

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

+ **W.P(C) No.1332/2008**

% **Date of decision: 25.02.2008**

Delhi Transport Corporation Petitioner

Through: Mrs.Avnish Ahlawat, Advocate.

Versus

Shri Ram Phal Respondent

Through : Nemo.

CORAM :-

* **HON'BLE MR. JUSTICE ANIL KUMAR**

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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? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner corporation has impugned the award dated 9th October, 2007 holding that no purpose will be served by reinstating the respondent workman at this stage and also holding that he cannot be awarded full back wages as he has not served the management/petitioner for a very long period, however, in order to meet the ends of justice respondent has been awarded a compensation of Rs.75,000/- in lieu of his reinstatement, back wages and other consequential benefits.

2. An industrial dispute, “whether the removal of the respondent from services was illegal and/or unjustified and, if so, what relief could be granted to the respondent and what directions are necessary?” was referred to the Labour Court.

3. The respondent was stated to be inducted as a conductor in the year 1976 and he was chargesheeted on 14th April, 1988 on the allegation that he availed 111 days’ leave without pay during the year 1987 which reflect his lack of interest in the work of the corporation. On the basis of the allegations made against the respondent, a domestic inquiry was conducted.

4. The respondent workman challenged the domestic inquiry on the ground that it was in violation of principle of natural justice and the findings given by the Inquiry Officer were perverse. The Disciplinary Authority, however, removed him from the services of the Corporation by order dated 31st July, 1995. The order of removal was challenged by the respondent on the ground that it was disproportionate to the alleged misconduct. The respondent workman also contended that he has been unemployed since his illegal removal from the services and sought his reinstatement with full back wages and continuity of service.

5. Regarding the inquiry, the Labour Court held that inquiry was conducted according to the principle of natural justice.

6. Regarding other issues, the Labour Court considered the record and held that perusal of the record reflects that major portion of 111 days' leave was sanctioned. The court relied on the statement of respondent that he had applied for leave and the same were sanctioned by Depot Manager and at no point of time any part of the leave was turned down. The respondent had categorically contended that he did not receive any communication regarding disapproval or non-sanction of leave or any part thereof as was alleged against him in the impugned charge sheet.

7. The petitioner in the cross-examination of the respondent, who had categorically contended that he had applied for the leave and he had not received any communication disapproving the sanction of his leave, did not cross examine the workman regarding this. The Labour Court noted that the respondent workman was not at all cross-examined regarding this. From the perusal of the leave record produced by the petitioner, it was inferred by the Labour Court that out of total leave of 111 days, 96 days' leave was sanctioned. 9 day's leave was rejected, however, no communication was sent to the respondent workman regarding non-

sanctioning of his leave for 9 days. Out of sanctioned leave, 50 days' leave was granted on account of medical certificate whereas 55 days' leave was granted despite no medical certificate being produced. In these circumstances, it has been inferred that since out of 111 days leave, 96 days' leave was sanctioned and the communication regarding non-sanctioning of 9 days' leave was not sent, the misconduct cannot be construed against the respondent in the facts and circumstances and in any case it could not be inferred that the respondent was negligent and his conduct reflected lack of interest. In the circumstances, dismissal from the service for 6 days' leave in respect of which there does not appear to be any application or any medical certificate reflects disproportionate punishment awarded to the respondent of terminating from the service.

8. The Labour Court considered the judgment of the Supreme Court, DTC vs. Sardar Singh, 2004 LLR 953. It was noted that though prior permission was required for the leave, however, an exception had been carved out in case of sudden illness in terms of clause 1. The Labour court considering the pleas of the workman and held that once, it has been established by the respondent that 96 days' leave was sanctioned, out of which 50 days' was sanctioned on account of medical certificate and 55 days' leave was sanctioned without medical certificate and therefore, in the facts and circumstances, the burden had shifted on the

management/petitioner to establish that the respondent was negligent and absence of the respondent showed lack of interest.

9. Learned counsel for the petitioner has emphatically relied on Sardar Singh (supra) to contend that even if there is a sanctioned leave without pay, it will tantamount to mis-conduct. Perusal of the said judgment rather reflects that the Apex court has noted the exception carved out in case of sudden illness. Admittedly, in the case of the respondent, the leave was sanctioned without pay on the ground of illness as respondent has produced the medical certificate for the leave of 50 days which was sanctioned.

10. In these facts and circumstances, it has not been established by the petitioner corporation that the respondent was negligent and showed lack of interest and even if the leave is sanctioned without pay, it shall still be misconduct on the part of the respondent. Fifty days leave was sanctioned on account of illness for which medical certificates were submitted by the respondent for which leave was sanctioned and for remaining days medical certificate were not submitted but it was on account of illness.

11. While exercising its powers of judicial review under Article 226 of the Constitution of India this Court is not to re-appreciate the evidence and findings of the Court unless the same are perverse or there is a manifest error. It is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the Court does not interfere with factual findings of the lower courts and restrain itself from re-appreciating evidence while exercising powers of judicial review. Reliance for this proposition can be placed on the judgment of the Supreme Court, *Government of A.P. and Ors. v. Mohd. Nasrullah Khan* reported as (2006) 2 SCC 373. Reliance can also be placed on the following judgments rendered by the Supreme Court and this Court concerning the scope of judicial review by a writ court: *Harbans Lal v. Jagmohan Saran* (1985) 4 SCC 333; *B.C. Chaturvedi v. Union of India* (1995) 6 SCC 749; *Indian Overseas Bank v. I.O.B. staff Canteen Workers' Union* AIR 2000 SC 1508 ; *Municipal Corporation of Delhi v. Asha Ram and Anr.* 117 (2005) DLT 63 and *Filmistan Exhibitors Ltd. v. N.C.T. Secy. Labour and Ors.* 131 (2006) DLT. In all the above judgments, it has been held that a writ court should refrain from interfering with the orders of an inferior tribunal or subordinate court unless it 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.

12. The objective of judicial review is to ascertain that a person received a fair treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. The Apex Court in (1995) 6 SCC 749, B.C.Chaturvedi Vs Union of India at page 759 in para 12 had held as under:

“ 12 . Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/ Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the

conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

13. The Labour Court has considered the ratio of Sardar Singh’s case (supra) and exception carved out of illness. The case of the respondent is not merely of sanctioned leave without pay but the sanctioned leave without pay on account of illness for which medical certificates for certain periods were also given by the respondent and remaining period is also of leave without pay on account of illness for some period for which medical certificate were not given and for 9 days for which the leave was not sanctioned but refusal to sanction the leave was not communicated to the respondent. The cases where the leave is sanctioned without pay for the purpose of record and absence remain unauthorized are distinguishable from the facts of the present case.

14. In the facts and circumstances, there is no perversity or manifest error or denial of principle of natural justice to the petitioner corporation which will entail interference by this court under Article 226 of the Constitution of India. The writ petition is, therefore, dismissed.

February 25th, 2008.

ANIL KUMAR J.

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