

* **HIGH COURT OF DELHI : NEW DELHI**

WP (C) No.902/2007

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Darshan Singh

.....Petitioner

Through: Mr. Kunwar Arish Ali, Adv.

Versus

LeMeridian, Janpath, New Delhi

.....Respondent

Through: Mr. Kailash Vasdev, Sr. Adv.
with Mr. Sanjay K. Shandilya,
and Mrs. Ekta Mehta Advs.

Judgment pronounced on: 06.08.2010

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MANMOHAN SINGH, J.

1. The present writ petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India praying for order/directions to set the order dated 13.10.2006 passed by the Learned Labour Court and to direct the management to pay the salary w.e.f. 11.04.1996 till today, the balance bonus amount w.e.f. 19.07.1989 till today and the holidays fund since 1989 till today.

2. The brief facts of the case are that in 1989 the petitioner was appointed as a driver in the Hotel Le Meridian initially on the pay of Rs. 850/- per month and in 1992 and 1993 he got increments in his salary. He was also issued a letter of appreciation on behalf of the management

of Hotel Le Meridian with one week's basic pay extra as a reward.

3. In March 1996 the petitioner was suspended by the management of the Hotel Le Meridian and a chargesheet was issued against him according to which on 25.03.1996 at about 12:05 PM, the petitioner had indulged in a fight with Mr. Kartar Singh and used filthy language against him. On 11.05.1996 a domestic enquiry was initiated against the petitioner and a person who was earlier associated with the management was appointed as the Enquiry Officer. On 25.03.1997 on the basis of the said enquiry in which the complainant was not even produced by the management, the petitioner was dismissed from the service.

4. The petitioner has stated in the writ petition that during the domestic enquiry only two witness were examined by the Enquiry Officer as management witnesses and the complainant on whose oral complaint the whole enquiry was conducted was neither examined nor called by the management.

5. The petitioner preferred an industrial dispute in which the order dated 13.10.2006 was issued and being aggrieved by the said order petitioner has filed the present writ petition.

6. In the counter affidavit on behalf of the respondent it has been submitted that the respondent is not a State within the meaning of Article 12 of the Constitution of India and the petition filed is not maintainable in as much as the necessary parties have not been impleaded. It is further stated that the petitioner was chargesheeted in 1995 also on the ground of having indulged in a heated argument with

Mr. Avtar Singh and consequently he was suspended but after he tendered a written unqualified apology his suspension was withdrawn.

7. On 25.03.1996 the petitioner indulged in a physical fight using filthy language with Mr. Kartar Singh and two days later he was suspended by the hotel. After the petitioner was chargesheeted he and Mr. Kartar Singh, both were directed to submit their written explanations and failure to submit the written explanation was to be taken as acceptance of all the charges. The explanation given by Mr. Kartar Singh was found to be unsatisfactory therefore an enquiry was conducted against him but in the inquiry report submitted by the Enquiry Officer it was held that the charges against Mr. Kartar Singh could not be proved. The petitioner also submitted his reply to the chargesheet denying the charges against him hence the respondent appointed Mr. G.C. Welesha as the Enquiry Officer and started a domestic enquiry which was conducted in accordance with principles of natural justice. During the said enquiry the petitioner at his request was permitted to be represented by one Mr. Iqbal Ahmed, Advocate.

8. In the cross-examination, the petitioner has admitted that the enquiry proceedings were conducted in his presence and he participated in the same. He also admitted that the said proceedings bore his signature on all the pages i.e. Ex.WW1/M2 (running into 56 pages). He has also admitted in his cross-examination that during the enquiry proceedings he was represented by an Advocate. As far as his objection of the biasness of the Enquiry Officer is concerned, in cross-examination he has only explained that since Enquiry Officer was

appointed by the management, so he could say that he was favouring the management. No other reason could be assigned by him. He has also admitted that the enquiry proceedings were conducted in Hindi as per his prayer. Further as the petitioner failed to summon Kartar Singh and at the instance of the workman the matter was fixed for final arguments, the grievance of the petitioner in the present petition cannot be accepted.

9. The Enquiry Officer after considering all the documents and depositions on record held that all the charges against the petitioner have been proved. The respondent, after getting the Enquiry Report issued a show cause notice to the petitioner and after receiving its reply discharged the petitioner from his services.

10. The operative portion of the finding of the Enquiry Officer reads as under:

“In the present case, the workman was given full opportunity to defend himself. He was allowed to be represented by an advocate during enquiry proceedings. The workman claimed that he had stated the enquiry officer to be biased because he was appointed by the management. This is true about every enquiry. The enquiry officer is always appointed by the management and this fact cannot label the enquiry officer as biased. The workman has failed to prove specifically as to in what manner the enquiry officer was biased and therefore it cannot be said that the enquiry conducted against the workman was not fair. The workman even did not specify as to what principle of natural justice was not followed during enquiry proceedings.”

