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W.P. No.11954-11961-11978-11979/2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.03.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS.11954, 11961, 11978 & 11979 OF 2018

The Management
Vinayaka Missions Medical
College & Hospital
Keezhakasakudi, Kottucherry
Karaikal.

.. Petitioner in all WPs

- Vs -

1. The Presiding Officer
Hon'ble Industrial Tribunal-cum-Labour Court
Puducherry

2. The President/Secretary
Vinayaka Missions Staff Welfare Union
No.19, 4th Cross, Nehru Nagar
Thalatheru PO, Karaikal.

.. RR-1 & 2 in all WPs

3. R.Balasubramanian

.. R-3 in WP 11954/2018

4. B.Albert Tremod Anand

.. R-3 in WP 11961/2018

5. M.Arokianathan

.. R-3 in WP 11978/2018

6. C.Devabalachandar

.. R-3 in WP 11979/2018

Writ Petitions filed under Article 226 of the Constitution of India praying
this Court to issue a writ of certiorari calling for the records of the impugned



W.P. No.11954-11961-11978-11979/2018

WEB COPY

order dated 8.2.2018 of the Presiding Officer, Hon'ble Industrial Tribunal cum Labour Court, Puducherry, the 1st respondent herein, in I.A. No.6, 4, 5 & 8 of 2011 in I.D. (T) No.14/2009 and quash the same as ultra vires, arbitrary, non-est in the eyes of law.

For Petitioner : Mr. S.Ravindran, SC, for
M/s. J.Swaminathan

For Respondents : Mr. Balan Haridas for RR-2 & 3
in all writ petitions

COMMON ORDER

Assailing the orders in and by which the approval petitions filed by the petitioner seeking approval for the dismissal of the respective workmen came to be dismissed, the present writ petitions have been filed by the petitioner.

2. It is the case of the petitioner that it is a leading medical education institution established in the year 1996 and for catering to the needs of the medical college, 220 staffs are employed at the Medical College at Karaikal apart from contract and casual workers and 180 doctors are employed to cater to the needs of nearly 550 students and for the patients.



W.P. No.11954-11961-11978-11979/2018

WEB COPY

3. It is the further case of the petitioner that the respective workmen were employed in the petitioner college and they were individually served with a charge sheet dated 23.12.2009 alleging acts of indiscipline, insubordination, wilful neglect of work, disobeying the orders of the superiors and also for confining the superior officer in his cabin for the entire day on 18.9.2009, which gross misconduct calls for imposition of penalty. The show cause notice was issued calling upon the workmen, viz., the respective 3rd respondents to submit their explanation and upon receipt of the explanation and being not satisfied with the same, enquiry was ordered resulting in the submission of the report by the enquiry officer holding the charges levelled against the respective workmen as proved except a certain portion of the charge, as mentioned in the report.

4. It is the further case of the petitioner that a further show cause was issued on 9.8.2010 along with the enquiry report calling upon the respective workmen to submit their explanation as to why the enquiry report should not be accepted and major penalty be imposed. It is the further case of the petitioner that written explanation was submitted by the workmen stating that they are protected workmen as defined u/s 33 of the Industrial Disputes Act (for short 'the



W.P. No.11954-11961-11978-11979/2018

WEB COPY

Act) in the pending I.D. No.14/2009 before the Industrial Tribunal and submitted that the petitioner is barred from imposing any penalty.

5. It is the further case of the petitioner that after carefully analyzing the written explanation, the petitioner, by a detailed speaking order, dismissed the respective workmen from service by payment of one month wages through cheque dated 30.09.2010 in lieu of order of dismissal. Since the workmen refused to receive the same in person and persuasion did not yield any result, the petitioner sent the same through registered post to the residential address of the respective workmen.

6. It is the further case of the petitioner that approval petitions were filed seeking approval for the dismissal of the respective workmen and the workmen were examined before the Tribunal and they did not raise any allegation of bias or violation in the enquiry and also submitted that one month wages was paid through cheque dated 30.09.2010, which the respective workmen refused to receive.



W.P. No.11954-11961-11978-11979/2018

WEB COPY

7. Inspite of the evidence of the respective workmen coupled with the documentary evidence and also notwithstanding the fact that in respect of one other workman, whose case was covered under an approval petition, whose case also stood on the very same footing, while the Tribunal confirmed the dismissal by holding that the enquiry was conducted properly and in conformity with principles of natural justice, however, in respect of the respective workmen herein, on technical grounds, dismissed the approval petitions stating that there was no satisfactory explanation for the delay of 21 days in making the approval for application and for the delay of 18 days for payment of one month wages. Aggrieved by the said order, the present petitions have been filed by the petitioner.

