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W.P.No.13628 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.13628 of 2022
and W.M.P.Nos.12856 and 12858 of 2022

G.Ramachandran

.. Petitioner

Versus

1. The Management,
Tamil Nadu State Transport
Corporation (Villupuram) Limited,
Cuddalore Region,
Cuddalore District.

2. The Special Deputy Commissioner of Labour,
Chennai.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus to call for the records made in A.P.No.212 of 2014, dated 26.03.2021 on the file of the second respondent herein and quash the same as illegal and direct the first respondent to reinstate the petitioner into services with back wages and attendant benefits to secure the ends of justice.



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For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.Aswin, for R1

: Mr.K.Surendran,
Additional Government Pleader,
for R2

ORDER

This Writ Petition is filed to quash the order in A.P.No.212 of 2014, dated 26.03.2021 on the file of the second respondent and to consequently reinstate the petitioner into service with back-wages and attendant benefits. By the said order, the application filed by the first respondent management, for approval of the punishment of dismissal from service imposed on the workman, was allowed.

2. The brief facts, on which this Writ Petition arose, are that the workman was working as a Driver in the first respondent management. While so, on 02.05.2013, he was issued with a charge memorandum relating to an accident caused by him which resulted in the death of an eight-year-old



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child. The said charge memorandum is extracted hereunder:-

"குற்றச்சாட்டுக்கள்

- 1) நீர் 30.12.2012 அன்று சுமார் 10.50 மணியளவில் அரியாங்குப்பம் பாலத்தில் டிஎன் 32/என்3046 என்ற பேருந்தை அதிவேகமாகவும், கவனக்குறைவாகவும், அஜாக்கிரதையாகவும் ஓட்டிச்சென்று இருசக்கர வாகனத்துடன் மோதி உயிர்ச்சேதமான விபத்துக்குள்ளாக்கியது.
- 2) மேற்படி விபத்தில் செல்வன்.சர்புதீன் (வயது 8) என்ற சிறுவன் இறப்பதற்கு காரணமாக இருந்தது.
- 3) பணியில் கவனக்குறைவுடனும், அலட்சியப்போக்குடனும் செயல்பட்டது.
- 4) பணிபுரியும் நிறுவனத்திற்கு நட்டம் உண்டாக்கியது.
- 5) பொறுப்புள்ள ஓட்டுனராக பணிபுரியத் தவறியது."

3. The workman submitted an explanation that he was not responsible for the accident. A Domestic Enquiry was conducted and the Enquiry Officer submitted a report on 23.04.2014 holding that the charges as proven. The second show-cause notice was issued on 17.05.2014. The petitioner submitted his further explanation. However, the same was not accepted and by the order, dated 27.09.2014, the workman was dismissed from the



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service. The workman was also prosecuted for the very same charge in C.C.No.750 of 2014. By the judgment, dated 05.08.2015, the workman was acquitted of the charges by the Criminal Court.

4. In the meanwhile, as per the settlement entered into between the Trade Unions and the management, the management filed a petition for approval of the punishment under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act') before the second respondent. By the order, dated 14.09.2017, the second respondent considered the approval petition in terms of the judgment of the Hon'ble Supreme Court of India in ***Lalla Ram Vs. D.C.MC Chemical Works Limited and Anr.***¹ found that the enquiry was not conducted with due compliance with principles of natural justice. Further, it was also found that there is no *prima facie* evidence on record to prove the charges. It was also further held that the action amounted to victimisation. On the said grounds, the approval was

¹ AIR 1978 SC 1004



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5. The management filed W.P.No.25687 of 2018 and by the judgment, dated 01.10.2020, this Court considered the judgment of the Hon'ble Supreme Court of India in ***John D'Souza Vs. Karnataka State Transport Corporation*** (order dated 16.10.2019 in Civil Appeal No.8042 of 2019) and held as follows:-

