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W.A.(MD)NO.2472 OF 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2025

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

W.A.(MD)No.2472 of 2024 AND
C.M.P.(MD)Nos.17319 & 17320 of 2024

K.Kannan

... Appellant/ Respondent No.2

Vs.

1. The Management,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Madurai Region, Bypass Road,
Madurai. ... 1st Respondent / Petitioner
2. The Special Joint Commissioner of Labour,
O/o.the Commissioner of Labour,
Chennai – 6. ... 2nd Respondent / 1st Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order passed in W.P.(MD)No.19112 of 2024 on the file of this Court dated 22.10.2024.

For Appellant : Mr.S.Govindan

For Respondents : Mr.S.C.Herold Singh,
Standing counsel.

**J U D G M E N T**

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(Order of the Court was delivered by G.R.SWAMINATHAN, J.)

Heard both sides.

2.The appellant joined Tamil Nadu State Transport Corporation(Madurai) Ltd., Madurai as driver on 30.04.1985. He reached the age of superannuation on 31.05.2015. 1½ months prior to the date of retirement, he was issued with charge memo. According to the management, the appellant obtained employment by furnishing a false educational certificate. The appellant had claimed that he had passed 8th standard when he had not done so. Domestic enquiry was conducted and the appellant was dismissed from service on 26.03.2015. Approval petition was submitted before the Special Joint Commissioner of Labour, Chennai. The approving authority applied the principles laid down in ***Lalla Ram V. D.C.M.Chemical Works (AIR 1978 (S.C.) 1004)***. On most of the issues except one, the approving authority found in favour of the management. However, approval was declined vide order dated 29.12.2023 on the ground that the application for approval was not submitted simultaneously. Challenging the same, the management filed W.P.(MD)No.19112 of 2024.



3.The learned single Judge held that the approving authority was not justified in declining approval on this ground. The order impugned in the writ petition was set aside and the writ petition was allowed. Aggrieved by the same, the employee filed this writ appeal.

4. Section 33(2) of the Industrial Disputes Act is as follows:-

“ ...

(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 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(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

(b) for any misconduct not connected with the dispute, or 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.”



The learned counsel appearing for the appellant submitted that the above provision was considered by the Hon'ble Supreme Court in ***Lalla Ram V. D.C.M. Chemical Works (AIR 1978 (S.C.) 1004***. He vehemently contended that the approval petition must be submitted simultaneously and even a day's delay is fatal. He drew our attention to the decision of this Court made in ***The Management, Tamil Nadu State Transport Corporation (Salem) Limited Vs. The Special Deputy Commissioner of Labour, Chennai (W.P.No.4317 of 2015 vide order dated 06.04.2022)***.

5. In the aforesaid case, a learned Judge of this Court had held as follows:-

“ This Court in several decisions have held that an application made after one or two days, was held to be fatal to the action initiated by the employer.”

6. In ***the Management, Tamil Nadu State Transport Corporation (Salem) Limited Vs. R.Kubendran (W.P.No.6693 of 2023 vide order dated 21.03.2023)***, it was held as follows:-

“ 11. Among various grounds on which the approval petition was rejected, one of the ground is



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that there is a delay of six days in filing the approval petition. Section 33(2)(b) of the Act provides that when a workman is dismissed from service and a conciliation proceeding touching upon the service condition of the concerned workman is pending before the Authorities, the application under Section 33(2)(b) of the Act requires to be filed simultaneously. The term 'simultaneously' has been dealt with in various decisions of this Court, as well as the Hon'ble Supreme Court and in all the decisions, the meaning given to the term 'simultaneously' would be on the same day of dismissal. There is not a single precedent from any one of the High Courts in the Country or the Hon'ble Supreme Court of India which condones the delay of six days in filing an application under Section 33(2)(b) of the Act."

According to the learned counsel for the appellant, the learned single Judge did not adhere to the earlier precedents of this Court and erroneously set aside the order of the approving authority. Per contra, the learned counsel for the first respondent submitted that the order is well reasoned and does not warrant interference.



7. We carefully considered the rival contentions and went through the materials on record. The question that calls for consideration is whether the application seeking approval under Section 33(2)(b) of the ID Act, 1947 has to be submitted to the authority concerned on the same day of passing the order dismissing the workman and whether any delay on this score is fatal.

8. The proviso to Section 33(2)(b) of the ID Act was held to be mandatory by the Constitution Bench in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., V. Ram Gopal Sharma and Others ((2002) 2 SCC 244)***. We may incidentally observe that Section 33(2) of the Industrial Disputes Act does not stipulate any time limit for submission of the approval petition. The Hon'ble Supreme Court interpreted the above provision in ***Lalla Ram*** as follows:-

12. The position that emerges from the abovequoted decisions of this Court may be stated thus: In proceedings under Section 33(2)(b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (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 out; (iii) whether the

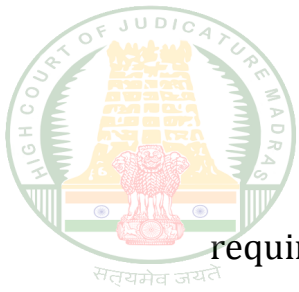


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employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court...that 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 and (v) **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.** 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.”

