

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

Date of decision: 11th July, 2011.

+ W.P.(C) No.6004/2008

% RAMESH CHAND RANA Petitioner
Through: Mr. Aeltemesh Rein, Ms. Maheravish Rein, Ms. Shamsravish Rein & Mr. Siddharth Thapliyal, Advocates.

Versus

MANAGEMENT OF M/S XEROX MODICORP LTD. Respondent
Through: Mr. Raj Birbal, Sr. Adv. with Ms. Raavi Birbal & Mr. Abhay Kumar, Advocates.

**CORAM :-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

- | | | |
|----|---|---------------|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Not necessary |
| 2. | To be referred to the reporter or not? | Not necessary |
| 3. | Whether the judgment should be reported in the Digest? | Not necessary |

RAJIV SAHAI ENDLAW, J.

1. The petitioner workman impugns the award dated 16th February, 2008 of the Industrial Adjudicator on the following reference:-

“Whether the services of Sh. Ramesh son of Sh. Dharam Singh Rana have been terminated illegally and/or unjustifiably by the management, and if so, to what sum of money as monetary relief alongwith consequential benefits in terms of existing laws/Govt. Notifications and to what other relief is he entitled and what directions are necessary in this respect?”

holding that there was no reason to interfere in the penalty of dismissal awarded by the respondent employer to the petitioner workman on the basis of domestic inquiry by the disciplinary authority and that the services of the petitioner workman had been legally and justifiably terminated.

2. This writ petition has been filed claiming only the following relief:-

“(i) Set aside & quash award dt. 16/2/2008 passed in ID No.853/06/01 by Shri. Rakesh Siddhartha, Presiding Officer, Labour Court No.XVII, Karkardooma Courts, Delhi with all consequential reliefs to the poor worker.

(ii) Award all costs of litigation to the petitioner.

(iii) Pass any other further order / orders / directive / directives / writ or writs according as your Lordships may deem fit and proper in the circumstances of the case in favour of the petitioner.”

3. The award dated 16th February, 2008 is subsequent to the earlier order dated 19th October, 2007 of the Industrial Adjudicator on the preliminary

issue framed as to the validity of the departmental inquiry held and finding the domestic inquiry preceding the order of termination to have been conducted in a fair and proper manner. The discussion in the award is thus only qua the quantum of punishment. The Industrial Adjudicator, in the impugned award, has held the punishment of termination to be proportionate to the charge against the petitioner workman of, on 2nd June, 2010 at 1810 hours in the evening having entered into the cabin of the General Manager (Integrated Marketing) of the respondent employer carrying Toner and black powder from the photocopying machine and a wreath of old shoes and chappals wrapped in a gift pack and having abused the said General Manager, blackened her face and put the wreath of old shoes and chappals around her neck and of which charge the domestic inquiry had found the petitioner workman to be guilty of.

4. The petitioner workman has not claimed any relief in the petition qua the order dated 19th October, 2007 of the Industrial Adjudicator finding the domestic inquiry to be fair and proper. Rather, the petitioner workman has not even annexed to the petition a copy of the said order.

5. When the counsel for the petitioner workman sought to raise argument of the domestic inquiry having been biased, it was enquired from the counsel for the petitioner workman as to how without impugning the order dated 19th October, 2007 of the Industrial Adjudicator and without even filing copy thereof, the said argument could be raised. The counsel had no answer. Though in my view, the said argument cannot be considered for this reason alone but since the record of the Industrial Adjudicator has been requisitioned in this Court, this Court to satisfy the judicial conscience has considered the challenge to the findings of the Industrial Adjudicator of the domestic inquiry being fair and proper.

6. The petitioner workman in the writ petition in this regard has stated that the petitioner workman was in the domestic inquiry proceeded against *ex parte*; that the respondent employer's witnesses were not allowed to be cross-examined; that the application of the petitioner workman before the Inquiry Officer for setting aside of the *ex parte* was not considered.

7. The Industrial Adjudicator in the order dated 19th October, 2007 has on the basis of evidence led before him held that the petitioner workman in

his cross-examination had admitted that he had been attending the proceedings before the Inquiry Officer and the said proceedings bore his signatures; that the charge sheet was duly served on him and he had submitted a reply thereto; that he had cross-examined all witnesses of the respondent employer; that on the day when he was proceeded against *ex parte*, he claimed to have left the inquiry proceedings to withdraw his dues but there was no reason for the petitioner workman to remain absent since Accounts Branch was situated in the same building; that the petitioner workman had abandoned the inquiry; that the Inquiry Officer in his evidence had asserted that he did not receive any request from the petitioner workman for setting aside of the *ex parte* order. The Industrial Adjudicator as such held that in the circumstances, the petitioner workman could not have lost track of the domestic inquiry and the Industrial Adjudicator further held that the petitioner workman had failed to prove that he had applied for setting aside of the *ex parte*. It was further held that such plea appeared to have been taken as an afterthought. It was further held that the petitioner workman had been unable to prove any specific instance whereby the

inquiry could be termed not fair and the resultant report said to be perverse. It was yet further held that the onus was on the petitioner workman to prove that the inquiry was perverse and the petitioner workman had failed to discharge the said onus.

8. The counsel for the petitioner workman before this Court also has not been able to find any fault with the order dated 19th October, 2007 of the Industrial Adjudicator. Though the record of the inquiry proceedings is also before this Court but the counsel for the petitioner workman has not shown therefrom also as to what is the perversity, unfairness or unreasonable in the same. I may notice that the record of the inquiry is voluminous and is found to be running into over 400 pages. As per the report of the Inquiry Officer, as many as 20 sittings between 21st June, 2000 and 5th February, 2001 were held by the Inquiry Officer. Without the counsel for the petitioner workman being able to show as to at what stage the Inquiry Officer was unfair or biased against the petitioner workman and in what manner, this Court will not of its own as an Appellate Court, review the record of the inquiry to form an opinion whether the same was fair or not. The finding of the domestic

inquiry being fair and proper is a finding of fact, though laced with law and without any perversity being shown, no case for interference in exercise of powers of judicial review is made out.

9. I may record that the counsels for the parties at the beginning of the hearing had stated that counter affidavit had been filed by the respondent employer and which was not on record. Another copy of the counter affidavit was handed over by the counsel for the respondent employer in the Court and which has been taken on record. Similarly, the counsel for the petitioner workman had handed over Rejoinder thereto in the Court and which has also been taken on record.

10. There is thus no merit in the petition; the same is dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

JULY 11, 2011
bs.

(corrected and released on 28th July, 2011)