

IN THE HIGH COURT OF DELHI AT NEW DELHI

W. P. (C) 3820/2006

Reserved on: August 16, 2011
Decision on: September 2, 2011

ASHOK MANUFACTURING CO. LTD. Petitioner
Through: Mr. Puneet Saini, Advocate.

versus

HARPAL SINGH Respondent
Through: Mr. Atul T. N., Advocate.

CORAM: JUSTICE S. MURALIDHAR

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

JUDGEMENT
02.09.2011

1. The Petitioner Ashok Manufacturing Company Limited ('management') challenges an Award dated 11th October 2004 passed by the Industrial Tribunal ('Tribunal') in I D No. 46 of 1989. By the impugned Award, the Tribunal held the termination of the services of the Respondent workman Shri Harpal Singh illegal and directed his reinstatement with full back wages.

2. The Petitioner also challenges an order dated 30th May 2002 passed by the Tribunal holding that the enquiry proceedings held before the dismissal of the Respondent workman was not fair and proper and was violative of principles of natural justice.

3. The Respondent workman was working with the Petitioner management for fifteen years as a machinist. The workman stated that he, along with his colleagues, joined the New Delhi General Mazdoor Union in 1987 and this annoyed the management.

Further, the Respondent along with his colleagues formed the Ashok Manufacturing Private Limited Employees' Union and served a charter of demands on the management. A memo dated 28th May 1988 was issued to him to which the workman replied on 29th May 1988. According to the workman, Mr. Achal Nath the Technical Director of the management called him into his cabin on 20th August 1988 and threatened to have him beaten up if he did not give up his union activities and protests. The workman wrote a letter dated 31st May 1988. This led to the workman being served with a charge sheet dated 2nd June 1988. One Mr. Y. D. Dhingra, Manager (R & D), a subordinate of Mr. Achal Nath was appointed as an Enquiry Officer ('EO'). Pursuant to the enquiry, the workman was dismissed from service.

4. A perusal of the enquiry report shows that at the first sitting on 11th June 1988, the workman asked that one Mr. Bijender Kumar Sharma, a co-worker, should be permitted to assist him in the proceedings. The management representative objected on the ground that Mr. Sharma was no longer an employee of the Company. This objection was upheld by the EO and the workman was asked to bring another representative. On 11th July 1988, the workman asked that he should be permitted to have the assistance of either a lawyer or the Union President. This was declined. The Tribunal found that Mr. Sharma has not taken his full and final dues and, therefore, the reason for the EO disallowing the request of the workman to have Mr. Sharma assist him in the proceedings was not a valid one. On this aspect, it is contended on behalf of the management that once an employee ceases to be in employment, his assistance could not be sought by the charged employee. Reliance is placed on the decision in ***Regional Authority, Dena Bank v. Ghanshyam (2001) 5 SCC 169*** which holds that where a workman is retrenched, the relationship of master and servant comes to an end. This Court is unable to accept the above submission. Where Mr. Bijender Kumar Sharma had not yet accepted his full and final dues and a dispute regarding his termination was still pending, it was a plausible view that his services as an assistant could be requisitioned by the workman.

5. The second ground on which the enquiry was held to be unfair was that the workman was asked to first lead his evidence although it was the management which had

chargesheeted him and the burden was on it to prove his misconduct. The learned counsel for the management has relied upon the reply given by the workman in his cross-examination where he agreed that the EO had followed the Certified Standing Orders ('CSO'). It is submitted that, therefore, the enquiry was held in a fair manner.

6. A perusal of the report of enquiry shows that the workman was asked to present his case first because he had alleged that he had been threatened by Mr. Achal Nath on 20th May 1988. When he declined the EO asked the management witnesses to be examined. Thereafter, the workman's witnesses were examined. Where an enquiry is held to enquire into allegations involving the Director himself, it should not be entrusted to an officer subordinate to the Director as there is a likelihood of the enquiry being biased, particularly where the Director in question is listed as a witness. In the circumstances, the refusal to permit the workman to be assisted by a co-worker did have an impact on his ability to defend himself. For instance, the CSO required a proper show cause notice to be served on the workman. The management has in the writ petition admitted that no show cause notice was issued to the workman. It also appeared that the enquiry which took place on 7th June 1988 was concluded in a short while on 15th October 1988. The opinion formed by the Labour Court in the order dated 30th May 2002, that the enquiry was not fair and proper, is a plausible view. Consequently, this Court is not inclined to interfere with the order dated 30th May 2002 of the Tribunal.

7. The management was permitted by the Tribunal to lead evidence to prove the workman's misconduct. The records show that despite several opportunities given to the management, it failed to lead any evidence. When on 28th October 2002 the management did not present its evidence, the costs of Rs. 300/- were imposed and the case was adjourned to 4th March 2003. On that date again, none appeared and even the costs of Rs. 300/- were not paid. The management's evidence was closed. Thereafter an application was made before the Tribunal by the management for setting aside the order dated 4th March 2003. This application was dismissed by the Tribunal on 10th September 2003. The said order was not challenged by the management. The Petitioner clearly has no explanation to offer for failing to lead evidence in the Tribunal despite opportunities. In the circumstances, the decision of the Tribunal to accept the

case of the workman that his services were terminated with a view to keeping him away from union activities and without holding a fair enquiry cannot be faulted.

8. It is pointed out by the Petitioner that the workman had accepted Rs. 6704.02 and Rs. 16520.29 as his gratuity amount in full and final settlement. He had withdrawn his Provident Fund on 22nd September 1989 and, therefore, he had forfeited his right to challenge the order of dismissal. The workman on the other hand, had enclosed a copy of letter dated 30th November 1988 in which he clearly stated that he has accepted the above amounts under protest “without prejudice to any claim and contention for reinstatement with continuity of service and full back wages”. There is no denial by the Petitioner that indeed the workman had written the above letter in which, *inter alia*, it stated that “I have challenged the management’s action in illegally and wrongfully terminating my permanent services and also have raised industrial dispute in conciliation”. Consequently, this Court finds no merit in the plea of the Petitioner that on account of the workman having received the aforementioned amounts, he was precluded from raising an industrial dispute.

9. The workman was superannuated in December 2004 and, therefore, now the question of his being reinstated in service does not arise. Even the application under Section 17B of the Industrial Disputes Act, 1947 only resulted in his getting 17B wages for a very short period, i.e., from the date of the Award till the date of his superannuation on 31st December 2004.

10. On an application by the workman by an order dated 10th December 2009, the Petitioner was directed to deposit 50% of the Award amount. However, the application by the workman to have that amount released to him was dismissed as not pressed. Attempts thereafter for settling the dispute have not been successful. With this Court not finding any ground having been made out for interference with the impugned Award, it is directed that the amount deposited in this Court by the Petitioner, together with interest accrued thereon, should be immediately released to the Respondent workman upon proper identification. In terms of the Award the Respondent workman would be entitled to full back wages with all increments and continuity of service till

the date of his superannuation. The balance payable to the workman, after deducting the amounts already paid to him, should be paid to the workman by the Petitioner management within a period of four weeks from today.

11. The writ petition is accordingly dismissed with costs of Rs. 5,000/- which will be paid by the Petitioner to the Respondent within a period of four weeks.

S. MURALIDHAR, J.

SEPTEMBER 2, 2011

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