

**Parasram Vs. State and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/772900](http://sooperkanoon.com/772900)

**Court :** Rajasthan

**Decided On :** Jan-03-2008

**Reported in :** [2008(117)FLR66]

**Judge :** P.S. Asopa, J.

**Appellant :** Parasram

**Respondent :** State and ors.

**Disposition :** Petition allowed

**Judgement :**

**P.S. Asopa, J.**

1. By this writ petition, the petitioner has challenged the order dated 9.11.2000 whereby the case of the petitioner has been refused by the Government to refer to the labour Court under Section 12(5) of the Industrial Disputes Act, 1947 (for short as 'Act of 1947') on the ground that in the earlier case the industrial Tribunal, Jaipur in its order dated 18.4.1991 has held that the domestic enquiry is against the principles of natural, justice and punishment order dated 10.10.1990 is proper and fair.

2. Brief facts of the case are that the petitioner's services were terminated on 10.10.1990 while serving as painter Gr. I, against which a departmental appeal

was filed and same was dismissed. On 18.4.1991, termination order was approved under the provisions of Section 33(2)(b) of the Act of 1947. On raising the civil dispute before the Civil Court, the suit was returned under Order 7 Rule 11 CPC for want of jurisdiction. Thereafter, a complaint was moved before the conciliation Officer, in which a failure report was submitted and ultimately the Government refused to refer the dispute vide its order dated 9.11.2000 on the ground that the termination order has been approved under Section 33(2)(b) of the Act of 1947 and the domestic enquiry has been held to be in accordance with principles of natural justice and punishment order has been held to be proper and fair.

3. The respondents State and RSRTC have filed reply wherein the aforesaid non-reference order has been justified on the ground that in the matter under Section 33(2)(b) of the Act of 1947, the departmental enquiry was found proper, just and fair and there was no violation of principles of natural justice.

4. The submission of the Counsel for the petitioner is that at the time of passing the punishment order dated 10.10.1990, there was a dispute of general nature, pending before the Industrial Tribunal, Jaipur, therefore, his case was sent for approval under Section 33(2)(b) of the Act of 1947. It is further submitted that the scope of Section 33(2)(b) and Section 10/12(5) of the Act of 19-17 are different. under Section 33(2)(b) of the Act, fairness of the enquiry can be prima facie considered but the charges on merit are not required to be considered; whereas under Section 10 of the Act, charges on the basis of which termination order was passed, are to be considered on merit on the basis of evidence of the parties which now on reference can be led by them and the prima facie finding on the fairness of the punishment order will not operate as res judicata. In support of his contention, the Counsel for the petitioner has relied upon three judgments being (i) Messrs. Atherton West and Co. v. The Suit Mill Mazdoor Union and Ors. 0065/1953 : AIR 1953 SC 241 para Nos. 1.8 and 19; (ii) Amar Singh and 3 others v. Judge, Labour Court, Bharatpur 1997 WLC (Raj) UC 79 : 1997 (76) FLR 111 para Nos. 11 to 13 and Cholan Roadways Ltd. v. G Thirugnanasambandam : 2005 (3) SCC 241 : 2005 (104) FLR 440 (SC) : 2005 (27) AIC 294 para Nos. 13, 18 and 37.

5. The Counsel for the respondent-State submits that the Government has rightly refused the reference as the validity of the termination order has already been adjudicated under Section. 33(2)(b) of the Act, therefore, it is not a fit case for any interference.

6. I have gone through the record of the writ petition as also considered the rival submissions of all the parties.

7. As per tire judgment of the Supreme Court rendered in Cholan Roadways Ltd. (supra), jurisdiction of the tribunal under Section 33(2)(b) of the Act is limited and cannot be equaled with Section 10 of the Act. Para No, 13 of the judgment in Cholan Roadways Ltd. (supra) is reproduced as under:

13. It is neither in doubt nor in dispute that the jurisdiction of the Industrial, Tribunal under Section 33(2)(b) of the Industrial Disputes Act is a limited one. The jurisdiction of the Industrial Tribunal under Section 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. The respondent was represented and assisted by three observers, Shri M, Venkatesan was the Branch Manager, CRC, Tanjore Town Branch, who had submitted his report and proved the same before the inquiry officer. He furnished a detailed account of the position of the bus vis-a-vis the other bus after the collision took place. He found that there was no brake tyre mark of the bus on the road. All the two seater seats on the entire left side of the bus were found totally damaged. The left side roof arch angle of the bus was found totally out. Not only were A persons found lo be dead; at the spot, the driver and conductor of the bus and 10 other passengers also sustained injuries in this accident. Out of the said 10 passengers, 3 subsequently died in the hospital owing, to the injuries sustained by them. He further found that on the left side of the road in the earthen margin, there was a tamarind tree's protruding, branch and which was found to have been already cut and the bottom stump of the branch was found protruding to a length of 3 inches. The bus was found to have been brought to a halt only at a distance of 81 ft from the place of impact against the tree, the delinquent is said to have swerved, the bus further to the right side from left side without applying brake and reducing

speed and later only did he bring the bus to a halt at some distance as a result of which the entire side roof angle of the bus got cut.

(emphasis supplied)

8. Earlier to it, this Court in the case of Amar Singh (supra) also held that the findings of the Labour Court while granting approval not operates as res judicata since nothing has been decided except granting approval on the basis of pleadings and removing bar on termination. Relevant para Nos. 10 and 11 of the Amar Singh's case (supra) are reproduced as under:

10. It has been stated at the bar by both the Counsel for the parties that even the final order of dismissal i.e. order dated 22.12.1989 is also pending adjudication in the reference before the Labour Court. For he reasons that the petitioners can challenge their order of dismissal on all the grounds, which may be available to them, that is, victimisation, harassment, unfair Labour practice, inquiry being held without opportunity, or the order of dismissal being inflicting a harsh punishment, both the Counsel have fairly agreed before this Court that the parties would be satisfied if all the references in this regard made earlier vide order dated 4th March, 90 wherein the initial dismissal of June, 1988 and the withdrawal of such dismissal vide order dated 22.12.1989, which references are pending before' the Labour Court are decided by the Labour Court and adjudication is made on all these references.

11. In view of the such submission, I feel it appropriate not to interfere in the order of approval granted by the Labour Court, which finding of the Labour Court is only prima facie conclusion under the Act and does not amount to res judicata on any count, as nothing has been decided by the Labour Court except granting of approval and removing the bar of termination.

(emphasis supplied)

9. The issue can be examined from other angle that there are certain mandatory requirements i.e. simultaneous payment of one month wages and making an application by the employer for approval under Section 33(2)(b) of the Act for the

grant of approval, the compliance of which is to be seen by the Industrial Tribunal. Although the pleadings and violation of principles of natural justice can also be prima facie seen but as regards the merit of the charges are concerned, that can only be adjudicated under Section 10/12(5) of the Act. Therefore, the State Government has committed serious error in not making the reference.

10. In view of above, the order of non-reference dated 9.11.2000 is quashed and set aside. The matter is remanded back to the Government to take decision on the issue of reference afresh within a period of three months from the date of production of certified copy of this order.

Accordingly, true writ petition is allowed.

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