
(2008) 06 MAD CK 0064

In the Madras High Court

Case No : Writ Petition No. 17039 of 1998

Tamil Nadu State Transport Corporation (Madurai Division-II)
Ltd.

APPELLANT

Vs

G. Ramakrishnan and Another

RESPONDENT

Date of Decision : 09-06-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33(2)

Citation : (2008) 3 LLJ 350

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Kala Ramesh, for the Appellant; V. Gangadaran, for R. Ganesan, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—Heard the arguments of the learned Counsel for the parties and perused the records.

2. This writ petition is directed against the order of the second respondent Industrial Tribunal dated May 29, 1998 made in Approval Petition No.

4/1992.

The petitioner is the Management. Parties in this writ petition are referred to as the Management and workman as the case may be.

3. The brief facts leading to the industrial dispute are as follows:

The first respondent workman joined the service of the petitioner Corporation on March 16, 1971. He was charge-sheeted on July 13, 1991 for

being unauthorisedly absent and without notice from June 9, 1991. Since the explanation offered by the first respondent was: not satisfactory, an

enquiry was conducted on July 27, 1991. The Enquiry Officer, by his report dated

September 30, 1991, found the charge against the first respondent as proved. A show-cause notice dated October 26, 1991 was issued as to why he should not be terminated from service. The workman gave a reply dated November 6, 1991 and he was terminated from service by an order dated December 11, 1991. Since a dispute relating to bonus was pending before the second respondent Tribunal in I.D. No. 62/1992, the petitioner Corporation filed an Approval Petition u/s 33(2)(b) of the Industrial Disputes Act, 1947 (for short, "I.D. Act").

4. The matter was taken on file by the second respondent Industrial Tribunal as Approval Petition No. 4/1992. The workman filed 10 documents and they were marked as Exhibits W-1 to W-10. The Management filed 10 documents and they were marked as Exhibit M-1 to M-

10. Both sides did not lead any oral evidence. The Industrial Tribunal, on an analysis of the evidence placed before it, passed the order dated May 29, 1998, (which is impugned in this writ petition) and the request for grant of approval to the dismissal of the first respondent workman was rejected.

5. Pending the writ petition, only notice was ordered in the petition for injunction. Subsequently, it was dismissed by an order dated December 27, 2002. The Tribunal did not enter into the validity of the enquiry and the findings recorded by the Enquiry Officer. On the contrary, it held that the workman had completed 20 years of service and, therefore, he is eligible to go under Voluntary Retirement as per the Government Order. Since the workman was making continuous representations to go on VR and that he had completed 20 years of service, he is eligible for VR. It also held that there was a justification for his failure to attend duty and even though he had suffered 14 minor punishments, he was not a chronic absentee and that if only he was given VR, he may get all his terminal benefits due to his long service.

6. This approach of the Tribunal is wholly impermissible especially when the petitioner Corporation had passed a reasoned order preceded by an enquiry. The power u/s 33(2)(b) of the I.D. Act conferred on the Tribunal is limited in its scope. The Supreme Court in *Lalla Ram Vs.*

Management of D.C.M. Chemical Works Ltd. and Another, dealt with a case u/s 33(2)(b) of the I.D. Act and held in paragraph 12 as follows:

12. The position that emerges from the above quoted decisions of this Court may be stated thus: In proceedings u/s 533(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 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 Prabesh Singh*, *Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar*, *Hind Construction & Engineering Co. Ltd. v. Their Workmen*, *Workmen of Messrs Firestone Tyre & Rubber Co. of India (P) Ltd. v. Management and Eastern Electric & Trading Co. v. Baldev Lal* that though generally speaking the award of punishment or misconduct under the Standing Orders is a matter for the management to decide and 31 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. 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.

7. Further, the same principle was reiterated by the Supreme Court vide its judgment in Cholan Roadways Limited Vs. G. Thirugnanasambandam,

. The following passage found in paragraph 13 may be usefully extracted at p. 572 of LLJ:

72. It is neither in doubt nor in dispute that the jurisdiction of the Industrial Tribunal u/s 33(2)(b) of the Industrial Disputes Act is a limited one. The jurisdiction of the Industrial Tribunal u/s 33(2)(b) cannot be equated with that of Section 10 of the Industrial Disputes Act. In this case admittedly an enquiry has been held wherein the parties examined their witnesses....

8. Therefore, the Tribunal had exceeded its jurisdiction in refusing to grant approval on an irrelevant ground. The Tribunal did not keep in its mind the parameters of Section 33(2)(b) of the I.D. Act while dealing with the application presented before it by the petitioner O Corporation.

9. In view of the same, the writ petition is allowed and the impugned order of the Tribunal will stand set aside. No costs. However, the grant of approval for the termination of the first respondent workman will not prevent him from raising an appropriate industrial dispute against his termination.