A bare reading of the above decision would show that the Hon'ble Supreme Court even while directing that the submission of the approval petition should be simultaneous conceived of situations when it might not be possible. That is why, it permitted submission of the approval petition within a “reasonably short time”. The only



requirement was that all the ingredients laid down by the Hon'ble Supreme Court should form part of the same transaction.

9. Interestingly, the Hon'ble Supreme Court in a previous Three Judges Bench decision reported in ***AIR 1962 SC 1500 (Strawboard Manufacturing Company V. Gobind)*** had held as follows:-

“The next question is as to when should an application be made. In this connection our attention was drawn to [s. 33-A](#) of the Act which gives a right to the employer to apply for redress in case an employer contravenes the provision of s. 33 and there is no doubt that the proviso to [s. 33 \(2\)](#), (b) should be so interpreted as not to whittle down the protection provided by s. 33-A. As we read the proviso, we are of opinion that it contemplates the three things mentioned therein, namely, (i) dismissal or discharge, (ii) payments of wages and (iii) making of ,in application for approval, to be simultaneous and to be part of the same transaction, so that the employer when he takes action under [s. 33 \(2\)](#) by dismissing or discharging an employee, should immediately pay him or offer to pay him wages for one month and also make an application to the tribunal for approval at the same time. **When**

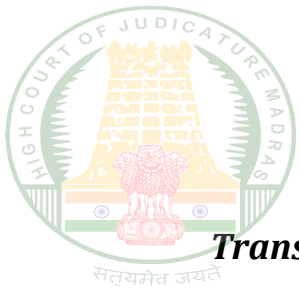


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however we say that the employer must take action simultaneously or immediately we do not mean that literally, for when three things are to be done they cannot be done, simultaneously but can only be done one after the other. What we mean is that the employer's conduct should show that the three things contemplated under the proviso, namely, (i) dismissal or discharge, (ii) payment of the wages, and (iii) making of the application, are parts of the same transaction. If that is done, there will be no occasion to fear that the employee's right under s. 33-A would be affected. The question whether the application was made as part of the same transaction or at the same time when the action was taken would be a question of fact and will depend upon the circumstances of each case."

10.It is relevant to note that in ***Lalla Ram***, there is no reference to ***Strawboard***. It appears that some of the Judges of this Court have been carried away by the expression "simultaneously" found in ***Lalla Ram***. ***Lalla Ram*** is not a magical incantation. We are of the view that ***Lalla Ram*** and ***Strawboard*** should be read together. There is yet another decision of the Hon'ble Supreme Court in ***Calcutta State***

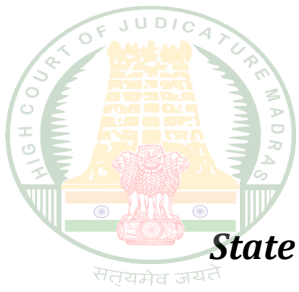


Transport Corpn. v. Mohd. Noor Alam ((1974) 3 SCC 70 which was

rendered prior to *Lalla Ram* and after *Strawboard* which dealt with the issue on hand. The issue that arose for consideration in the said case was whether not making the application for approval on the same day of passing the dismissal order is a breach of the statutory provision. The issue was answered in the following terms :

“..This decision shows that similar action has to be taken in these matters but **that does not mean that all the three things mentioned before should be done on the same day.** It is the conduct of the employer that has to be considered from the point of view of finding out whether the dismissal or discharge, payment of wages and making of the application for approval form a part of the same transaction. **A difference of a day in doing one thing or the other may not be of material consequence so long as it is clear that the employer meant to do all the three things as part of one and the same transaction.** No hard and fast rule can be laid down in these matters Each case must be decided on its own facts.”

Lalla Ram which is a later decision provides for submission of the approval petition within a reasonably short time. ***Strawboard*** holds that whether the submission of the approval petition was as per law has to be decided with reference to the facts of each case. ***Calcutta***



State Transport categorically held that a day's delay cannot be said to be of material consequence so long as it is clear that the employer meant to do all the three things as part of one and the same transaction. Hence, we hold that those decisions of the Madras High Court which hold that approval petition should be submitted on the same day and if not done, it is fatal, run counter to the ratio laid down in **Strawboard, Calcutta State Transport** as well as **Lalla Ram**.

11. Even though we uphold the approach of the learned single Judge in this regard, the equitable circumstance obtaining in favour of the appellant cannot be lost sight of. The appellant joined service in the year 1985. He was dismissed on the strength of a complaint received 32 years later. A co-ordinate Division Bench in **W.A.(MD) No.116 of 2020 dated 23.03.2011** had held that termination of service after a lapse of 22 years is impermissible even though the employee had obtained employment by making a false claim. Adopting the said approach, we decline to interfere with the order impugned in the writ petition. The order of the learned single Judge is set aside.



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12. On instructions from the appellant, the learned counsel states that the appellant will not press for payment of interest for the intervening ten years. The benefits payable to the appellant shall be settled by the management within a period of twelve weeks from the date of receipt of a copy of this order. This writ appeal stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.SWAMINATHAN, J.) & (K.RAJASEKAR, J.)
10th July 2025

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