IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 19TH DAY OF AUGUST 2011

BEFORE

HON'BLE MR. JUSTICE RAM MOHAN REDDY

WRIT PETITION NO:12624/2010 (L-TER)

BETWEEN:

M/S ELASTREX POLYMERS PVT., LTD.,
8, GANGADHARANAPALYA
KASABA HOBLI, NELAMANGALA,
BANGALORE DISTRICT,
REPRESENTED BY ITS
MANAGER-PRODUCTION.

... PETITIONER

(BY SRI K.PRABHAKAR RAO, ADV.,)

AND:

SRI JANARDHANA
S/O SRI SANJEEVAIAH,
AGED ABOUT 35 YEARS,
R/A BUKQ SAGAR, ELLYOOR
POST, KUNIGAL TALUK,
BANGALORE DISTRICT.

...RESPONDENT

(BY SRI K.S.SUBRAHMANYA, ADV., FOR C/R)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER PASSED BY THE HON'BLE INDUSTRIAL TRIBUNAL, BANGALORE, DATED 12.3.2010 IN SERIAL APPLICATION NO.10/2006 AT ANNEXURE-E AND DECLARE THAT THE ACTION TAKEN BY THE PETITIONER AGAINST THE RESPONDENT-WORKMAN UNDER SECTION 33(2)(b) OF THE I.D.ACT, AS VOID AND PROPER AND ETC.,

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Petitioner-employer initiated disciplinary proceeding against the respondent-workman for certain acts of misconduct of verbal abuse of the shift Supervisor, followed by a domestic enquiry, extending reasonable opportunity of hearing to the respondent and a report holding the charges proved. The Disciplinary Authority too, after considering the material on record held the respondent guilty of the charges, and by order dated 1.12.2006, dismiss the respondent from service while simultaneously, filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947, for short Act, registered as Serial Application No.10/2006 in AID No.1/2006, before the Additional Industrial Tribunal, Bangalore. Parties let in evidence and the Industrial Tribunal on the material on record held the domestic enquiry as fair and proper, as

also the charges proved. However, interfered with the order of punishment, on (i) that the punishment was actuated by reckoning the unauthorised absence over which an enquiry was pending; (ii) that the punishment of dismissal was grossly disproportionate to the gravity of misconduct proved; by invoking Section 11(A) of the Act to dismiss the application, by order dated 12.3.2010. Hence, this petition by the employer.

2. Learned counsel for the petitioner is correct in his submission that in exercise of jurisdiction under Section 33(2)(b) of the Industrial Disputes Act, the Industrial Tribunal is required to see whether a prima facie case is made out as regards the validity of the domestic enquiry held into the allegations of misconduct, keeping in view the fact that if the approval is granted, the order of dismissal, which may be passed against the employee would be liable to be challenged in an appropriate legal proceeding, before the Industrial

Tribunal, under the Industrial Disputes Act and therefore, the dismissal of the approval application is illegal.

3. The jurisdiction of the Industrial Tribunal under Section 33(2)(b), it cannot be disputed, is limited and not equated to one under Section 10 of the Act, since consideration necessary for grant of approval under Section 33(2)(b), is whether a prima facie case is made out as regards the validity of the domestic enquiry, since if the dismissal is approved, the same would be liable to challenge in terms of Section 10 of the Act. This is the law laid down in ***Martin Burn Limited Vs. R.N.Banerjee***[1], which reads thus:

> *"27. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima*

facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion, which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record.(see Buckingham & Carnatic Company Limited Vs. The Workers of the Company, (1952) Lab. Accused 490 (F)".

4. The Apex court in ***Cholan Roadways Limited Vs. G.Thirugnanasambandam***[2], following the aforesaid decision, observed thus:

"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

[1] AIR 1958 SC 79

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."