8. Learned senior counsel appearing for the petitioner submitted that the Tribunal has, on technical grounds, dismissed the approval petitions, which is grossly unsustainable and erroneous.

9. It is the further submission of the learned senior counsel that there is no allegation by the respective respondent that the enquiry was not conducted



W.P. No.11954-11961-11978-11979/2018

WEB COPY

properly nor is there an allegation of violation of principles of natural justice. In fact, during cross examination, the respective workmen have conceded that the enquiry was conducted properly and there was no bias or violation of principles of natural justice and in such circumstances, on mere technicality, the Tribunal ought not have dismissed the approval petitions.

10. Attention of this Court is drawn to the decision of the Apex Court in ***Lalla Ram – Vs – DCM Chemical Works Ltd. & Anr. (1978 (3) SCC 1)*** and it is submitted by the learned senior counsel that where 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, the conditions being satisfied, the Tribunal would grant the approval. Pointing to the ratio laid down, it is the submission of the learned senior counsel that the approval petitions having been filed within a relatively short period of time, the dismissal of the approval petitions on the ground of delay is wholly arbitrary and perverse and the same deserves to be set aside.

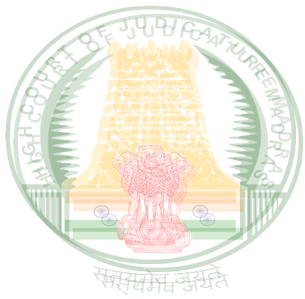


W.P. No.11954-11961-11978-11979/2018

WEB COPY

11. Per contra, learned counsel appearing for the respective workmen, who are arrayed as the 3rd respondent in the respective writ petitions submitted that filing of approval petitions and payment of wages are to be made simultaneously and the delay, if any, in this regard, which stands unexplained, is fatal to the dismissal of the workmen. Learned counsel laying emphasis on Section 33-A of the Act submitted that there should be substantive compliance of the ingredients of the aforesaid provision so as to enable the Tribunal to uphold the dismissal. However, in the present case, the respective workmen were dismissed vide order dated 30.09.2010, but the wages of one month was paid after a delay of 18 days and the application for approval of the said dismissal was filed after a delay of 21 days from the date of the order of dismissal and there being no explicable reason for the delay, the Tribunal has rightly dismissed the approval petitions, which is just and proper and is also in consonance with the ratio laid down in *Lalla Ram's case (supra)* and, therefore, no interference is warranted with the same.

12. In support of the aforesaid submissions, learned counsel placed reliance upon the following decisions :-



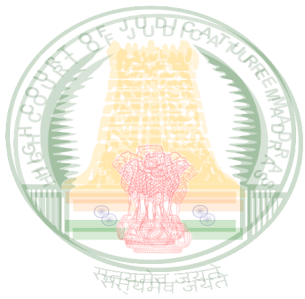
W.P. No.11954-11961-11978-11979/2018

WEB COPY

- i) *The Management, Tamil Nadu State Transport Corporation (Kumbakonam) Ltd. – Vs – The Special Deputy Commissioner of Labour & Anr. (W.A. No.1608/2022 – Dated 21.07.2022)*
- ii) *The Management, Tamil Nadu State Transport Corporation Salem Ltd. – Vs – M.Rajamanickam (W.P. No.24992/2018 – Dated 21.09.2023)*

13. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the decisions relied on by the respective parties.

14. There is no quarrel with the fact that the respective workmen have not raised any quarrel with regard to the manner in which the departmental proceeding was conducted, nor have they raised allegation with regard to violation of principles of natural justice or bias on the part of the enquiry officer. Therefore, to the extent of the manner in which the enquiry had been conducted, there arises no need for this Court to look into the same.

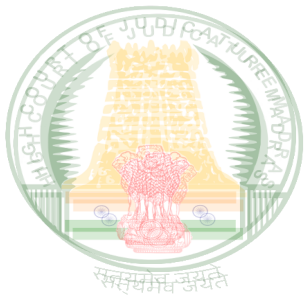


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15. The whole case is predicated upon the delay that had occasioned from the time the order of dismissal was passed and the date on which the one month wages have been paid and the approval petitions have been filed before the Tribunal seeking approval of the order.

