

WP(MD)No.10653 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 15.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.10653 of 2017
and W.M.P.(MD)No.8135 of 2017

The Management,
Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
Madurai Region,
Bye-pass Road,
Madurai – 625 010.

... Petitioner

versus

1. The Special Deputy Commissioner of Labour,
Office of the Commissioner of Labour,
Teynampet,
Chennai – 600 006.

2. K.Durai

... Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for the issuance of a Writ of Certiorari, to call for the records of the
1st respondent in his proceeding in Approval Petition in A.P.No.384/2012
dated 01.07.2016 and quash the same.

For Petitioner	: Mr.J.Senthil Kumariah
For R1	: Mr.C.Venkatesh Kumar, Special Government Pleader
For R2	: Mr.S.Packiya Muthu Legal Aid Counsel



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ORDER

The second respondent was engaged as a Driver in the petitioner Transport Corporation from 19.08.2010. He was issued with a charge memo on 24.07.2012 that he was unauthorizedly absent for more than 15 months from 10.08.2011. Based on the charge memo, an enquiry was conducted on 25.08.2012. A second show cause notice was also issued on 25.09.2012. Thereafter, the 2nd respondent was dismissed from service on 06.12.2012. The petitioner Management has filed an approval petition in A.P.NO.384 of 2012 before the first respondent/Authority under Section 33(2)(b) of the Industrial Disputes Act, 1947, seeking approval for the dismissal of the 2nd respondent. The said approval petition was rejected by the first respondent, by his order dated 01.07.2016 that the enquiry was not conducted in a proper manner and that a *prima facie* case is not made out as against the workman. As against the rejection order dated 01.07.2016 passed by the first respondent under Section 33(2)(b) of the Industrial Disputes Act, the Management has filed this writ petition.

2. The learned counsel appearing for the petitioner Management submits that the 2nd respondent was engaged only as a temporary Driver and



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he was unauthorisedly absent for more than 15 months from 10.08.2011.

Therefore, a charge memo was issued as against the 2nd respondent on 24.07.2012 and an enquiry was conducted. Thereafter, based on the reply submitted by the 2nd respondent on the second show cause notice, he was dismissed from service. According to him, all the procedures have been complied with and one month last drawn salary was also given to the workman. However, the first respondent, without any reason, has rejected the approval petition filed by the Management that the enquiry has not been properly conducted.

3. The learned counsel for the 2nd respondent submits that the 2nd respondent met with an accident on 09.08.2011, while riding his motorcycle bearing Reg.No.TN59W 1473 and he suffered injury to his hip and a tear in the cartilage of his right knee. He further submits that the 2nd respondent has duly informed the Management, however, the Management has not considered the request of the 2nd respondent and not provided any medical leave to him. The Management has also proceeded with the disciplinary proceedings by issuing a charge memo and also concluded an enquiry on the same day, without even permitting the 2nd respondent for producing medical records and the accident report. In support of his contention, the learned



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counsel has also relied on a Judgment of the Hon'ble Supreme Court in

Lalla Ram vs. D.C.M. Chemical Works Ltd., reported in ***1978 (3) SCC 3***.

4. This Court considered the rival submissions made.

5. The second respondent was dismissed from service by order dated 06.12.2012. The order of dismissal needs to be approved by the first respondent under Section 33(2)(b) of the Industrial Disputes Act, 1947.

6. Section 33(2)(b) of the Industrial Disputes Act, 1947, is extracted as under:

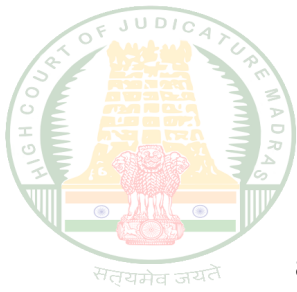
33. [Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.]*[Substituted by Act 36 of 1956, Section 21, for Section 33 (w.e.f. 10.3.1957).]*

(1)

(a)

(b)

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute] *[Substituted by Act 36 of 1956, Section 21, for Section 33 (w.e.f. 10.3.1957).]*[or, where there



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are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman] [*Inserted by Act 36 of 1964, Section 18 (w.e.f. 19.12.1964).*]-

(a) [alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or [*Substituted by Act 36 of 1956, Section 21, for Section 33 (w.e.f. 10.3.1957).*]

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

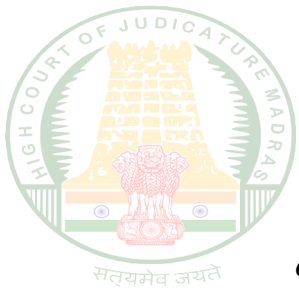
Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. In ***Lalla Ram vs. D.C.M. Chemical Works Ltd.***, reported in **1978**

(3) SCC 3, the Hon'ble Supreme Court has laid certain conditions as follows:

“(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*



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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 (1), Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar (2), Hind Construction & Engineering Co. Ltd., v. Their Workmen (3), Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. Management & Orts (4), and Eastern Electric and Trading Co. v. Baldev Lal (5) 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 it is 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*

(v) *whether the employer has simultaneously or within such reasonably short time as to form part of the game transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.*



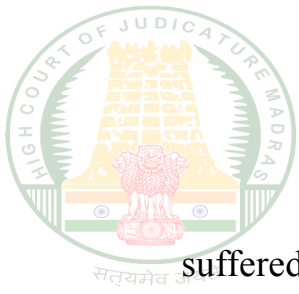
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If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour 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 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.”

8. In the present case, the first respondent has rejected the approval petition on the ground that the domestic enquiry has not been conducted properly. Admittedly, a notice for enquiry was issued only on 25.08.2012 and on the same day, the enquiry report was also filed by the Enquiry Officer.

9. The second respondent claims that he met with an accident, when he was riding his motorcycle bearing Reg.No.TN59 W 1473 and also



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suffered injury to his hip and a tear in the cartilage of his right knee. The injury suffered by the 2nd respondent can be established only when proper enquiry is conducted. This Court is of the view that proper enquiry has not been conducted by the Management and thereby, the guidelines issued in ***Lalla Ram's case*** have been violated and the first respondent Authority is right in rejecting the approval petition filed by the Management.

10. Accordingly, this writ petition is dismissed with liberty to the Management to conduct a fresh enquiry by affording reasonable opportunity to the 2nd respondent. No costs. Consequently, connected miscellaneous petition is closed.

11. The High Court Legal Services Committee shall pay a sum of Rs.15,000/- (Rupees fifteen thousand only) to the learned counsel Mr.S.Packiya Muthu, who was appointed as Legal Aid Counsel to defend the case of the 2nd respondent.

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NCC : Yes/No
Index : Yes/No
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To

The Chairperson,
High Court Legal Services Committee,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI,J.

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