



W.P. No.14211 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2025

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THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.14211 of 2022
and W.M.P. No.13445 of 2022

Carborundum Universal Limited
Bonded Abrasives Division,
48, SIPCOT Industrial Complex,
Hosur – 635 126.

Represented by its General Manager
– Manufacturing

....

Petitioner

Vs.

S. Babu S/o. Savariraj

....

Respondent

PRAYER: The Writ petition has been filed under Article 226 of Constitution

of India praying to issue a Writ of Certiorari calling for the records of the
Presiding Officer, Labour Court, Hosur dated 28.04.2019 in A.P. No.4 of
2019 in I.D. No.37 of 2019 and to quash its order dated 28.04.2021.

For Petitioner : Mr. Anand Gopalan
For M/s. Agam Legal.

For Respondent : Mr. N.G.R. Prasad for
M/s. Row and Reddy.

ORDER

This Writ petition has been filed by challenging the order passed by the
Labour Court, Hosur in A.P. No.4 of 2019 in I.D. No.37 of 2019, wherein the
Writ petitioner has filed a petition for granting approval for the dismissal order
passed by the Writ petitioner as against the respondent for his mis-conduct.



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The said approval petition was dismissed by the Approval Authority.

Aggrieved by the said order, the present Writ petition has been filed.

2. The short facts necessary to dispose of the Writ petition are as follows:-

The respondent was working as an ‘operator’ in the petitioner Management. While so, on 21.12.2013, the respondent along with 7 other co-workers were selected by the petitioner to participate in the shuttle-cock tournament conducted by the Murugappa Group Tournament Committee, Chennai. All the 7 workers along with the respondent went ‘on-duty’ to participate in the said Tournament in the vehicle arranged and hired by the petitioner. While returning from Chennai to Hosur after the Tournament, the respondent alleged to have misbehaved with the co-workers and fought in the public in a drunken state. Therefore, a Charge Memo was issued on 03.01.2014 and the respondent also replied on 07.02.2014 denying the charges. Thereafter, a domestic enquiry was conducted and the respondent also participated, however, he failed to cross examine the witnesses. Thereafter, the Enquiry Officer conducted the enquiry proceedings and rendered findings that the charges against the respondent were proved. On 30.06.2014, a second Show Cause Notice was issued and the respondent gave his explanation on 09.07.2014. Thereafter, the Management passed an order



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by dismissing the respondent from service on 16.07.2014. In view of the pendency of the dispute pertaining to charter of demands by the Union in I.D. No.47 of 2010 before the Labour Court, Salem, the petitioner filed an approval petition and the same was numbered as A.P. No.5 of 2014. The Labour Court, after hearing both sides, declined to grant approval and the same was dismissed. Aggrieved by the said order, the petitioner Management has filed the present Writ petition.

3. The learned counsel appearing for the Writ petitioner Management would submit that on 21.12.2013, while returning from Chennai to Hosur after participating in a Tournament, the respondent in a drunken state, misbehaved with the co-workers and also fought in public place and hit one of the co-workers. Therefore, a Charge Memo was issued on 03.01.2014 and thereafter, a domestic enquiry was conducted and after following legal formalities, a punishment of dismissal from service was imposed by the Management as against the respondent. Since an industrial dispute in I.D. No.47 of 2010 was pending before the Labour Court, Salem, an approval petition was filed simultaneously, seeking approval for the dismissal order passed by the petitioner Management in A.P. No.5 of 2014. The Labour Court erroneously dismissed the petition without appreciating the scope of enquiry under Section 33(2)(b) of the Industrial Disputes Act. The Labour Court proceeded that the



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Approval Application as one of applications under Section 2A of the I.D. Act.

The Labour Court failed to consider the guidelines issued by the Hon'ble Supreme Court in *Lalla Ram's* case. The Labour Court ought not to have taken into consideration the punishment imposed on the respondent is harsh and disproportionate, which cannot be the subject matter in Approval Application and the same can be dealt only with the Labour Court in a dispute under Section 2A(2) or 2K of the Industrial Disputes Act. Therefore, the order passed by the Labour Court declining to grant approval for the dismissal order is liable to be quashed.