16. The decision in *Lalla Ram case (supra)* is pressed into service on behalf of the petitioner, wherein, the Apex Court, on the issue of approval of dismissal u/s 33 (2)(b) of the Act, held as under :-

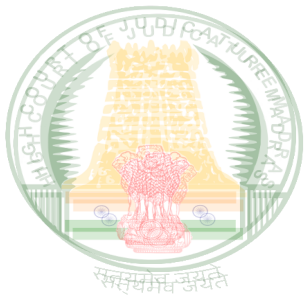
“12. The position that emerges from the above quoted decisions or this Court may be stated thus : In proceedings Under Section 33(2)(b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing 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.



W.P. No.11954-11961-11978-11979/2018

WEB COPY

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 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



W.P. No.11954-11961-11978-11979/2018

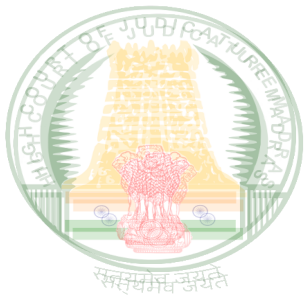
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paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.”

(Emphasis Supplied)

17. From the aforesaid decision, it is clear that approval would have to be granted by the Tribunal if the employer has paid or offered to pay wages for one month to the employee and 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.

18. It is therefore clear that payment of wages and filing of approval with regard to the dismissal before the Tribunal forms part of the same transaction of the order of dismissal and they have to be done simultaneously. The only issue that requires consideration of this Court is the import of the word ‘simultaneously’, and within which period the act of payment of wages and filing of approval petition ought to be done in the light of the order of dismissal.



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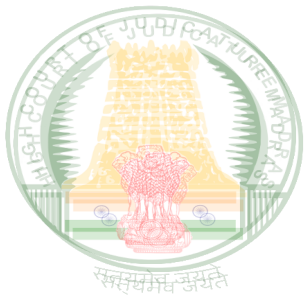


W.P. No.11954-11961-11978-11979/2018

19. Similar issue fell for consideration before the Division Bench of this Court in the case of ***The Management, Tamil Nadu State Transport Corporation (Kumbakonam) Ltd. – Vs – The Special Deputy Commissioner of Labour & anr. (W.A. No.1608/2022 – Dated 21.07.2022)*** and placing reliance on the decision of the Apex Court, the Division Bench held as under :-

"3. It is settled law that whenever an approval application is filed under Section 33(2)(b) of the Act of 1947, there are three required actions to be taken simultaneously. Out of which, the first is the order of punishment; the second is to tender the notice pay provided under the provisions aforesaid; and, the third is simultaneously filing of the application before the court/authority where the matter is pending making it part of the same transaction. Non-compliance of any of the aforesaid actions would render the application invalid and, in the instant case, before filing the application, the notice pay was not tendered, though cheque was prepared. The view aforesaid is supported by the judgment of the Apex Court in the case of Straw Board Manufacturing Company Limited, Saharanpur v. Govind, AIR 1962 SC 1500, wherein the issue regarding simultaneous actions in maintaining the approval application under Section 33(2)(b) of the Act of 1947 has been elaborately discussed and settled. Paragraph 5 of the said judgment is quoted hereunder for ready reference:

"5. The next question is as to when should an application be made. In this connection our attention was drawn to Section 33-A of the Act which gives a right to the employee to apply for



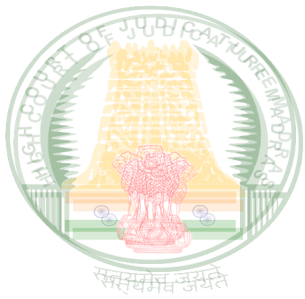
WEB COPY



W.P. No.11954-11961-11978-11979/2018

*redress in case an employer contravenes the provision of Section 33 and there is no doubt that the proviso to Section 33(2)(b) should be so interpreted as not to whittle down the protection provided by Section 33-A. As we read the proviso, we are of opinion **that it contemplates the three things mentioned therein, namely, (i) dismissal or discharge, (ii) payment of wages and (iii) making of an application for approval, to be simultaneous and to be part of the same transaction**, so that the employer when he takes the action under Section 33(2) by dismissing or discharging an employee, should immediately pay him or offer to pay him wages for one month and also make an application to the Tribunal for approval at the same time. When however we say that the employer must take action simultaneously or immediately we do not mean that literally, for when three things are to be done they cannot be done simultaneously but can only be done one after the other. What we mean is that the employer's conduct should show that the three things contemplated under the proviso, namely, (i) dismissal or discharge, (ii) payment of the wages, and (iii) making of the application, are parts of the same transaction. If that is done, there will be no occasion to fear that the employee's right under Section 33-A would be affected. The question whether the application was made as part of the same transaction or at the same time when the action was taken would be a question of fact and will depend upon the circumstances of each case."*

