

R-139

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

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Judgment Reserved on: 07.12.2010
Judgment Delivered on: 09.12.2010

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RSA No.167/2003

DELHI TRANSPORT CORPORATION Appellant
Through: Mr.J.N.Aggarwal & Mr.Mayank Joshi,
Advocates.

Versus

SHRI SUBHASH CHAND Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the 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

INDERMEET KAUR, J.

1. The present appeal has impugned the judgment and decree dated 15.5.2003 which had endorsed the finding of the Trial Judge dated 07.2.1996 whereby the suit of the plaintiff Subhash Chand had been decreed in his favour.

2. The plaintiff had filed a suit for permanent and mandatory injunction with a prayer that a declaration be passed declaring that the order of punishment dated 16.8.1991 (whereby the plaintiff was awarded punishment of reduction in his pay scale from Rs.1130/- to his initial pay scale of Rs.950/-) be declared unwarranted and void ab initio with a direction that the defendant be directed to pay the salary of the plaintiff in terms of his pay scale of Rs.1130/-.

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3. Plaintiff was employed with the DTC as a conductor. He was in the pay scale of Rs.950-20-1150. He was made a victim of the malpractices of the checking staff. Plaintiff was performing his duties honestly and diligently but due to the connivance of some of the members of the checking staff of the DTC, false allegations had been levelled against him pursuant to which a charge sheet had been filed against the him. This was on 11.11.1997. Enquiry was held which was not in accordance with the procedure established by law and was in violation of the principles of natural justice. No opportunity of fair hearing or to defend his case had been granted to the plaintiff. He was not afforded proper assistance; he was forced to sign on blank papers; the witnesses of the department were tutored; report of the enquiry officer was illegal, unjust and perverse. The punishment order dated 16.8.1991 is liable to be set aside.

4. The written statement had disputed the allegations in the plaint. It was stated that the suit was barred and liable to be dismissed under Section 41(h) of the Specific Relief Act. The plaintiff being a “workman” it was the “Labour Court alone which had jurisdiction to try the present suit”. The conduct of the plaintiff even otherwise disentitled him to any relief.

5. On the pleadings of the parties, the following four issues were framed:

1. Whether the plaintiff is entitled to decree for declaration alongwith consequential relief of decree for mandatory injunction as prayed for? OPP

2. Whether the suit of the plaintiff is liable to be dismissed in view of Section 41(h) of the Specific Relief Act and the plaintiff being workman labour court has the jurisdiction to try and entertain the grievance of the plaintiff as alleged in para 2 of the preliminary objection? OPD

(iii) Whether the suit of the plaintiff is also liable to be dismissed in view of Section 41(i) of the Specific Relief Act as alleged in para 3 o the preliminary objection in the written statement ?OPD
(iv) Relief.

6. The oral and documentary evidence was examined. It was held that the Civil Court has jurisdiction whenever the Enquiry Officer has acted beyond the scope of his power and there are allegations of violation of principles of natural justice. It has come on record that the delinquent had filed an appeal against the order of his punishment but the appeal remained undecided; the enquiry proceedings had taken unnecessarily long. The penalty was found to be harsh and in violation of principles of the natural justice. Suit of the plaintiff was accordingly decreed in his favour. It was directed that that the original pay scale of Rs.1130/- be accorded to the plaintiff with other consequential reliefs.

7. In appeal vide impugned judgment dated 15.5.2003 the order of the Trial Court was upheld. Issue no.1 was dealt with in detail. On the re-examination of the oral and documentary evidence, the Court returned a fact finding that the Enquiry Officer was biased and influenced by the checking staff; the finding of the Enquiry Officer that the act of the delinquent in handing over an unpunched ticket to the checking staff amounted to an admission of guilt was an incorrect finding; there was no evidence before the Enquiry Officer to return a finding. The impugned judgment had noted that the departmental appeal had been filed by the delinquent on 25.09.1991 but even till the filing of the suit i.e. up to 25.8.1993 the same had not been disposed of. The enquiry had also remain pending for four long years, during which period the delinquent was placed under suspension. The judgment of the

Trial Court was upheld.

