

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Civil Writ Petition No.222/2008**

% Date of Decision : January 24, 2008

Bhagwan Dass Petitioner

Through : Mr. Sanjay Ghosh,
Advocate

Versus

Lala Ram Sarup T.B. Hospital Respondent

Through : Nemo

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not ? | Yes |
| 3. | Whether the judgment should be reported in the Digest ? | Yes |

SUDERSHAN KUMAR MISRA, J (Oral)

1. By this petition, the petitioner seeks to challenge the award passed by the Labour Court, FAST TRACK-XXI in ID No.762/06/89 (hereinafter referred as the impugned award).

2. The petitioner was working as Safai Karamchari with the Lala Ram Sarup TB Hospital at Aurobindo Marg, New Delhi ever since 1970. On 31st May, 1987, a staff nurse on duty complained that the petitioner was drunk and had misbehaved with her along with two other workers, namely Bansi Lal and Ramesh. After the said complaint was made, the petitioner along with the other two individuals who also happened to be employees of the same hospital, were suspended. He claims that he had in fact not misbehaved at all.

Ultimately, after going into the matter, the respondent hospital punished Bansilal by withholding two increments and Ramesh was awarded a penalty of censure. However, the petitioner was dismissed from service. The matter of the petitioner's dismissal came to be referred to the Labour Court for adjudication by an order dated 16th June, 1989. The said Court granted an opportunity to the respondent management to prove the petitioner's misconduct in Court. Before that Court, the petitioner took the stand that he suffered hostile discrimination inasmuch as whilst his co-workers, Bansilal and Ramesh, who were also involved in the incident, were punished by the withholding of two increments in the case of Bansilal and Censure in the case of Ramesh whereas the petitioner himself was dismissed from service. He also took the plea that the punishment of dismissal imposed upon him was highly disproportionate to the misconduct proved against him and therefore prayed that the Labour Court exercise its power under Section 11A of the Industrial Disputes Act and substitute the same for a lesser punishment commensurate to the misconduct found. After recording evidence of the parties and going into the matter, the learned Labour Court concluded that the termination of the petitioner's service is neither illegal nor unjustified and therefore he was not entitled to any relief. After hearing counsel for the petitioner, I am satisfied that no case is made out for issuance of notice in this matter and the petition deserves dismissal at this stage itself.

3. By its order dated 27th August, 2003, for a number of reasons, the Labour Court concluded that the petitioner was not offered legitimate opportunity of leading evidence in defence and that therefore the enquiry report is vitiated on the ground that the

domestic enquiry was not held in accordance with the principles of natural justice. Consequently, the learned Labour Court granted the respondent management the opportunity to prove the misconduct of the workman by leading evidence before the Court. In the evidence of the complainant staff nurse, it has been proved that whilst she was on evening duty at about 4.30 p.m., the petitioner came inside the room where she was sitting and started harassing her along with Ramesh to compel her to dress a wound on a co-worker. They gheraoed her and thereafter abused her stating that "HARAMJADI SALI, RANDI TERI JAISI TO MERE PARON KE NEECHE SE NIKAL GAI". The petitioner and his associates were also smelling of alcohol and the petitioner in particular kept moving close to her and on being told by the staff nurse to keep his distance, he reportedly said, "TU KYA SAMAJHTI HAI TERE SE JYADA KHOOB SOORAT MERI BIBI HAI, TU USKE PERON KI DHOOOL BE NAHIN HAI VO CHH BACHCHON KI MAN HO GAI HAI PAR TERE SE JYADA KHOOB SOORAT HAI. AGAR MAIN TERI IJJAT KHARAB KAROON TO DOCTOR JAIN MERA KUCH NAHIN BIGAR SAKTA. TUJHE MAIN BAGAL MAIN DABA KAR LE JA SAKTA HUN." No question was put to the complainant in cross examination that the petitioner was not under the influence of liquor at that time. Before me, the petitioner's counsel sought to rely upon the petitioner's cross examination where he has denied the suggestion that he had misbehaved or that he was drunk. However, there is no cross examination of the complainant nurse or any other witness or other individuals present on this aspect. Under the circumstances, I do not think any benefit can be gained by the petitioner from the exculpatory statements made by him during his own cross examination whereby he has denied everything, and the conclusion of

the learned Labour Court in this respect cannot be faulted. Similarly, in response to the petitioner's attempt to blame the staff nurse for refusing to do what he alleges was her duty and apply the requisite dressing on his co-worker, the same cannot give any right to the claimant to resort to such misbehaviour and intimidation or to subject the staff nurse to such indignity, humiliation and harassment. It appears that about 10 days after the complaint was lodged by the staff nurse against him, the petitioner, in his reply thereto, also made serious allegations against the staff nurse by claiming that the staff nurse called him, "you people are SHARABI, BADMASH AND GUNDAs" and that she also referred to them in Hindi as, "CHURAs" and, "CHAMARs". Since there was no attempt to bring any corroborative evidence of other members of the staff or patients, etc. who would have been in a position to bear out these allegations of the petitioner, it is obvious that these were completely baseless allegations. I have enquired from the petitioner's counsel whether the petitioner pursued the matter of these allegations any further in any independent proceedings. I am informed that no other proceedings were taken up. In any case, those allegations, at best, could have constituted grounds for a separate proceeding against the staff nurse and they cannot, to my mind, justify the petitioner's conduct and behaviour.

