

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

+ **Writ Petition (Civil) No.1532/2008**

% Date of Decision : February 26, 2008

Jai Bhagwan Petitioner

Through : Mr. Shri Prabhakar,
Advocate

Versus

Delhi Transport Corporation Respondent

Through : Ms. Latika Chaudhary,
Advocate

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment?
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. This writ petition under Article 226 of the Constitution of India has been preferred by the petitioner seeking quashing of impugned order dated 4.02.2008 passed by Industrial Tribunal in Approval Application (OP) No.518/1993.

2. The services of the petitioner were terminated by the respondent/management in the year 1993 and an application under Section 33(2) (b) of the Industrial Disputes Act, seeking approval from the appropriate Industrial Tribunal was filed. On 21.3.2001, the Industrial Tribunal concluded that the enquiry conducted by the management was vitiated. It permitted the management to prove its case before the court by leading evidence. After the management

had examined its witness, the matter was then posted for the workman's evidence. Ultimately on 14.8.2002, the management's application, seeking approval under Section 33(2)(b) of the Industrial Disputes Act, came to be dismissed because there was no appearance on its behalf, and also for non-payment of costs of Rs.300/- that had been imposed upon it by that court. This order was impugned by the management before this Court in Writ Petition (C) No.3904/2004. On 5.12.2006, this Court allowed the said writ petition. Consequently, the order dated 14.8.2002 passed by the Labour Court was set aside and that Court was directed to proceed with the matter and dispose of the management's application under Section 33(2)(b) of the Industrial Disputes Act, seeking approval of the dismissal of the workman, on merits. On remand, on 23.2.2007, the Industrial Tribunal posted the matter for recording of evidence of the respondent/management. Although the workman sought, and was granted, a number of adjournments for this purpose, he failed to carry out the cross examination. Ultimately, on 28.11.2007, the Labour Court closed the opportunity of the workman to cross examine the management's witness. The workman then moved an application before the Labour Court praying that since evidence of the management stood closed even before the matter went up to the High Court, from where it has now been remanded, the evidence of the management witness recorded after the remand, be not read, or treated as part of the record and/ or to allow petitioner to cross examine the management witness. This application was disposed of by the impugned order of 04.02.2008, whereby one final opportunity was given to the petitioner to cross examine the management witness.

3. Before me, counsel for the petitioner-workman has sought to explain away the fact that after the order of the Industrial Tribunal dated 23.2.2007 directing the matter to be put up on 16.3.2007 for evidence of the management, the management witness, namely, Sh. G. K. Sharma was also duly examined without any objection by the petitioner and the matter has been specifically posted, at the request of the petitioner himself, for cross examination of the management's witness by the explanation that through all this time, and over all these hearings, he was not aware that this procedural error has been committed, and for that reason he did not take this objection earlier. He states that this was sufficient ground for setting aside or modifying the order passed by the Labour Court on 23.2.2007 and that for this reason alone, the learned Court ought to have granted this prayer. Petitioner's counsel states that he became aware of this procedural error for the first time only towards the end of January, 2008 when he inspected the file after the closure of the opportunity to cross-examine the management's witness by the aforesaid order dated 28.11.2007, which he wanted to challenge.

4. The earlier Writ Petition No.3904/2004 setting aside the dismissal of the respondent's application under Section 33(2) of the Industrial Disputes Act came to be allowed on 5.12.2006. By that order, parties were directed to appear before the Labour Court on 10.1.2007. Pursuant to this order, it appears that the workman, who is the petitioner before me, himself moved an application on 10.1.2007 informing the Labour Court of this Court's order in the writ petition. Along with that application, he annexed a certified copy of the order of this Court dated 5.12.2006. Therefore, there can be no doubt that the petitioner was fully aware of the terms of the order dated

5.12.2006 passed by this Court. Furthermore, the order sheet pertaining to the proceedings held before the Labour Court on 10.1.2007 has not been annexed by the petitioner in these proceedings.