8. This is a second appeal. After its admission on 25.10.2004, the following substantial questions of law were formulated; they inter alia read as follows:

“1. Whether the civil suit filed by the Respondent, a workman within the meaning of Section 2(S) of the Industrial Disputes Act, 1947, was maintainable?

2. Whether the report dated 10th August, 1990 passed by the Inquiry Officer could have been set aside by the Civil Court?”

9. The respondent had been served but in spite of service he has chosen not to appear. It is noted in the record.

10. Appellant has placed reliance upon a judgment of the Apex Court reported in (2008) 2 SCC 350 Chief Engineer, Hydel Project & Ors. Vs. Ravinder Nath & Ors. to substantiate his submission that the present being a case of an “industrial dispute” the jurisdiction of the Civil Court was barred. It is submitted that in the case reported in (2005) 7 SCC 447 Rajasthan SRTC Vs. Zakir Hussain the Apex Court had clarified the nature of the reliefs which would fall within an “industrial dispute” barring the jurisdiction of the Civil Court. Applying the ratio of the said judgment, the jurisdiction of this court is barred; the dispute raised by the delinquent is an “industrial dispute”.

11. It is a well settled that a Court will not normally sit in appeal over the findings arrived at by the Enquiry Officer; the Court is not to examine or re-examine the evidence adduced before the Enquiry Officer. It is only in exceptional cases when the findings of the Enquiry Officer are perverse or opposed to the principles of natural justice that an interference is warranted by the Civil Courts.

12. The pleadings before the Civil Court as is evident from the plaint were that the Enquiry Officer had violated the rules of natural justice; no opportunity of fair hearing has been granted to the delinquent; there was no evidence before the Enquiry Officer to draw a finding of guilt against the delinquent; all this was done with the active connivance of the officers of the checking staff of the DTC pursuant to which the delinquent had been victimized and fallen a prey to them. The punishment of reduction of his pay scale of Rs.1130/- to the initial pay scale of Rs.950/- was unwarranted and disproportionate to the charge levelled against the delinquent which was to the effect that delinquent in his capacity as a conductor had not issued tickets to the travelling passengers. The Supreme Court in the case of Delhi Transport Corporation Vs. DTC Mazdoor Congress & Ors. reported in AIR 1991 SC 101 had held as follows:

“It is now well settled that the ‘audi alteram partem’ rule which is essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi-judicial orders but to administrative orders affecting prejudicially the party-in-question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule 1 Rules of natural justice do not supplant but supplement the Rules and Regulations.

The rights of the Government Companies and Public Corporations which are State instrumentalities within meaning of Article 14 and their employees cannot be governed by the general principle of master and servant, and the management cannot have unrestricted and unqualified power of terminating the services of the employees.”

13. The two fact finding Courts have returned a positive finding that the principles of natural justice have been violated; the orders of the Enquiry Officer were perverse; based on no evidence; the impugned judgment had noted that there was no evidence in the nature of the testimony of a passenger or a co-passenger who could state that the delinquent was not issuing tickets.

14. The Supreme Court in the case of Chief Engineer, Hydel Project (supra) had held that where a dispute is an “industrial dispute” arising out of right or a liability under the general common law and not under the Industrial Disputes Act, the jurisdiction of the Civil Court is in alternative leaving it to the election of the suitor concerned to chose his remedy for the relief which is competent to be granted in a particular remedy.

15. In the instant case what the plaintiff had sought as is clear from the averments in the plaint is a common law remedy. He has alleged that the Enquiry Officer was prejudiced and biased, being a case of no evidence his findings are perverse and opposed and in violation of the principles of natural justice as also the principles of audi alteram partem; a fair hearing had not been granted to the delinquent. He has been a victim of malafides. Jurisdiction of the Civil court is not ousted in such a case.

16. Substantial question of law is answered accordingly. There is no merit in the appeal; it is dismissed.

INDERMEET KAUR, J.

DECEMBER 09, 2010
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