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W.P.No.25089 of 2021
and W.M.P.No.26432 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2025

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THE HONOURABLE MRS. JUSTICE **N.MALA**

W.P.No.25089 of 2021
and W.M.P.No.26432 of 2021

The Management
Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
Nagapattinam Division,
140, Public Office Road, Vellipalayam,
Nagapattinam – 611 101.

... Petitioner

Vs.

1.G.Venkatesan

2.The Special Joint Commissioner of Labour,
D.M.S. Campus, Anna Salai,
Chennai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the orders dated 15.04.2021 in A.P.No.52/2019 passed by the second respondent and quash the same, consequently direct the second respondent to approve the order of the petitioner dated 31.01.2019 dismissing the first respondent from service.

For Petitioner : Mr.C.Senapathi

For R1 : Mr.D.Soundar Raj

For R2 : Mr.M.Jayanthi

Additional Government Pleader



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ORDER

Challenge in this writ petition is made to the orders passed by the Special Joint Commissioner of Labour, Chennai in A.P.No.52/2019 dated 15.04.2021, rejecting the petitioner-corporation's approval application filed under Section 33(2)(b) of the Industrial Disputes Act, 1947.

2. The petitioner will be referred as petitioner corporation and the first respondent as workman.

3. The facts of the case in a nutshell are as follows :

The workman joined as a Conductor in the petitioner corporation. In the course of employment, the workman went on unauthorized leave for 426 days, between May 2015 to June 2016. Therefore, the petitioner corporation issued charge memos dated 29.08.2015, 11.01.2016, 27.07.2016, to the workman. The workman did not submit his explanation to the charge memos, however, the petitioner corporation decided to conduct domestic enquiry and appointed an enquiry officer to conduct the enquiry. The enquiry officer gave sufficient opportunity to the workman by sending notices on 20.10.2016 and 02.11.2016, and since the workman failed to appear for enquiry despite notices the enquiry officer on 29.12.2016, set the workman *ex parte*. On 09.01.2017, the enquiry officer submitted his enquiry report finding that the charges against



the workman were proved. On 30.01.2017, the petitioner corporation issued the second show cause notice to the workman and also published the notice in a Tamil daily, namely "Maalai Malar" on 17.03.2017. The workman submitted his reply, but the petitioner corporation dissatisfied with the reply dismissed him from service on 31.01.2019. Thereafter, the petitioner corporation filed the petition under Section 33(2)(b) of the Industrial Disputes Act, before the second respondent. On 15.04.2021, the second respondent dismissed the approval petition. Aggrieved over the same, the petitioner corporation has filed the present writ petition.

4. Heard both sides and perused the materials placed on records.

5. It is seen from the records that the first respondent was dismissed from service for misconduct of unauthorized absence from May 2015 to June 2016, for a period of 426 days. An enquiry officer was appointed by the petitioner corporation to conduct the domestic enquiry, however, the workman chose not to appear for the enquiry and hence he was set *ex parte*. The enquiry officer submitted his report on 09.01.2017, holding that the misconduct of unauthorized absence of the workman was proved. Thereafter, the petitioner corporation issued the second show cause notice to which the workman replied. The petitioner corporation, dissatisfied with the reply of the workman,



dismissed him from service on 31.01.2019. The second respondent following the judgement of the Hon'ble Apex Court in ***Lalla Ram Vs DCM Chemical Works Limited*** reported in ***1978(3) SCC 1*** framed the following questions for consideration:

- 1) Whether a proper domestic enquiry in accordance with the relevant rules / standing orders and principle of natural justice has been held?
- 2) Whether a prima facie case has been established in the domestic enquiry based on the legally acceptable evidence ?
- 3) Whether the employer had come to a bonafide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice ?
- 4) Whether the employer has paid or offered to pay wages for one month to the employee ?
- 5) 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 ?