5. According to counsel for the petitioner, after a couple of adjournments on account of the absence of the Presiding Officer, the matter thereafter came up on 23.2.2007, when the Labour Court directed the matter to be put on 16.3.2007 for evidence of the management. This order was passed in the presence of proxy counsel for the petitioner. Be that as it may, the fact that the petitioner himself had filed the order of this Court dated 5.12.2006 on 10.1.2007 before the Labour Court, cannot be lost sight of. Similarly, the order of 23.2.2007 directing the matter to be put on 16.3.2007 for evidence of the management cannot also be said to have been passed without the knowledge of the petitioner. Thereafter, it appears that the evidence of the management witness was duly recorded and number of opportunities were also granted to the petitioner to cross-examine the said witness produced by the management.

6. However, the petitioner failed to cross-examine the witness and consequently on 28.11.2007, when yet another adjournment was requested by the petitioner on the plea that his counsel was unavailable, the Labour Court thought fit to close his opportunity for cross-examination. From a copy of the order sheet dated 28.11.2007 placed by the petitioner on the record, it appears that the Labour Court was also constrained to impose costs on the petitioner. Although the petitioner has not bothered to attach copies of the relevant order sheets which might indicate the reason that prompted Labour Court to impose these costs, it appears that they were

imposed due to the failure of the petitioner to cross-examine the management witness despite repeated opportunities.

7. In substance what emerges is as follows:-

(i) That the Labour Court allowed the Delhi Transport Corporation to examine another witness namely Mr.G.K.Sharma, although, its evidence had already been closed earlier.

(ii) Although this order permitting the corporation to examine its witness was passed in the presence of the petitioner, there was no objection taken by him.

(iii) Although repeated opportunities were sought by the petitioner to cross examine that witness, which was duly granted, he failed to utilise them.

(iv) Ultimately, the right to cross examine the witness was closed.

(v) It was only thereafter that the petitioner decided to challenge the order permitting the corporation to examine its witness.

Learned counsel for the petitioner has not been able to show any authority for the proposition that under such circumstances, it is open to the petitioner to challenge the order permitting the corporation to examine its witness.

8. The power of a Court to recall a witness or to direct the examination of any witness at any stage of a trial or even in appeal, is well known. While the petitioner may be correct that the management's evidence was already over and there was no formal application by it for examination of any fresh witness, there has been clear acquiescence by the petitioner to the order dated 23rd February, 2007 directing examination of Mr. G. K. Sharma. Not only was it passed in the presence of the petitioner who had himself tendered a copy of this Court's order in the writ petition; he never took any

objection to this order even later on. On the contrary, the petitioner allowed the management to examine Mr. G. K. Sharma and kept seeking adjournments to cross examine him; even going to the extent of suffering an order to pay costs for this purpose. It was only when his opportunity to cross examine was finally closed and counsel for the petitioner inspected the file to assail the order closing his chance to cross examine the said witness, that it dawned upon counsel that he could very well have objected to the Labour Court granting the management an opportunity to produce further evidence. To my mind, the maxim '**Vigilantibus, et non dormientibus, jura subveniunt**' i.e., the vigilant, and not the sleepy, are assisted by the laws, applies to the facts of the present case. Furthermore, the conduct of the petitioner thereafter is clear acquiescence of the decisions of the Labour Court dated 10.1.2007 and 23.2.2007. In any case, by its order of 4.2.2008 which is impugned before me, the Labour Court has granted yet another opportunity to the petitioner to cross examine that witness. It would be open to the petitioner to elicit the truth from him or to discredit him. I do not see any miscarriage of justice in the matter, nor do I find any perversity in the impugned matter that would persuade this Court to exercise its writ jurisdiction.

9. Under the circumstances, and especially in view of the fact that repeated opportunities were granted to the petitioner to cross-examine the witness, and even thereafter, by way of the impugned order passed on 4.2.2008, the Labour Court has granted yet another opportunity to cross-examine the witness after recalling its order dated 28.11.2007 by which the right to cross-examine was closed; I do not find any infirmity in the order calling for interference by this Court in the exercise of writ jurisdiction.

10. The writ petition is dismissed.

CM Nos. 3007/2008 & 3008/2008

11. Since the writ petition has been dismissed, these applications do not survive and are dismissed as such.

The applications stand disposed of.

Sudershan Kumar Misra, J.

February 26, 2008
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