4. It is next urged by the petitioner that he has been subjected to unfair discrimination inasmuch as the other co-workers, namely Bansi Lal and Ramesh were let off comparatively lightly. He states that whilst Bansi Lal was punished with the penalty of withholding of two increments and Ramesh was merely punished by censure, in contrast to this, the petitioner has been dismissed from service. The petitioner states that the learned Labour Court ought not to have accepted the

respondent's case that a more lenient approach was taken in the cases of the other two because they had tendered an apology and undertook not to indulge in any such activities in future. The petitioner states that the fact that there was actually no such written apology is demonstrated by the cross examination of Shri V.K. Jain, Administrative Officer of the respondent where he has stated, "I do not possess the letter of apology tendered by the other co-worker." He submits that in view of this admission elicited by his counsel in cross examination, the learned Labour Court ought not to have given any weightage to the tendering of an apology as being a reason for a lesser punishment and consequently, the finding of the Labour Court must be set aside in these proceedings. I do not agree with this submission. The fact of the apology has been stated by the staff nurse in her examination-in-chief filed by way of affidavit. There, she has stated that both the co-workers, Ramesh and Bansi Lal, were taken back on duty on tendering their written apology and undertaking not to indulge in any such activities in future. I find that the staff nurse has not been cross examined on this point at all. Furthermore, there is no evidence or cross examination that might indicate the person to whom these apologies would have been tendered or whether they were tendered to the staff nurse or to the hospital or to both. This is relevant because it has also come in the evidence of the Administrative Officer, Mr. V.K. Jain, who stated in his affidavit by way of evidence that the other two persons were allowed to join the duty with minor punishment, "on their tendering apology and undertaking that they will not indulge in such activities in future". In Mr. Jain's cross examination what is elicited is only the following,

“I do not possess the letter of apology tendered by the other co-worker”.

Nothing else is brought out. If the petitioner was trying to prove that no apologies whatsoever were tendered by his co-workers, then it was for him to establish the person or authority to whom the said apologies were claimed to have been given and to further demonstrate that that person or authority has never in fact received any such apologies. In this case, while the complainant who says that the petitioner's co-workers apologised, is not cross examined at all; all that is put to the Administrative Officer, who also said that such apologies were tendered, is merely the question whether he has brought the letter of apology. The question that no such letter or letters exist on the record has not been put to him nor has the record been summoned. Nor has the witness been asked whether he could produce it if given an opportunity. In the circumstances, the bland suggestion that no apology was tendered, has simply been denied. Although Bansi Lal had since died, the petitioner has also not bothered to examine the other co-worker, Ramesh, who is said to have also given the said apology, in support of his stand that no apology was tendered by his co-workers who were also supposed to have been involved in the incident. To my mind, it was necessary for the petitioner to have at least asked the Administrative Officer whether he was in a position to produce the letter of apology from the records if he was given an opportunity to do so. For all these lapses, the petitioner has only himself to blame and under the circumstances, the finding of the Labour Court that the apologies in question were actually tendered as claimed, does not require any interference. Furthermore, on this aspect, the Labour Court was also

conscious of the clear distinction that emerged to the effect that whilst the complainant was clearly and specifically able to identify the leading role played in the matter by the petitioner, as also his attitude and the words he used against her at the relevant time, no such specific allegations were made against the co-workers and that the complainant was not able to give the exact words used by the other two. Under the circumstances, the conclusion of the Labour Court that the gravity of the misconduct indulged in by the petitioner is quite different from that of the misconduct of the other two, is unexceptionable.