6. The 2nd respondent decided issues 1, 4 and 5 in favour of the petitioner Corporation and issues 2 and 3, against it. The Labour Court on the basis of the plea raised by the workman that, he had informed the branch



manager of his absence, found that the witness examined by the Management was not a direct witness and therefore, returned a finding that the Management had failed to establish a *prima facie* case on the basis of the materials placed before it. In the considered view of this Court, the finding of the Labour Court is both erroneous and factually incorrect. The Labour Court failed to take note that the Management witness Thiru.G.Bharathi, who was an Assistant in charge of the attendance register of the drivers and conductor at the Poraiyaar branch of the petitioner- corporation, deposed on the basis of Ex.M3 and Ex.M4, namely, postal returned cover and attendance details and Ex.M5, letter of the Personal Department. These documents clearly established that the workman had not submitted any leave letter and had been on unauthorised leave of more than 486 days. Even the specific period of unauthorised absence was clearly deposed by the said witness.

7. The Labour Court however, totally ignored the aforesaid material and legally relevant evidence filed by the petitioner- corporation and returned a perverse finding that a *prima facie* case was not made out. Consequently, this Court holds that the findings of the 2nd respondent that no *prima facie* case was established cannot be sustained in law.



8. It is pertinent to note that in an enquiry under Section 33(2)(b) of the Industrial Disputes Act, the jurisdiction of the Labour Court is confined only to examining if a *prima facie* case is made out for granting approval. The Labour Court cannot re-appreciate the evidence as if sitting in appeal over the findings of the enquiry officer. Interference is permissible only if the findings of the enquiry officer are perverse or contrary to the evidence placed before him. In the present case, the materials on record, namely Ex.M3, Ex.M4 and Ex.M5 substantiate the misconduct alleged against the workman. The enquiry officer on a logical appraisal of the said evidence before him, concluded that the misconduct was proved. Unless the Labour Court recorded a finding that, the conclusion of the enquiry officer was perverse, it was not open to it to interfere with those findings. Considering the limited scope of enquiry permissible under Section 33(2)(b) of the Industrial Disputes Act, this Court is of the view that the Labour Court, in the absence of any finding that the enquiry officer's conclusions were perverse, ought not to have interfered with the same.

9. The Hon'ble Supreme Court in the case of ***Central Bank of India Ltd. versus Prakash Chand Jain***, reported in (1969) 2 LLJ 377, laid down the test of perversity, in para 5 and 6 held as follows:

"5. These decisions make it clear that, when an Industrial Tribunal is asked to give its approval to an order of dismissal under Section 33(2)(b) of the Act, it can disregard the



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findings given by the Enquiry Officer only if the findings are perverse. The test of perversity that is indicated in these cases is that the findings may not be supported by any legal evidence at all. This principle was further affirmed in a different context in State of Andhra Pradesh v. S. Sree Rama Rao where this court had to consider whether a High Court, in a proceeding for a writ under Article 226 of the Constitution, could interfere with the findings recorded by departmental authority in disciplinary proceedings taken against a Government servant. The court held:

"But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be come legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding or a writ under Article 226 of the Constitution."

6. In this connection, reference was also made to some cases where this court has held that a finding by a domestic tribunal like an Enquiry Officer can be held to be perverse in those cases also where the finding arrived at by the domestic tribunal is one at which no reasonable person could have arrived on the material before the tribunal. Thus, there are two cases where the findings of a domestic tribunal like the Enquiry Officer dealing with disciplinary proceedings against a workman can be interfered with, and these two are cases in which the findings are not based on legal evidence or are such as no reasonable person could have arrived at on the basis of the material before the Tribunal. In each of these cases, the findings are treated as perverse. It is in the light of these principles that we have to see



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whether the Industrial Tribunal, Delhi, in the present case, was justified in refusing to accord approval to the order of dismissal which was passed on the basis of the evidence recorded by the Enquiry Officer, Mr Tipnis."

10. Applying the aforesaid principles to the present case, it is apparent that the Labour Court, travelled beyond its jurisdiction by virtually reassessing the entire evidence and interfering with the findings of the enquiry officer, which were based on legally acceptable evidence, as thought it were an appellate forum. In the considered view of this Court, such an approach is impermissible and contrary to the settled legal principles governing Section 33(2)(b) of the Industrial Disputes Act. Hence, the impugned order dated 15.04.2021, is set aside. Consequently, the approval sought for by the petitioner-corporation under Section 33(2)(b) of the Industrial Disputes Act, shall stand allowed.

In the result, the writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

23.09.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl/dsn



To

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The Special Joint Commissioner of Labour,
D.M.S. Campus, Anna Salai,
Chennai.

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N.MALA, J.
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