"5. Insofar as the question relating to validity of the domestic enquiry is concerned, it would be necessary to focus here that the Hon'ble Supreme Court of India in the decision in John D'Souza -vs- Karnataka State Transport Corporation (Order dated 16.10.2019 in Civil Appeal No. 8042 of 2019) has explained the law relating to the procedure to be adopted in a proceeding for approval under Section 33(2)(b) of the Act with reference to the earlier rulings, as follows:-

"31. This Court in the above cited decisions has, in no uncertain terms, divided the scope of enquiry by the Labour Court/Tribunal while exercising jurisdiction under Section 33(2)(b) in two phases. Firstly, the Labour Court/Tribunal will consider as to whether or not a prima facie case for discharge or dismissal is made out on the basis of the domestic enquiry if such enquiry does not suffer from any defect, namely, it has not been held in violation of principles of natural justice



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and the conclusion arrived at by the employer is bona fide or that there was no unfair labour practice or victimisation of the workman. This entire exercise has to be undertaken by the Labour Court/Tribunal on examination of the record of enquiry and nothing more. In the event where no defect is detected, the approval must follow. The second stage comes when the Labour Court/Tribunal finds that the domestic enquiry suffers from one or the other legal ailment. In that case, the Labour Court/Tribunal shall permit the parties to adduce their respective evidence and on appraisal thereof the Labour Court/Tribunal shall conclude its enquiry whether the discharge or any other punishment including dismissal was justified....

34. It, thus, stands out that though the Labour Court or the Tribunal while exercising their jurisdiction under Section 33(2)(b) are empowered to permit the parties to lead evidence in respect of the legality and propriety of the domestic enquiry held into the misconduct of a workman, such evidence would be taken into consideration by the Labour Court or the Tribunal only if it is found that the domestic enquiry conducted by the Management on the scale that the standard of proof required therein can be 'preponderance of probability' and not a 'proof beyond all reasonable doubts' suffers from inherent defects or is violative of principles of natural justice. In other words, the Labour Court or the Tribunal cannot without first examining the material led in the domestic enquiry jump to a conclusion and mechanically permit the parties to lead evidence as if it is an essential



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procedural part of the enquiry to be held under Section 33(2)(b) of the Act."

Viewed from this perspective, if the Conciliation Officer had been of the opinion that the domestic enquiry suffered from any infirmity, the same ought to have been disclosed to the parties and thereafter they ought to have been called upon to adduce their evidence in support of their respective contentions and then finally decided the validity of the domestic enquiry.

6. As it is apparent that the exercise in accordance with the procedure required to be followed in the aforesaid binding decisions of the Hon'ble Supreme Court of India had not been undertaken by the Conciliation Officer in this case, it would not be possible to uphold the impugned order refusing approval for termination of the Respondent.

7. The result of the foregoing discussion is that the impugned order dated 14.09.2017 in A.P. No. 212 of 2014 passed by the Conciliation Officer, which cannot be sustained, is set aside and the matter is remitted back to the Conciliation Officer for deciding the matter afresh in the required manner...."

Thereafter, once again the matter was taken up and by the order, dated 26.03.2021, approval was granted to the punishment. Aggrieved by which, the workman is before this Court.

6. *Mr.R.Sankarasubbu*, learned Counsel for the workman, taking this

Court through the judgment of the Criminal Court, would submit that



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admittedly, the charges before the Criminal Court as well as the Domestic Enquiry are the same. The Criminal Court considered the evidence on record on merits and acquitted the petitioner. Once the Criminal Court acquits the petitioner on merits, then, the authorities in the Domestic Enquiry cannot come to a contrary conclusion. In support of his submissions, the learned Counsel would rely upon the judgment of the Hon'ble Supreme Court in **Ram Lal Vs. State of Rajasthan and Ors.**², more specifically, relying upon paragraph No.30 of the said judgment.

