

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

+ **Writ Petition (Civil) No.8676/2005**

Date of Decision : 12.08.2009

Delhi Transport Corporation

.....Petitioner

Through: Ms. Rashmi Priya for Mr.
J.S. Bhasin, Advocate

Versus

Sh. Ram Kishan (Ex-Driver)

.....Respondent

Through: Nemo.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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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 |

V.K. SHALI, J.

1. The petitioner by virtue of present petition has challenged the order dated 10th June, 1998 and the award dated 2nd December, 2003 passed in ID No.371/1994 by the learned Labour Court. Briefly stated, the facts leading to the filing of the present writ petition are that the petitioner had engaged one, Ram Kishan as a Driver for its fleet of buses in 1982. He was allotted a badge No.11102 and a pay token No.33119 and was the permanent employee of the petitioner. His last posting was at Dichaon Kalan Depot. On 3rd September, 1990 he was given a memo which was followed by a chargesheet wherein it was alleged that he had assaulted and used filthy language against Asstt. Engineer Kharak Singh who was sitting on the date of the

incident in the office of the Depot Manager at about 8.20 P.M. It is alleged that on the said date, nearly 15-16 employees of the petitioner had barged into the room of the Depot Manager, where the complainant Kharak Singh was sitting, both from in and exit gates and thereafter the incident took place. As a consequence of this, the chargesheet having been given on 14th September, 1990, the respondent/workman had denied the charges and given his defence. One Smt. Anu Kumar was appointed as an Inquiry Officer to conduct inquiry. The Inquiry Officer recorded the statements of Kharak Singh, the complainant, one Balwan Singh, Duty Officer, Bhagat Ram, Asstt. Fitter and Jagbir Singh, Security Staff.

2. The workman in support of his case examined Om Prakash, and Risal Singh, Drivers, apart from getting his own statement recorded. The learned Inquiry Officer after analyzing the evidence and hearing the arguments gave a finding that the charges of misconduct against the petitioner are established and accordingly directed his removal from the service. The removal of petitioner was challenged by him before the appropriate Government which made a reference in the following terms to the learned Labour Court vide order dated 2nd May, 1994 :

“Whether the removal of Shri Ram Kishan from service is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect ?”

3. On the basis of the aforesaid references, the learned Labour Court raised two preliminary issues;

- 1) whether the inquiry conducted by the management was free and fair ? and
- 2) To what relief, if any, is the workman entitled in terms of the reference.

4. The learned Labour Court after examining the evidence and hearing the arguments came to the conclusion that the inquiry which was conducted against the respondent/workman was not free and fair as the principles of natural justice were not followed and accordingly issue No.1 was decided in favour of the workman.

5. So far as issue No.2 was concerned, the learned Labour Court directed the reinstatement of the workman. This order of the learned Labour Court dated 10th June, 1998 was not challenged by the petitioner/management before the High Court and therefore this order had become final and binding on the parties. So far as the reference dated 2nd May, 1994 is concerned, the learned Labour Court answered the said reference also against the petitioner/management. This reference which was answered by the learned Labour Court in favour of the workman was primarily based on the fact that the Presiding Officer of the Labour Court earlier way back on 16th October, 1998 had held in the preliminary issue that the inquiry which was conducted against the respondent/workman was not free and fair and therefore liable to be set aside. By virtue of the present award, the learned Labour Court observed that as a necessary consequence, the removal of the respondent/workman was illegal and unjustified in the light of earlier finding dated 16th

October, 1998 and accordingly directed his reinstatement with payment of 50% of back wages with continuity of service and other legal benefits by virtue of the impugned award dated 2nd December, 2003.

6. The petitioner/management feeling aggrieved by order dated 16th October, 1998 as well as by the award dated 2nd December, 2003, the cumulative effect of which is that the inquiry which had been held against the respondent/workman has been declared to be violative of principles of natural justice and as a necessary consequence directing the reinstatement of the workman with payment of 50% of back wages.

7. I have heard the learned counsel for the petitioner as well as the learned counsel for the respondent. I have also gone through the record. A perusal of the order sheet shows that the petitioner/management had at some point of time made up its mind not only to re-employ the respondent/workman provided they found the respondent/workman to be fit to drive the vehicle, but they felt aggrieved on account of the 50% of the back wages which have been directed to be paid to the respondent/workman by the learned Labour Court. On merits in the writ petition, the petitioner has assailed both the order as well as the award on the ground that the preliminary issue which has been decided by the learned Labour Court was in violation of the Supreme Court judgment in ***The Cooper Engineering Ltd. Vs. P.P. Mundhe*** 1975 (2) SCC 661 wherein it has been held that the question as to whether the domestic inquiry has violated the principles of

natural justice essentially pertains to procedural aspects of the domestic inquiry and not to the merits or to the quantum of punishment and therefore the said aspect of the matter even if decided in favour of the respondent/workman only impairs the procedural aspect and not the substance of the inquiry. On merits, the learned counsel for the petitioner has contended that the learned Labour Court has literally sat as a Court of Appeal and gone into the question of finding of fact, as to whether the respondent/workman had misconducted by assaulting the complainant, Kharak Singh, AE on the date of incident or not and substituted its own finding after re-appreciating the evidence. The learned counsel has observed that the learned Labour Court has grossly erred in doing so and it has placed reliance on ***Vest Bokaro Colliery (TISCO Ltd.) Vs. Ram Pravesh Singh*** (2008) 1 SCC (L&S) 890, ***Workmen Represented by Hindustan V.O. Corpn. Ltd. Vs. Hindustan Vegetable Oils Corporation Ltd. & Ors.*** (2009) 9 SCC 534, ***M.P. Electricity Board Vs. Jagdish Chandra Sharma*** (2005) 3 SCC 401 and ***Mahindra & Mahindra Ltd. Vs. N.B. Narawade*** 2005(2) SCALE 302.