4. The learned counsel appearing for the respondent would submit that the Writ petitioner Management in the domestic enquiry proceedings, had not given fair opportunity to the respondent and there is no commission of any offence and to prove the charges levelled against the respondent, no sufficient witnesses were examined. The respondent is a member of one of the Trade Unions exists in factory by name 'Carborandum Universal Employees Union – DRP 119' and the Union has raised an industrial dispute pertaining to general demands. The petitioner Management wanted the respondent Union and its members to come forward to sign in the settlement which was arrived with other Union and when the same was rejected, started all acts of victimisation and unfair labour practices. Before the enquiry Proceedings, the



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main witnesses were not examined and therefore, there is no prima facie case made out based on the acceptable evidences and the dismissal order was passed and there is a victimisation and no one month salary was fully paid. Therefore, the Labour Court has correctly dismissed the petition and the order of the Labour Court is in order and the Writ petition is liable to be dismissed.

5. Heard both sides and perused all the materials available on record.

6. Before the Labour Court, the Writ petitioner Management has filed an Approval Petition for the dismissal order passed by them as against the respondent, based on the domestic enquiry. The charges against the respondent were that on 21.12.2013 at about 10.30 p.m., when they were returning from Chennai to Hosur after participating in the Shuttle-cock Tournament, the respondent in a drunken state, made quarrel with the driver and thereafter, at the time of having dinner, he questioned about the quality of the food served in the hotel and at that time, the hotel owner attempted to assault the respondent and the same was pacified by the co-employees. Thereafter, when one of the co-employees namely M. Anandakumar asked about his behaviour in the hotel, he made quarrel with him, abused him with obscene words and assaulted with hands and also damaged the door of the van and got down from the van. For that misconduct, the charges were framed and



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thereafter, a domestic enquiry was conducted.

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7. In the domestic enquiry, the respondent also participated and denied the charges before the Enquiry Officer and thereafter, when the matter is posted for examination of the Management side witnesses, the respondent sought for adjournment and the enquiry was adjourned and thereafter, he did not participate in the proceedings and again, he appeared before the Enquiry Officer and participated in the enquiry proceedings and did not cross examine the witnesses. Thereafter, the enquiry officer after analysing the evidences, rendered findings that the charges against the respondent were proved. Thereafter, the Disciplinary Authority had issued a second Show Cause Notice to the respondent and passed the dismissal order as against the respondent. Since the dispute in respect of demands by the Union was pending against the petitioner Management, they filed an approval petition before the Labour Court, Hosur and the Labour Court declined to grant approval on the ground that the charges against the respondent were not proved and there is a victimisation and no prima facie case is made out.

8. This Court also perused the entire materials.

9. The Labour Court, while deciding the application under Section 33(2)(b) of the Industrial Disputes Act, gone into the merits of the case, held



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that no prima facie case is made out and the punishment awarded by the Disciplinary Authority is shockingly disproportionate. As per *Lalla Ram's case*, at the time of granting approval, the Labour Court has to see whether principles of natural justice has been followed at the time of domestic enquiry, whether any prima facie case is made out based on the acceptable evidence, whether the dismissal of service is on victimization, whether one month salary was paid to the workman and also whether the approval petition was filed simultaneously along with the dismissal order.

10. As far as the 1st point in respect of proper domestic enquiry in accordance with relevant rules of Standing orders and principles of natural justice is concerned, it is an admitted fact that the respondent participated in the domestic enquiry and he also sought for adjournment and the matter was adjourned and thereafter, the Management witnesses were examined in the presence of the respondent, but he did not cross examine the witnesses. Therefore, the 1st point in respect of the principles of natural justice have been followed.

11. The 2nd point that the prima facie case based on the legal evidence is concerned, the Management witnesses have categorically deposed about the delinquency of the respondent and the witnesses were not cross examined



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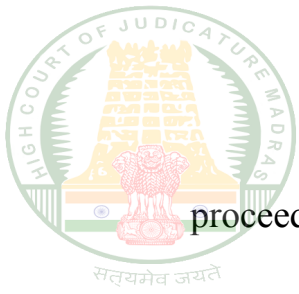
even after giving opportunity to the respondent. According to the respondent, the driver of the van who is the competent witness to speak about the incident has not been examined. However, the co-passenger and the victim allegedly assaulted by the respondent namely M. Anandakumar was examined as witness and he also stated about the delinquency of the respondent. Therefore, there is prima facie case made out based on the acceptable evidence. The charge is not in respect of the assault as against the van driver and the victim was examined as witness.

12. At this juncture, the learned counsel appearing for the respondent has relied upon the following judgments:-

(i) Hardwari Lal vs. State of U.P. and others reported in (1999) 8 Supreme Court Cases 582.