7. Per *contra*, Mr.Aswin, learned Counsel for the first respondent Corporation would submit that the scope of enquiry concerning Section 33(2)(b) of the Act is very limited. The second respondent has to consider the issue regarding the five questions that were formulated by the Hon'ble Supreme Court of India in **Lalla Ram's** case (cited *supra*) and thereafter, the scope of enquiry was enhanced in **John D'Souza's** case (stated *supra*). Only

² (2024) 1 SCC 175



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for considering the said questions, further evidence can also be taken by the authority and only considering the same, this Court had earlier remanded the matter back to consider the validity of the action by taking into account any such evidence also.

8. After the remand, the management let in evidence, and it marked *Ex.P-1* to *Ex.P-15* and considering the same, now, the approval is granted. Regarding the arguments made by the learned Counsel for the petitioner on merits, the same cannot be raised in the present proceedings, which only arise out of the approval order. It would be open for the workman to raise the said ground if he chooses to raise a dispute under Section 2A of the Act, and only in the same, the ground relating to the acquittal by the Criminal Court's judgment, etc., all can be considered. Therefore, when the approval is validly granted, the Writ Petition filed by the workman is liable to be dismissed.



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9. In reply, the learned Counsel for the workman would submit that no additional evidence was adduced by the management after the remand.

10. I have considered the rival submissions made on either side and perused the material records of the case.

11. The primary question in this case is after the acquittal by the Criminal Court, whether the punishment imposed against the workman would still be justified or not.

12. The legal position is no longer *res integra* as it was already enunciated by the Hon'ble Supreme Court of India in ***G.M.Tank Vs. State of Gujarat and Anr.***³ and the same is also reiterated in the later judgment including the judgment relied on by the learned Counsel for the workman in ***Ram Lal's*** case (cited *supra*). In view thereof, if the charges are identical

³ (2006) 5 SCC 446



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and the same and the Criminal Court, based on the same evidence on record, analyses the charges and gives findings on merits that the charges against the workman are not proved and the acquittal of the Criminal Court not being one on the benefit of the doubt and on merits of the charge, then, there cannot be a contra finding in the Domestic Enquiry as against the workman.

13. Bearing that principle in mind, in this case, it can be seen that the charges are identical. The Criminal Court considered the case of the prosecution from paragraph No.6 of its judgment onwards and appraised the evidence of the complainant as well as **P.W.1** in the trial. Thereafter, the Criminal Court also took into consideration the evidence of **P.W.4**. After analysing the entire evidence in paragraph No.10, the Criminal Court found as follows:-

"... By connecting the said facts with the cross examination of P.W.1, this Court found that the sudden application of break in the highway without following the due Traffic Rules resulted with collision by the two wheeler driven by P.W.1. Therefore the role of the accused came only on third phase, the first two phases were occupied by the driver of Ambassador car as well as



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rider of the two wheeler (P.W.1). Therefore, we cannot fix the exclusive negligence only on the part of the driver of TNSTC bus alone. Furthermore, none of the witnesses deposed that the accused is having sufficient space to apply the break even after seeing sudden fall of P.W.1 and his foster son Niyas. That apart as mentioned above none of the prosecution witnesses explained the fact that the accused is having sufficient space to take swipe and deviation. In short nothing had been suggested before the court by the prosecution that despite of seeing the PW1 and foster son, the accused acted negligently by driving the bus towards them. More so, the exact distance between the tyre and the deceased Niyas especially at the time of fall was not explained anybody. The said factor played vital in determining the negligence."

Thus, it can be seen that though the word 'benefit of the doubt' is mentioned in paragraph No.11, the finding of the Criminal Court is on the merits of the charges and it had found that no negligent driving cannot be attributed to the petitioner at all.

14. In that view of the matter, the finding in the Domestic Enquiry that the petitioner drove the bus in a rash and negligent manner can no longer stand. This being the situation, the first submission is that the question can be gone into only in the dispute that is to be raised by the workman under



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Section 2A(2) and not in the approval petition. Though, normally, in the approval petition, the second respondent will only be required to consider the five questions as enunciated by the Hon'ble Supreme Court of India in **Lalla Ram's** case (cited *supra*), still, this question, when the Criminal Court answered the charges on merits, can also be considered within the second question i.e., whether there is *prima facie* evidence before the Domestic Enquiry concerning the charges or not.