[emphasis supplied]

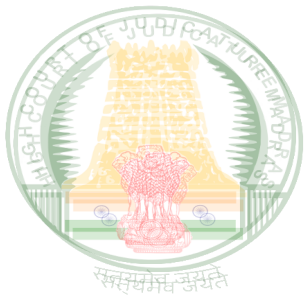


W.P. No.11954-11961-11978-11979/2018

WEB COPY

20. From the ratio laid down in the abovesaid decision, it is implicitly clear that three things are contemplated in matters relating to dismissal or discharge, payment of wages and making of any application for approval, which are to be simultaneous and to be part of the same transaction. However, expanding on the scope of the terminology simultaneously as found therein, the Apex Court held that when an employer takes action u/s 33 (2) by dismissing or discharging an employee, the employer should immediately pay or offer to pay the wages for one month and also make an application to the Tribunal for approval at the same time. However, simultaneously or immediately therein does not mean literally, but all the three things being part of the same transaction, the employer's conduct has to reveal that all the three things have been done as a single transaction.

21. To make it a single transaction, while the dismissal of the workmen is given effect to, it has to be immediately followed with the payment of one month's wages and also by filing the petition for approval before the Tribunal, which alone could make the transaction a single wholesome transaction. Any

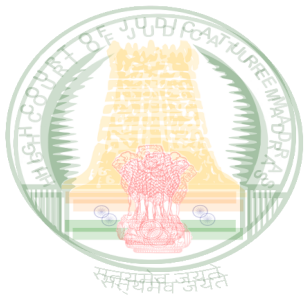


W.P. No.11954-11961-11978-11979/2018

WEB COPY

delay, if unexplained, would sever away from the transaction and would not make the transaction a single transaction, in which case, it would defeat the purpose of the said provision and, therefore, any delay would be fatal to the order of dismissal, if not explained properly.

22. Applying the principles and ratio of the aforesaid decision to the case on hand, while the order of dismissal was passed on 30.09.2010, however, the petitions seeking approval of the said order of dismissal had been filed with a delay of 21 days and the payment of one month's wages has been done with a delay of 18 days. All through the case, there is no explanation, which had occasioned the said delay and in the absence of any proper explanation for the delay, the said delay is fatal to the case of the petitioner. Rightly appreciating the same the Tribunal had dismissed the approval petitions, which cannot be said to be arbitrary, unreasonable or perverse and further it is not on a technicality; rather, it is only enforcing the safeguards provided to the workmen u/s 33-A of the Act. Therefore, this Court sees no reason to interfere with the said order.



W.P. No.11954-11961-11978-11979/2018

WEB COPY

23. For the reasons aforesaid, all the writ petitions fail and, accordingly, the same are dismissed confirming the orders passed by the Presiding Officer, Industrial Tribunal cum Labour Court, Puducherry, in I.A. No.6, 4, 5 & 8 of 2011 in I.D. (T) No.14/2009. There shall be no order as to costs.

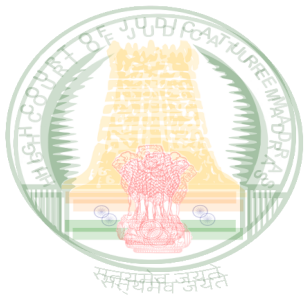
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To

The Presiding Officer
Industrial Tribunal cum Labour Court
Puducherry.



WEB COPY

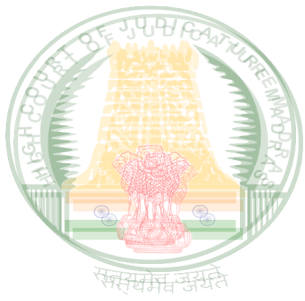


W.P. No.11954-11961-11978-11979/2018

M.DHANDAPANI, J.

GLN

**W.P. NOS.11954, 11961,
11978 & 11979 OF 2018**



WEB COPY



W.P. No.11954-11961-11978-11979/2018

25.03.2025