AND FURTHER :

"18. The jurisdiction of the Tribunal while considering an application for grant of approval has succinctly been stated by this Court in Martin Burn Limited Vs. R.N.Banerjee[6]. While exercising jurisdiction under Section 33(2)(b) of the Act, the Industrial Tribunal is required to see as to whether a prima facie case has been made out as regards the validity or otherwise of the domestic enquiry held against the delinquent, keeping in view the fact that if the permission or approval is granted, the order of discharge or dismissal which may be passed against the delinquent employee would be liable to be challenged in an appropriated proceeding

[2] (2005) 3 SCC 241

*before the Industrial Tribunal in terms of the provision of the Industrial Disputes Act". **In Martin Burn Case(supra)***

5. The decision of the Apex Court in ***Ved Prakash Gupta vs. Messrs Delton Cable India (P) Limited***[3] relied upon by the Industrial Tribunal to dismiss the petition, was based on incorrect understanding of the observations therein. That was a case of dismissal of a chargemen security for use of abusive language, leading to loss of confidence and in the adjudication of the industrial dispute, the Labour Court exercised a jurisdiction under Section 10(1)(c) of the Industrial Disputes Act, and therefore, that decision was inapplicable to the facts of this case, since exercise of jurisdiction by the Industrial Tribunal was under Section 33(2)(b) of the Act.

[3] 1984(I) LLJ 546

6. So also, the Industrial Tribunal pressed into service, the decision in ***Bisra Stone Lime Company Limited vs. Industrial Tribunal and another***[4] *of* the High court of Judicature, Orissa, over the proposition that the Disciplinary Authority had taken into consideration some other charge of reckless driving, being more serious, to impose the punishment of dismissal, calling for interference and therefore dismissed the serial application under Section 33(2)(b) of the Industrial Disputes Act, 1947.

7. In the facts of that case, the High court of Judicature, Orissa noticed that the order of dismissal from service was based on a composite sentence of three charges of assault, driving without permission and driving in reckless manner, of which latter two charges were offences of a serious nature. The Court noticed that there was neither notice nor enquiry over the latter

[4] 1965(I) LLJ 246

two charges and therefore, held that the refusal to accord approval by the Tribunal was justified.

8. The Labour Court at paragraph 16(v) of the order impugned observed that though the order dated 1.12.2006 of dismissal left no manner of doubt that there was no aggravating situation to hand over the order of dismissal for proved acts of misconduct, nevertheless, the Disciplinary Authority considered the charge of unauthorised absenteeism to impose the punishment of dismissal. A bare perusal of Ex.O.4, the order dated 1.12.2006, imposing the punishment of dismissal, does makes reference to a fact that during the pendency of the enquiry over the charge of verbal abuse, the respondent remained absent from work unauthorisedly for 71 days, which indicated the indifference shown towards work and attitude. However that the fact was not a relevant consideration for imposition of the punishment of dismissal, since it is

recorded that the disciplinary authority while agreeing with the findings of the Enquiry Officer, holds the charges of verbal abuse of the Supervisor, proved against the workman being serious in nature, warranted the imposition of punishment of dismissal. In that view of the matter, the Industrial Tribunal mis-directed itself to hold that the Disciplinary Authority had imposed the punishment of dismissal by taking into consideration the allegation of misconduct of unauthorised absence, assuming the charge to be more serious than verbal abuse. The order of dismissal from service was not based upon a composite sentence including the charge of unauthorised absence over which enquiry was pending. In that view of the matter, the decision in **Bisra Stone Lime Company's case (supra)** has no application.

9. In the result, petition is allowed. The order dated 12.3.2010 insofar as it relates to the aforesaid

findings and conclusions is quashed. The finding that the domestic inquiry is fair and proper, and that the charges are proved are confirmed. Having regard to the reported opinion of the Apex Court in the decision marked in **Martin Burn's** case supra, the Serial Application No.10/2006 in AID No.1/2006 filed by the petitioner is allowed.

Sd/-
JUDGE

PB