15. The learned Counsel for the management argues that the same question has been considered by this Court in the earlier round. The operative portion of the judgment in paragraphs Nos.5 to 7 was extracted *supra*. In the said paragraphs, the issue has not been answered. The issue was indeed narrated in paragraph No.4 which reads as under:-

"4. The Conciliation Officer came to the conclusion that the requirement in items (iv) and (v) had been satisfied and in respect of the aspects in items (i) and (ii), it was held that since the Respondent has been subsequently acquitted by the Judicial Magistrate from the charge of negligent driving and against which no appeal



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has been preferred, the domestic enquiry has not been conducted following the Rules, Standing Orders and the principles of natural justice, and prima facie case has not been made out. It was opined that since the aspects in items (i) and (ii) have not been satisfied, it would follow for item (iii) that the dismissal of the Respondent is an act of victimization."

16. On a reading of the entire judgment, it can be seen that after narrating the said grounds, ultimately, no finding was given in paragraph Nos.5, 6 and 7 with reference thereof. This Court only said that because of the judgment in **John D'Souza's** case (cited *supra*), the approval authority can also allow additional evidence. It did not give any finding that the findings of the Criminal Court on merits should not be taken into account by the approval authority.

17. This apart, when the point which is pressed by the workman goes into the root of the matter, that can be considered by the authority approving the punishment. In any event, the first respondent is the State Transport



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Corporation and this Court, under Article 226 of the Constitution of India, is very much entitled to consider the said question also. Therefore, if it is only going to be obvious that the workman will raise an Industrial Dispute and the Labour Court has to see the Criminal Court's judgment and then hold that the dismissal cannot be justified, then, for mere procedural ramblings, the workman cannot be made to run pillar to post, especially, when his dismissal is of the year 2014, and we are in the year 2025.

18. Thus, the workman will be entitled to reinstatement. Though in the normal course, he will be entitled to the entire back-wages, in the special circumstances, considering the overall period of the litigation and the fact that the workman was being paid wages under Section 17B till the approval, I am of the view that the workman will be entitled to reinstatement into service with all continuity of service and all attendant benefits. Since he was paid wages under Section 17B of the Act till 26.03.2021, from 27.03.2021, till the date of reinstatement, the workman will be entitled for 50% of back-



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wages for the rest of the period.

19. In view thereof, this Writ Petition is allowed on the following terms:-

(i) The impugned order, dated 26.03.2021 made in A.P.No.212 of 2024 shall stand quashed;

(ii) The order of dismissal, dated 27.09.2014 shall stand quashed;

(iii) The petitioner/workman shall be reinstated into service with all continuity of service and attendant benefits;

(iv) The management shall also pay the arrears of Provident Fund deduction by treating as if the workman was in service and was paid the full wages during the period. This period shall also be calculated as on duty for all other purposes including gratuity, grant of increment, pension etc.

(v) As far as the arrears of back-wages are concerned, from the date of dismissal till the date of approval, i.e., up to 26.03.2021, the workman was paid wages under Section 17B of the Act. The workman will not be entitled



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to any further arrears in respect of the said period. However, from 27.03.2021 till the date of reinstatement, the workman will be entitled to 50% of the back wages;

(vi) Since the workman is nearing the age of superannuation, the workman shall be reinstated into the service within three weeks from the date of receipt/production of the web copy of this order;

(vii) As far as the arrears are concerned, the same shall be paid within 12 weeks from the date of receipt of a web copy of this order;

(viii) There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

09.01.2025

Neutral Citation : yes
grs

To

1. The Management,
Tamil Nadu State Transport
Corporation (Villupuram) Limited,



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Cuddalore District.

2. The Special Deputy Commissioner of Labour,
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D.BHARATHA CHAKRAVARTHY, J.

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