

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

+ **WP(C) No.1800/2008**

% **Date of decision : 13.03.2008**

Ram Phal

..... Petitioner

Through: Ms.Rashmeet K.Charya, Advocate.

Versus

DTC & Anr

..... Respondents

Through : Mrs.Avnish Ahlawat, Advocate.

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.

1. The petitioner workman has challenged the order dated 25th November, 2006 holding that the enquiry officer had not transgressed the rules of natural justice and had given a reasonable opportunity to the petitioner to defend himself and thus holding that the enquiry was conducted according to the principles of natural justice. The petitioner has also challenged the award dated 9th October, 2007 holding that the petitioner is entitled for compensation of Rs.75,000/- in lieu of his reinstatement, back wages and other consequential benefits.

2. I have heard the learned counsel for the petitioner and has perused the pleading and evidence produced along with the writ petition. It is apparent from the cross examination of the petitioner that it was admitted by him that he had received the charge sheet and the documents regarding leave which were furnished along with the chargesheet. He had also stated that the record of leave application and medical certificates were not called by him as he had admitted the charge. The Labour Court has also held that there was no violation of principles of natural justice merely because the enquiry officer had put certain questions to the petitioner who had admitted his guilt and in the circumstances it could not be held that the enquiry officer had acted as a prosecutor or a Judge.

3. Regarding the circulars of the DTC in respect of which it had been alleged that they were not provided to the petitioner, reliance was placed on State Bank of Patiala Vs.S.K.Sharma, 1997 LLR 268 holding that except cases falling under no notice, no opportunity and no hearing categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice viz. whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. It was held that if it is found

that he has been really prejudiced, appropriate orders could be made to repair and remedy the prejudice including setting aside the enquiry and/or the orders of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. From the enquiry report it is apparent that the workman was held guilty of charge on the basis that the petitioner had admitted that he had taken leave without pay and had not given any proof and reasoning for the substantial period of his leave. The Labour Court had held that after going through the report it is apparent that the findings of the enquiry officers are based on record and he had not considered any extraneous material and in the circumstances and consequently, it was held that there was no perversity.

4. From the perusal of the order dated 25th November, 2006 holding that the enquiry was just and proper and in compliance of the principles of natural justice, it is apparent that findings is based on legal evidence and the material on record. The findings arrived at are plausible and reasonable. In the circumstances no perversity or manifest error can be attributed to the order dated 25th November, 2006 deciding the preliminary issue that whether the enquiry was conducted in accordance with the principles of natural justice or not.

5. The learned counsel for the petitioner has also impugned the award dated 9th October, 2007 whereby the petitioner was not reinstated and he was awarded a compensation of Rs.75,000/- in lieu of reinstatement, back wages and other consequential benefits.

6. The Labour Court did not award reinstatement on the ground that it has not been proved by the petitioner that he was unemployed during the entire period when he was dismissed. The Labour Court relied on the fact that a period of 31 years has elapsed since his induction into service and the petitioner himself is nearing the age of superannuation and no purpose would be served by reinstating into the service at this stage. Reinstatement was also not awarded on the ground that the petitioner has not served the management for a long period after his dismissal.

7. This is no more res integra that the question as to whether on setting aside the wrongful dismissal of a workman he should be reinstated or directed to be paid compensation is a matter within the judicial discretion of the Labour Court or the Tribunal dealing with the industrial dispute. In exercising the discretion, fair play towards the employee on the one hand and interest of the employer including

consideration of discipline in the establishment, on the other require to be duly safeguarded.

8. The learned counsel for the petitioner has contended that the petitioner will still have about 6 years of service as he is about 54 years. The Tribunal, however, have considered that the petitioner was dismissed in 1995 and has remained without being employed with the petitioner for almost 13 years. Even if the petitioner has few more years, in the discretion of the Tribunal which cannot be termed to be perverse or arbitrary, the petitioner is not to be reinstated, then it will not be appropriate for this Court to exercise jurisdiction under Article 226 of the Constitution of India and to reinstate the petitioner. From the perusal of the claim filed by the petitioner before the Labour Court it appears that he had pleaded in paragraph 10 that he was unemployed. The plea of the petitioner in para 10 is as under:-

“10. That order of termination/removal is unjust and wrongful, punishment is otherwise disproportionate, harsh and oppressive. It cannot sustain. The workman is unemployed. He is entitled to reinstatement in service with full back wages and continuity of service.”