The third point which has been raised by the learned counsel for the petitioner is that the respondent/workman had earlier also misconducted and indulged in acts of insubordination and misbehavior with the staff on account of which in his short career from 1982 to 1994 or so he had been visited by departmental punishment on as many as 10 occasions,

and therefore to that extent the respondent/workman was an obdurate and this was the only method to deal with him by removing him from the service.

8. I have carefully considered the respective submissions. I feel that there is absolutely no merit in any of the submissions which have been made by the learned counsel for the petitioner. The first question which arises for consideration is that it is settled legal proposition that the High Court in exercise of its power of judicial review will not sit as a Court of Appeal and re-appreciate the entire evidence. The Court is not to see the quality of decision, but the only aspect, which is to be seen by the Court, is as to how the said decision has been arrived at and if the decision which has been arrived at by the learned Labour Court happens to be in violation of principles of natural justice or some provisions of act or rule or regulation, then it can interfere with the orders or the award passed by the learned Labour Court and not otherwise. In the instant case, the learned counsel for the petitioner has not been able to point out any such violation which may permit this Court to exercise its power of judicial review and set aside the order dated 16th October, 1998 or the award dated 2nd December, 2003.

As a matter of fact, a perusal of the order dated 16th October, 1998 clearly shows that the learned Labour Court has very critically analysed the entire evidence adduced before the Inquiry Officer and arrived at a finding that even if the testimony of Kharak Singh, AE, who is purported to have been assaulted by

the respondent/workman, is taken to be as correct, even then it cannot be made a basis of proof of allegation of misconduct against the respondent/workman for the simple reason that the identity of the workman who had actually assaulted Kharak Singh, AE itself is full of doubt and contradictions. In this regard, the learned Labour Court has referred to the testimony of Kharak Singh, AE himself wherein he has stated that the mob which had attacked him on the date of incident in the office of the Depot Manager perhaps consisted of the respondent/workman. This clearly shows that even the complainant was not sure whether Ram Kishan, the respondent/workman formed the part of that unruling mob or not. The next is the contradiction with regard to the victim being rescued. The victim, namely Kharak Singh, has stated that he was rescued by Balwan Singh, Duty Officer and Bhagat Ram, Asstt. Fitter while as both Balwan Singh and Bhagat Ram do not support the version of the Kharak Singh, complainant. Balwan Singh, in fact, states that it was Jagbir Singh, Security Officer who had saved Kharak Singh while as Jagbir Singh says that he did not come to the rescue of Kharak Singh, AE and it was Balwan Singh. Therefore, there is not only a doubt about that identity of the assailant, namely the respondent/workman, but there is also a doubt about the incident actually having taken place not because the witnesses are giving different versions but they are giving contradictory versions which, in fact, raise a

doubt as to whether any such incident of assault of Kharak Singh, AE had taken place at all or not.

9. The learned Labour Court while analyzing the testimonies of these witnesses have come to a finding that the inquiry against the respondent/workman conducted by the petitioner/management was not free and fair in a detailed reasoned order after considering all the pleas raised by the respondent and this order was passed way back on 10th June, 1998. The said order is being assailed only in the year 2005 by the petitioner and thus there is a grossly inordinate delay in assailing the said order and in other words, it can conveniently be said that the petitioner having not chosen to assail the said order has accepted the same to be correct and therefore no infirmity can be found with the award dated 2nd December, 2003 where the first issue with regard to the legality and validity of the removal of the respondent/workman gets decided ipso facto in favour of the respondent/workman on the basis of the decision dated 16th October, 1998.

10. The second issue which arises for consideration is that the what relief the respondent/workman is entitled to in the light of first issue having been decided in his favour. Here the learned Labour Court has balanced the equities and granted the respondent/workman not only reinstatement with benefit of continuity of service but 50% of back wages. The learned Labour Court ought to have directed the parties to adduce evidence as to whether the respondent/workman was employed during the

pendency of the proceedings or not. Both the petitioner and the respondent have not adduced any evidence as there is no discussion about the same. The fact that the respondent/workman was working as a Driver with the petitioner/management and therefore was a skilled person, it is hard to believe that even this long period from 14th September, 1990 till the award having been passed on 2nd December, 2003, he would have remained idle, especially when there is great demand of the drivers to drive the vehicle especially in big cities. Therefore, it is safe and reasonable to presume that the respondent/workman must have been gainfully employed as a Driver even during this period and he cannot be permitted to take advantage of the pendency of the proceedings before the Court and get a substantial amount of public money without having worked. No work no pay should be the rule. I therefore feel that although that will be an ideal situation if the rule of no work no pay is followed, but the facts of the present case are such that the respondent/workman was not able to discharge the work of a Driver with the petitioner/management only on account of the acts of omission and commission on the part of the petitioner/management. Therefore, depriving him of the entire benefit of back wages would be also too harsh on him.

11. Under these circumstances, I feel that he deserves to be granted some amount of percentage of wages from the date of removal till the date of reinstatement. I accordingly direct the petitioner to pay to the respondent/workman 25% of the back

wages from the date of his removal till the date of his reinstatement within a period of eight weeks from today, failing which the said amount shall further carry an interest @ of 9% from the date of removal till the date of his reinstatement.

12. With this modification of the award dated 2nd December, 2003, the writ petition is treated as disposed of.

V.K. SHALI, J.

August 12, 2009
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