition fails and the same is dismissed.

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No

Index : Yes / No

Internet : Yes

PNM

To

1. The Special Deputy Commissioner of Labour,
O/o. Commissioner of Labour, Chennai - 600 006.



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L.VICTORIA GOWRI, J.

PNM

ORDER IN
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