9. However, in the deposition filed by the petitioner on affidavit the petitioner has not deposed anything about petitioner being unemployed. The witnesses of the management/respondent has also not been cross

examined regarding unemployment of the petitioner, as no suggestion was given that the petitioner is unemployed. In these circumstances the Labour Court had inferred that since the petitioner has not even deposed that he remained unemployed and since the petitioner was dismissed from service on 31st July, 1995, it will not be appropriate to reinstate him almost after 13 years.

10. The learned counsel for the petitioner has relied on (1971) 3 SCR 774, Management of Panitole Tea Estate Vs The Workmen; AIR 1979 SC 75; M/s.Hindustan Tin Works Pvt Ltd Vs. The Employees of M/s.Hindustan Tin Works Pvt Ltd and others; 1982(1) All India Services Law Journal 255; Management of Delhi Transport Corporation Vs.Ram Kumar and Another, AIR 2001 SC 672 and Vikramaditya Pandey Vs. Industrial Tribunal and Another in support of the petitioner's contention for reinstatement. In the case of Management of Panitole Tea Estate (Supra) on a reference regarding the charge of pilferage, it was held by the Labour Court that the evidence, chit relied on by the management was too vague and was procured only to harass the workman for no fault of his and had also held that the domestic enquiry was violative of principles of natural justice and its findings were perverse and without any evidence to support them and in the circumstances it directed reinstatement of the workman. The said case is apparently distinguishable from the facts of the case of the petitioner.

In the present case, it has not been established that the petitioner was not gainfully employed.

11. The Supreme Court in M/s.Hindustan Tin Works Pvt Ltd (Supra) was concerned regarding the grant of back wages where termination of service either by dismissal, discharge or retrenchment was held to be invalid and whether the relief of reinstatement with continuity of service could be awarded. In the said matter, the Apex Court was concerned more with the award of back wages than reinstatement because the reinstatement had already been granted. The ratio of this judgment is clearly distinguishable and the petitioner cannot claim reinstatement on the basis of the same.

12. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. In Ambica Quarry Works v. State of Gujarat and Ors. MANU/SC/0049/1986 the Supreme Court had observed:-

"The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

In Bhavnagar University v. Palitana Sugar Mills Pvt Ltd (2003) 2 SC 111 (vide para 59), the Supreme Court had observed:-

" It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

13. The Division Bench of this Court in the case of Management of Delhi Transport Corporation (Supra) had rejected the plea of loss of confidence for grant of compensation to the employee instead of reinstatement. In this matter another conductor of the respondent Corporation was charged which related to having collected the fare from the passengers but not giving them the tickets and in the enquiry two charges were proved, however, in respect of the third charge no finding was recorded. During the pendency of the industrial dispute the Corporation had filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 and the application was allowed and approval was accorded. In the peculiar facts and circumstances of this case the workman conductor was reinstated. In this case it was also held that no presumption of being gainfully employed could be raised.

14. However, in the present case the petitioner pleaded that he is not gainfully employed in a paragraph in the claim but thereafter did not state in his deposition that he is not gainfully employed nor the fact that he is not gainfully employed was even put to the witnesses of the management. This factor has been considered by the Labour Court in denying him the reinstatement and granting him a consolidated amount on account of reinstatement, back wages and other benefits. The findings of the Labour Court in the facts and circumstances cannot be held to be perverse or suffering from manifest error as the finding is based on the lack of evidence on the part of the petitioner and it cannot be said that the finding is without any legal basis. This Court in exercise of its jurisdiction is not to substitute its own inferences with the inferences drawn by the Labour Court in the present facts and circumstances of the case.

15. It is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the Court should not interfere with factual findings of the lower courts and should 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. 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. The objective of judicial review is that a person receives a fair treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. 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.

16. Consequently, there is no perversity or manifest error or denial of principles of natural justice granting the compensation in lieu of reinstatement and back wages and other benefits to the petitioner. There are no grounds to interfere in the facts and circumstances and the writ petition is, therefore, dismissed.

March 13th , 2008

ANIL KUMAR J.

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