

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : February 04th , 2008

WP(C) No.322/2008

S.S.Saini PETITIONER
! Through: Mr.Ashok Aggarwal, Advocate.

Versus

\$ Centre for Culture Resources RESPONDENT
& Training
^ Through: Mr.Rajendra Dhawan, 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. (Oral)

1. The petitioner has impugned the award dated 28th September, 2006 of the Labour Court not interfering with the punishment awarded to the petitioner of dismissal from service and holding it to be proper and justified and rejecting the claim of the petitioner/workman.

2. The petitioner had raised an industrial dispute against his

dismissal from the service by the management, the Centre for Cultural Resources and Training and the reference was made whether the dismissal of Sh.S.S.Saini from service was illegal and or unjustified by the management and what relief the petitioner is entitled and what directions are necessary in that respect.

3. An issue was framed before the Labor Court “Whether the domestic enquiry was not fair and valid and in accordance with the observance of the principles of natural justice?” After hearing the parties it was held that the enquiry conducted by the respondent against the workman was fair and valid and in accordance with the principles of natural justice by order dated 24th August, 2006.

4. The learned counsel for the petitioner has contended that while deciding whether the enquiry was fair and valid, the Labor Court could not decide about the allegations made against the petitioner.

5. Perusal of order dated 24th August, 2006 reflects that the contentions were raised by the petitioner that documents which were essential for the defense were not provided to the petitioner despite demands made by him. The Labor Court had relied on the well reasoned order dated 2nd April, 1993 passed by the enquiry officer. By

the said order the enquiry officer had held that all the listed documents had been furnished to the petitioner. The enquiry officer had also noted that the charges against the petitioner were not for defamation but for violation of their conduct rules as the petitioner has communicated to the press without any valid permission from the competent authority. It was also considered that the petitioner had not denied the release of the documents but had pleaded that the petitioner has not released them in his individual capacity but as a Secretary of the CCRT Union. Since the Union was neither recognized by the respondent nor by the Central Government, it was held that the action of the petitioner was in individual capacity. In any case it was for the petitioner to establish that he had released the communications to the press after taking due oral or written permission.

6. While considering the fact whether the enquiry was fair and valid and question whether the petitioner had permission to release the information to the press and whether the act of the petitioner was in contravention of the rules was also considered. There is no perversity in the order dated 24th August, 2006 nor there is any manifest error or denial of principles of natural justice. The plea of the petitioner that while deciding the issue whether the enquiry

conducted was fair and valid, the other issue that the petitioner had violated the rules in releasing the information to the press without valid permission could not be decided, is without any legal valid basis.

7. The learned counsel for the petitioner is unable to point out any provision of law or any precedent holding that while deciding the issue regarding the domestic enquiry being fair and valid the other aspects could not be considered by the Labor Court especially in view of the fact that the burden was on the petitioner to establish that he had permission to release the correspondence to the press.

8. The learned counsel for the petitioner has also contended that no evidence was led by the parties before the enquiry officer. Perusal of the record reflects that the change of enquiry officer on the ground of bias was raised which was rejected as Sh.C.Venkataramani who was Director, Department of Culture who was then working as a Deputy Secretary in the Department of Culture, Ministry of Human Resource Development. He was appointed as an enquiry officer who was not associated with the Centre. Whether the enquiry officer was conducting the enquiry strictly as per rules was also considered by the Appellate Authority. The Chairman, CCRT had observed that the petitioner had not been maintaining proper decorum during the

proceedings and had been indulging in various tactics of delaying the enquiry.

9. It had also transpired that the enquiry officer in the proceeding on 29th September, 1992 had directed the petitioner to give a list of documents and witnesses, however, the petitioner did not avail the opportunity and did not send any list. The petitioner was again directed by letter dated 26th October, 1992 to submit the list of documents that were required from the point of view of petitioner, however, the list of witnesses and documents were not submitted by the petitioner. Again the petitioner was asked by letter No.5682/DS(A)/92 dated 23rd November, 1992 to furnish a list of documents/witnesses. But the petitioner instead of furnishing the list, by letter dated 30th November, 1992 questioned the authority of the enquiry officer. Even thereafter opportunities were given to the petitioner, however, the petitioner did not submit the list and submitted a letter dated 15th December, 1992 that it was not necessary for him to submit the list of documents and witnesses at that stage. Thereafter on 21st December, 1992 a list of documents and witnesses was sent which was found to be vague. After detailed consideration the enquiry officer by order dated 2nd April, 1993 had disallowed the witnesses and documents demanded by the petitioner

as they were not having any bearing or relevance to the actual charge.

10. In the circumstances, the plea of the petitioner that there was no evidence is not borne out from the record as the fact that the letters were communicated by the petitioner to the press were not disputed and the point of controversy was whether the permission was taken by the petitioner so as not to be liable under the various rules on the basis of which the disciplinary enquiry was initiated against the petitioner. In the circumstances the burden was on the petitioner and the petitioner failed to discharge its burden and cannot contend that the findings of the enquiry are without any basis in the facts and circumstances and without any evidence.

11. By the award dated 28th September, 2006 all the pleas and contentions had been considered by the Labor Court. The Labor Court has considered whether the punishment awarded to the petitioner is shockingly disproportionate to the charge proved and held that the petitioner cannot absolve himself of his responsibility on the ground that he was the General Secretary of the Union. It has been noted that the petitioner has not been victimized on account of trade union activities. Reliance was placed on Karnataka Bank Ltd Vs. A.L.Mohan Rao, 2006 LLR 252 (SC) regarding leniency if any to be shown to the

workman/petitioner.

12. Considering all these factors in detail the Labor Court has held that the punishment of dismissal from service imposed upon him is proper and justified and rejected the claim of the petitioner. The award dated 28th September, 2006 in the circumstances is not perverse nor has any such manifest error so as to entail interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

13. While exercising powers of judicial review under Article [226](#) of the Constitution of India this Court is not to re-appreciate the evidence. It is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the Court is not to interfere with factual findings 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. Reliance may 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.

14. 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. 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.”

15. All the relevant documents were with the petitioner. The charge framed against the petitioner was releasing the documents to the press without the permission and not whether the defamation was committed. It had been held that all the relevant documents were with the petitioner. Burden was on the petitioner to prove that he released the documents after due permission. No plea has been taken by the petitioner that for releasing the documents, permission was obtained from the respondent. Dismissal from the service by the respondent is

not shockingly disproportionate in the facts and circumstances. Petitioner is unable to point out violation of any rules of natural justice. Rather it has been established that the petitioner tried his best to delay the proceedings by taking all sorts of objections which were considered and rejected by the enquiry officer. No other grounds have been raised by the petitioner impugning the award of the Labor Court.

16. In the circumstances, there are no grounds to interfere with the order of the Labor Court. The writ petition in the facts and circumstances is without any merit and is, therefore, dismissed.

February 04th, 2008
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ANIL KUMAR, J.