(ii) The State of Madras vs. M. Kandaswamy reported in (1972) 1 MLJ 374.

13. On a careful perusal of above said judgments, failure to examine the material witnesses, in the domestic enquiry, vitiated proceedings. In the case on hand, the petitioner examined the co-employee, who travelled along with the respondent and he is a victim. Therefore, the above said case laws, will not be applicable to the present facts of the case and the enquiry



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proceedings cannot be vitiated for non-examination of the driver of the van.

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14. At the same time, the learned counsel appearing for the petitioner Management has relied upon the judgment of Hon'ble Supreme Court in ***John D'Souza vs. Karnataka State Road Transport Corporation reported in 2019 SCC Online SC 1347***. On a careful perusal of the said judgment, it is clear that where an application is made by the employer for the requisite permission under Section 33 of the Industrial Disputes Act, the jurisdiction of the Tribunal in dealing with such an application is limited. It has to consider whether a prima facie case has been made out by the employer for the dismissal of the employee in question and in those proceedings, it is not open to the Tribunal to consider whether the order proposed to be passed by the employer is proper or adequate or whether it errs on the side of excessive severity; nor can the tribunal grant permission, subject to certain conditions, which it may deem to be fair and even if the requisite permission is granted to the employer under Section 33 of the Act that would not be the end of the matter. It is not as if the permission granted under Section 33 validates the order of dismissal. Even if an industrial dispute is raised, on such a dismissal, the order of dismissal passed even with the requisite permission obtained under Section 33 has to face the scrutiny of the tribunal. In the case on hand, the Labour Court, while dealing with the approval under Section 33(2)(b) of



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the Industrial Disputes Act acted as exercising jurisdiction under Section 11(a)
of the Industrial Disputes Act.

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15. As far as the third point in respect of victimization and in so far as the unfair labour practice are concerned, in order to prove the victimization, there should be some evidence, but there is no evidence adduced by the respondent to prove the victimisation. Therefore, without any pleadings and evidence, the victimization cannot be proved. But the Tribunal rendered findings that there is a victimisation without any pleadings and evidence placed before it.

16. At this juncture, the learned counsel appearing for the respondent would submit that the charges were framed against two persons, but against one person, no proceedings were initiated and therefore, it amounts to victimization. The learned counsel appearing for the petitioner Management would submit that since the explanation offered by that another person was satisfactory, the Management accepted the explanation and not proceeded against him. Therefore, merely relieving one person from the charges after explanation, will not amount to victimization. In order to prove the victimization, there should be some pleadings and evidence, but there are no pleadings and evidence on the side of the respondent. Therefore, there are no



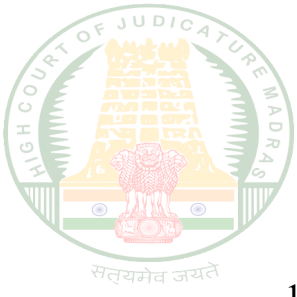
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materials produced by the workman to prove the victimization.

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17. As far as one month salary is concerned, there is no dispute and the approval petition was also filed simultaneously and the same was not disputed by the respondent. Therefore, the Labour Court without considering the above said aspects, erroneously held that the punishment awarded by the Management is shockingly disproportionate. Therefore, the Award passed by the Labour Court is not within the purview of Section 33(2)(b) of the Industrial Disputes Act and the Management has proved the charges framed against the respondent. Though the charges were proved, considering the nature of charges and strained relationship between the parties and in order to put an end to the litigation, this Court is of the opinion that it is appropriate to direct the petitioner Management to pay compensation to the respondent by invoking Article 226 of the Constitution of India.

18. It is an admitted fact that the petitioner is paying 17-B wages to the respondent. It is also an admitted fact that last drawn salary of the respondent is Rs.25,000/- and he was not in employment from 2014 and for more than 10 years, he is not in employment. Therefore, it is appropriate to award a fair and just compensation. Accordingly, this Court fixed compensation to the respondent as Rs.30 lakhs.



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19. In view of the above discussions, the Writ petition is partly allowed. The petitioner Management is directed to pay a sum of **Rs.30 lakhs (Rupees Thirty Lakhs only) towards compensation** to the respondent.

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

21.08.2025

Index : Yes/No
Speaking order/non-speaking order
mjs

To

The Presiding Officer,
Labour Court,
Hosur.



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P.DHANABAL, J.,

mjs

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