11. It appears from the charge sheet issued by the respondent that the abusive language used by the petitioner is so offensive and filthy for which I feel it not proper to reproduce in my order.

12. The petitioner after being dismissed from the services made a reference before the Labour Court for adjudication. Following issues were framed before the Labour Court:

- (I) Whether the enquiry held by the management was not fair and proper?
- (II) Whether services of the workman were terminated illegally and/or unjustifiably?
- (III) Relief.

13. After considering the settled law on the subject and rival submissions of the parties, the Labour Court refused to accept the relief claimed by the petitioner/workman. The main finding given by the Labour Court reads as under:

“17. It is the established law, that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by industrial tribunals as the tribunal is not required to consider the propriety or adequacy of punishment but in *Hind Construction and Engineering Co. Ltd. Vs. Their Workman (1965 1 LLJ462)* it was held by Hon’ble Supreme Court that “but where the punishment is shockingly disproportionate, regard being had to the particular conduct and the past record, or is such as no reasonable employer would ever impose in like circumstances, the tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice.

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19.

20. In the present case the management is running a Five Star Hotel. It is required from all its employees that they should be well behaved and courteous so that the customers do not feel averse to using the facilities provided by the management. The workman was working as a Driver with the management.

He not only indulged in physical fight with one co-worker in the cafeteria but also used filthy language which cannot be tolerated by even uneducated man. The charge sheet shows that on earlier occasions also the workman had indulged in fighting and quarreling with co-employees and he even had tendered apologies earlier. The conduct of the workman, in the present case is certainly act of indiscipline and his misconduct is such for which no sympathy can be shown to him, because of his incorrigible behavior. I am of the opinion that the penalty imposed by the management is proper.”

14. During the course of arguments of this petition, the learned counsel for the petitioner has made only single submission that Kartar Singh was the crucial witness in the matter who was working with the management and was not produced by the management as a witness which was necessary in this case in order to decide the real controversy between the parties. It appears from the record that the petitioner filed an application before the trial court to summon Shri Kartar Singh as a witness. The application of the petitioner was allowed vide order dated 6.11.2004 as the court felt that his evidence was relevant for the purpose of deciding the correctness and fairness of the controversy between the parties. The matter was thereafter adjourned from time to time to summon him, lastly when the matter was listed on 7.10.2005 it was recorded that the petitioner/workman has not served Kartar Singh properly. It was submitted by the petitioner workman that Kartar Singh was still in the employment of the management, so the management should be directed to produce the witness. The same request of the petitioner/workman was refused. At the same time at the instance of

the workman, the matter was fixed for arguments on the issue of enquiry on 6.1.2006. Admittedly, the order dated 7.10.2005 was not challenged by the workman/petitioner rather on his request the matter was fixed for final disposal. Hence, it appears from the circumstances that he had actually given up his right to summon Kartar Singh as his witness. I am of the view that now he cannot raise his same grievance in the present proceedings. Thus, the submission of the petitioner is rejected. No other submission has been made by the petitioner.

15. Learned counsel for the respondent has referred the decision of the Apex Court reported in (2005) 3 SCC 134; **Mahindra and Mahindra Ltd. vs. N.B. Narawade**, wherein in paras 11 and 12 it was observed:

“11. The learned counsel then pointed out that the Labour Court under a misconception in regard to its jurisdiction under Section 11-A of the Act without properly considering the decision of this Court in the case of **U.P. SRTC v. Subhash Chandra Sharma**, (2000) 3 SCC 324 which according to the learned counsel clearly laid down the parameters within which the Labour Court or any other court could operate while considering the question of proportionality of punishment erroneously proceeded to pass the impugned order. He placed special emphasis on the following paragraph of the above judgment of this Court:

“6. Whether it is open to the Industrial Tribunal or the Labour Court or the High Court to interfere with the quantum of punishment is, no longer, *res integra*, as the question has been answered by this Court several times in its various decisions. In *B.C. Chaturvedi v. Union of India* a three-Judge Bench of this Court has held that Section 11-A of the Industrial Disputes Act, 1947 confers

power on the Industrial Tribunal/Labour Court to apply its mind on the question of proportion of punishment or penalty. ... that this power is also available to the High Court under Article 226 of the Constitution, though it was qualified with a limitation that while seized with this question as a writ court, interference is permissible only when the punishment/penalty is shockingly disproportionate.”

12. Relying upon the ratio laid down by this Court in the said case *B.C. Chaturvedi vs. Union of India* the learned counsel submitted that unless the courts below come to a definite conclusion that the punishment awarded by the management is shockingly disproportionate to the misconduct as proved, it is not open to the Court to substitute such punishment merely because some power to alter the punishment is vested in it.”

16. In view of the above said facts and circumstances, I am of the considered view that the petitioner has failed to make out any case in his favour hence, no interference is required in the impugned order passed by the trial court. The writ petition is therefore dismissed. No orders as to cost.

MANMOHAN SINGH, J.

August 06, 2010
Jk/dp