5. Lastly, the petitioner has also sought to gain some advantage from the provisions of Section 11A of the Industrial Disputes Act by taking the position that there was sufficient ground for the Labour Court to grant relief to the petitioner by reducing the punishment and imposing some other punishment in lieu of the dismissal, especially in view of the fact that the other two workmen were treated more leniently. Here also, a perusal of the decision of the learned Labour Court cannot be faulted with. Section 11A confers a specific jurisdiction on the Labour Court to be exercised whilst adjudicating matters that come before it. This power is to be exercised by that Court keeping in mind the evidence and all other circumstances surrounding the case. Here, an examination of paragraph 8-10 of the impugned award shows that the Labour Court has applied its mind to this question to see whether under all the circumstances taken together including, inter alia, the fact of the other two workmen having been given lesser punishment, the impugned punishment meted out of the petitioner was either disproportionate or shocking to the conscience of the Court. I feel that the learned Labour Court has

rightly concluded that the punishment imposed was clearly warranted by the claimant's behaviour. Amongst other things, it has also emerged that the petitioner has remained obdurate and intransigent throughout. After the incident, whilst the other two workmen apologized, the petitioner went to the other extreme; he raised counter allegations of a very serious nature against the staff nurse besides insisting that he committed no misbehavior at all.

6. The scope of interference by the High Court in exercise of its writ jurisdiction under Article 226 of Constitution of India, has been defined in a number of judgments by the Supreme Court and also by different High Courts.

In ***J.H.Jadhav vs. Forbes Gokak Ltd. (2005) 3 SCC 202***, the Supreme Court held that the conclusion reached by the High Court was unsustainable. In that case the Division Bench had held that there was nothing on record to show that the appellant was a member of the Union or that the dispute had been espoused by the Union by passing any resolution in that regard. The Supreme Court held that the Tribunal had addressed its mind to that question, appreciated evidence both oral and documentary and found that the Union had espoused the appellant's cause. It held that under the circumstances, the High Court had misapplied the principles of judicial review under Article 226 in interfering with the decision. It was not a question of there being no evidence of espousal before the Industrial Tribunal. There was evidence which was considered by the Tribunal in coming to the conclusion that the appellant's cause had been espoused by the Union. The High Court should not have upset the finding without holding that the conclusion was irrational or perverse. Therefore, the conclusion reached by the High Court was

held to be unsustainable by the Supreme Court. It held that so long as the High Court did not conclude that the decision of the Tribunal was irrational or perverse, the conclusion reached by the Industrial Tribunal could not be overturned.

Similarly in the case of ***Indian Overseas Bank vs. I.O.B. Staff Canteen Workers Union and Anr. AIR 2000 SC 1508***, the Supreme Court has concluded that any liberal re-appreciation of evidence and redrawing of conclusions on pure questions of fact is impermissible in exercise of writ jurisdiction, inter alia, for the reason that, the High Court is not to exercise any appellate jurisdiction over the awards passed by the Tribunal and that, “the findings of fact recorded by a fact finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can be reasonably and possibly be taken.”

Similarly, in ***Harbans Lal vs. Jag Mohan AIR 1986 SC 302***, the Supreme Court has stated as follows:-

“.....The limitations on the jurisdiction of the High Court under Article 226 of the Constitution are well settled. The Writ Petition before the High Court prayed for a Writ in the nature of certiorari, and it is well known that a Writ in the nature of certiorari may be issued only if the order of the inferior tribunal or subordinate court suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enable the High Court to reappraise the evidence without sufficient reason in law and reach finding of

fact contrary to those rendered by an inferior court or subordinate court. When a High Court proceeds to do so, it acts plainly in excess of its power.”

Even a Division Bench of Bombay High Court in the case of **C. C. Palkar Vs. K. M. Mills Ltd. (1992) 4 SLR 82 (Bom)** observed that If the adjudicator’s award is challenged before the High Court in writ jurisdiction, it can be quashed, “if it is vitiated by the fundamental flaws of gross miscarriage of justice, absence of legal evidence, perverse misreading of facts, serious errors of law on the face of the order, jurisdictional failure and the like.” The High Court has, “to be cautious both in not overstepping as if Article 226 were as large as an appeal and not failing to intervene where a grave error of law has crept in.”

Even as long ago as in 1964, the Supreme Court in the case of **Syed Yakoob Vs. K. S. Radhakrishnan & Ors. AIR 1964 SC 477** observed as under :-

“7.....There is, however, no doubt that the jurisdiction to issue a writ of certiorari is supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of appreciation of evidence cannot be reopened or questioned in writ proceedings.....”

7. As I have already concluded, the impugned award does not suffer from error of jurisdiction or from any breach of the principles of natural justice nor can it be said to be vitiated by any manifest or an apparent error of law. Nothing has been shown which could suggest any flaws leading to a gross miscarriage of justice or any other perversity apparent on the face of the impugned award. This Court is

not an appellate court. Even otherwise the findings of the Labour Court are unexceptionable. Under the circumstances, the decision of the Labour Court does not warrant any interference in the exercise of writ jurisdiction by this Court.

The petition is dismissed.

Sudershan Kumar Misra, J.

January 24, 2008
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