



W.P.No.18608 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.18608 of 2019

and

W.M.P.No.17934 of 2019

K.Sivasubramaniam Spinning Mills Pvt Ltd.,
Nalligoundenpalayam Privu,
Pudupalayam Post,
Thekkalur – 641 654,
Anivashi Taluk, Tirupur District,
Rep. by its Whole Time Director

... Petitioner

Vs.

N.Subramaniam

... Respondent

Prayer : Writ Petition filed under Article 226 of Constitution of India
pleaded to issue a Writ of Certiorari, calling for the records of the
Presiding Officer, Industrial Tribunal, Chennai in A.P.No.50 of 2011 and
quash its order dated 21.03.2019.

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

For Respondent : No appearance

ORDER

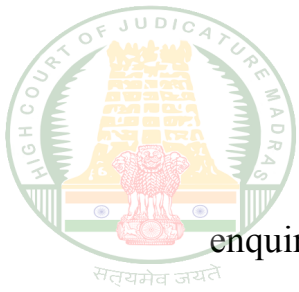
Challenging the rejection of the approval petition filed by the
petitioner-management in A.P.No.50 of 2011 by the Presiding Officer,



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Industrial Tribunal, Chennai vide order dated 21.03.2019, the present writ petition is filed.

2. It is the case of the petitioner that the respondent was employed as Operator in carding section in the petitioner mill. On 03.10.2010, the respondent reported for work during the full night shift commencing from 12.00 mid night to 7.00 a.m. At about 4.20 a.m., while he was working in carding department, the respondent picked up quarrel with S.Saravanakumar, a daily coolie and assaulted him. As CCTV was installed in the petitioner premises, the same was also recorded in the CCTV. As a result, the production activities were disrupted for about 20 minutes resulting in loss of production of 60 kilograms of cotton silver, which was valued at Rs.9,300/- approximately. On being informed, supervisor S.Soundararajan immediately came to the spot and based on his enquiry he gave a report about the misconduct committed by the respondent to the petitioner. On viewing the compact disc, it was also clear that the respondent had assaulted the said Saravanakumar. Thereby, on 05.10.2010, a show cause notice was issued to the respondent and he was also placed under suspension. Being not satisfied with the explanation given by the respondent, domestic enquiry was ordered. The



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enquiry officer submitted a report stating that the charges stood proved.

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The petitioner issued second show cause notice and thereafter, dismissed the respondent vide order of dismissal dated 19.08.2011. The petitioner filed an approval petition u/s 33(2)(b) of the Industrial Disputes Act, 1947 (in short 'the Act') before the Presiding Officer, Industrial Tribunal, Chennai seeking to approve the dismissal of the respondent. As per the decision of the Apex Court in the case of ***Lalla Ram Vs. Managment of D.C.M. Chemicals Works Ltd. & Ors.*** reported in ***AIR 1978 SC 1004***, applied the five test enumerated in the said case. The Tribunal held that the petitioner has not proved the guilt of the respondent by adducing proper evidence and therefore, rejected the approval petition vide impugned order dated 21.03.2019. Challenging the same, the present writ petition has been filed.

3. Learned counsel appearing for the petitioner submitted that the Tribunal failed to take into consideration the various parameters enumerated by the Hon'ble Apex Court and this Court while deciding the approval application and misdirected itself in taking into account various facts which cannot be the subject matter of jurisdiction in an application u/s 33(2)(b) of the Act. Hence, he submitted that the order of Tribunal



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deserves to be interfered at the hands of this Court. In support of his contentions, he relied upon the judgment passed by the Hon'ble Apex Court in the case of ***John D'Souza Vs. Karnataka State Road Transport Corporation*** reported in ***2019 (18) SCC 47***.

4. Though name of the respondent has been printed in the cause list, none appeared on behalf of the respondent. Considering the pendency of this writ petition, this Court is inclined to dispose of this writ petition based on the materials available on records.

5. The relevant portion of the judgment passed by the Hon'ble Apex Court in the case reported in ***2019 (8) SCC 47*** is extracted hereunder :-

“37. The Labour Court or Tribunal, therefore, while holding enquiry under Section 33(2)(b) cannot invoke the adjudicatory powers vested in them under Sections 10(i)(c) and (d) of the Act nor can they in the process of formation of their prima facie view under Section 33(2)(b), dwell upon the proportionality of punishment, as erroneously done in the instant case, for such a power can be exercised by the Labour Court or Tribunal only under Section 11-A of the Act.”



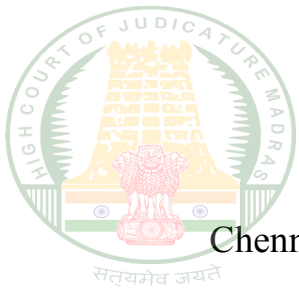
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6. Admittedly, the respondent is alleged to have assaulted a daily coolie and disrupted the production of the petitioner management, which had resulted in causing loss to the petitioner management. The supervisor was examined in proof of the charges framed against the respondent and the respondent also cross examined the said witness and he has also adduced evidence refuting the charges before the enquiry officer, thereby the respondent was dismissed from service. Without considering the same, the Tribunal has erroneously rejected the approval sought for by the petitioner.

7. The test here to be applied is whether the guideline framed by the Apex Court in the *Lalla Ram's* case is followed or not. In the present case, a perusal of the impugned order, this Court is of the view that the approval petition decided by the Tribunal is contrary to *Lalla Ram's* case. Therefore, this Court has no hesitation to set aside the order passed by the Tribunal and allow this writ petition.

8. In the result, this Writ Petition stands allowed and the impugned order passed by the Presiding Officer, Industrial Tribunal,



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Chennai in A.P.No.50 of 2011 dated 21.03.2019 is set aside. The

respondent is at liberty to raise an industrial dispute u/s 2(A)(2) of the Act in the manner known law and the period pending before the approval authority and this Court is excluded for the purpose of limitation. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No

Speaking order / Non-speaking order

NCC:Yes/No

sp

To

The Presiding Officer, Industrial Tribunal, Chennai.



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M.DHANDAPANI, J.

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