

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION(C) NO.122/2010

Date of Decision: 14th February, 2011

SARWAN KUMAR Petitioner
Through Mr. Suwarn Rajan, Advocate

versus

DTC. Respondent
Through Mr. Hari Om Sharan Singh, Adv. for
Ms. Saroj Bidawat, Advocate

CORAM:
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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

SUDERSHAN KUMAR MISRA, J.(Oral)

1. The instant writ petition has been preferred against the order dated 4th January, 2008 and the award dated 29th January, 2008, whereby the Labour Court held that the petitioner was guilty of misconduct and that the punishment imposed upon him is neither disproportionate nor harsh.

2. It is the case of the petitioner that he was appointed as a driver with the respondent in the year 1988 and continued to work with the corporation till his services were terminated by the respondent because he was absent from duty for a period of 136 days without taking permission from the competent authority. The petitioner states that this came about because he was suffering from Jaundice and Typhoid during this period and he had accordingly moved an application seeking leave for that period. However, on 30th June, 1994 the concerned officer of the department made a report to the competent authority that the petitioner has been absent from the duty of the respondent since 10th June, 1994. It was also stated therein that the petitioner had informed the respondent about his absence only for the period between 15th June, 1994 to 19th June, 1994 and that no further information has been received from the petitioner since 19th June, 1994.

3. Thereafter, on 25th May, 1995 a charge sheet was issued to the petitioner alleging that the petitioner had remained absent from duty for 136 days during the period of 1st July, 1994 to 31st March, 1995 without taking permission from the competent authority and that the aforesaid action amounted to misconduct in terms of paragraph 19 (e) (h) & (m) of the Standing Orders of the

Delhi Transport Corporation. The relevant paragraph of the Standing Orders reads as follows:

"4. Absence without permission –

(1) An employee shall not absent himself from his duties without having first obtained the permission from the Authority or the competent officer except in the case of sudden illness. In the case of sudden illness he shall send intimation to the office immediately. If the illness lasts or is expected to last for more than 3 days at a time, applications for leave should be duly accompanied by a medical certificate from a registered medical practitioner or the Medical Officer of the DTC. In no case shall an employee leave station without prior permission.

(ii) Habitual absence without permission or sanction of leave and any continuous absence without such leave for more than 10 days shall render the employee liable to be treated as an absconder resulting in the termination of his service with the Organization."

The general provisions with regard to this type of absence set down are as follows:

"19. General Provision – Without prejudice to the provisions of the foregoing Standing Orders, the following acts of commission and omission shall be treated as misconduct:

(a)

(h) Habitual negligence of duties and lack of interest, in the Authority's work."

Clause 15 of the Regulations so far as relevant reads as follows:

"2. Discipline – The following penalties may, for misconduct or for a good and sufficient reason be imposed upon an employee of the Delhi Road Transport Authority:-

(i)
(vi) Removal from the service of the Delhi Road Transport Authority.

(vii) Dismissal from the service of the Delhi Road Transport Authority.
....."

4. The enquiry officer held that the allegations of misconduct leveled against the petitioner stood proved. On the basis of the finding of the enquiry officer, the disciplinary authority terminated the service of the petitioner on the ground that he had remained unauthorizedly absent from duty for 136 days from 1st July, 1994 to 31st March, 1995. The dispute was then referred to the Labour Court for adjudication.

5. In the impugned Order dated 4th January, 2008, it was held by the Labour Court that the testimony of the workman, wherein he himself admitted that he had received the charge sheet and had also appeared before the enquiry officer, makes it clear

that the enquiry was conducted in accordance with the principles of natural justice.

6. Further, in the impugned award dated 29th January, 2008, the Labour Court also observed that the workman failed to show that he remained on leave after due permission from the competent authority. Moreover, the past record of the workman shows that there were several adverse entries against him, out of which one is regarding unauthorized absence from duty from 20th June, 1994 to 31st March, 1995 and another was for unauthorized absence from duty for 91 days from July, 1993 to June, 1994. Hence, the Court concluded that the act of the workman constitutes serious misconduct and the punishment imposed upon him is neither unjustified nor disproportionate to his misconduct. Consequently, the Labour Court passed the impugned award upholding the decision of the respondent to terminate the services of the workman.

7. In the writ petition, counsel for the petitioner contends that the Labour Court failed to appreciate the fact that it is not the case of the respondent that the absence of the petitioner was not due to his illness but was, in fact, deliberate and negligent. Counsel further submits that illness of a person is not in his control and if he remains absent for this reason he cannot be held guilty of

misconduct. Therefore, since the petitioner was absent from his duty due to medical reasons, he cannot be held guilty of misconduct. In support of this contention, the petitioner relies on the case of **DTC v. Sardar Singh** AIR 2004 SC 4161, wherein the Supreme Court held that absence due to medical or emergency reasons is considered an exception and is not misconduct. He further submits that, in any case, the punishment of removal from service for absence due to serious illness is an exceptionally harsh punishment and disproportionate to the misconduct.

8. The respondent contends that the petitioner did not submit any leave application for the period he remained absent from his duty, and, in fact, the medical certificates were produced for the first time only before the enquiry proceedings. Counsel for the respondent also relies on the **Sardar Singh's** case (supra) wherein, inter alia, it was also held that mere making of an application after, or even before, absence from work does not meet all the requirements and it is also necessary for the concerned employee to obtain leave in advance. It was also held in paragraph 9 of that case that :

“When an employee absents himself from duty, even without sanctioned leave for very long period, it prima facie shows lack of interest in work. Para 19(h) of the Standing Orders as quoted above relates to habitual negligence of duties and lack of

interest in the Authority's work. When an employee absents himself from duty without sanctioned leave the Authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's work. Ample material was produced before the Tribunal in each case to show as to how the concerned employees were remaining absent for long periods which affect the work of the employer and the concerned employee was required at least to bring some material on record to show as to how his absence was on the basis of sanctioned leave and as to how there was no negligence. Habitual absence is a factor which establishes lack of interest in work."

However, the petitioner failed to prove that he had submitted leave applications, and even if submitted, that they were duly sanctioned.

9. It is, therefore, the case of the respondent that the petitioner had taken unauthorized leave, which amounted to misconduct. On the other hand, the petitioner denies this allegation and contends that he had not committed any misconduct as his absence from duty was for justified reasons and there was neither negligence nor any lack of interest on his part. The Standing Orders of the Delhi Transport Corporation require that leave must be secured in advance. However, in case of an emergency, information must reach the DTC within three working days. Admittedly, the

petitioner resides in Sonipat (Haryana) from where he came for work to Delhi everyday. According to the petitioner, suddenly and unexpectedly, on 10th June, 1994, he fell ill. Assuming it was so, even then the petitioner was obliged to send an intimation of his incapacitation, "immediately", in terms of the aforesaid Regulations of the DTC.

10. I have put a question to the counsel for the petitioner as to when did the petitioner send intimation of his illness to the respondent. His reply is that the petitioner fell ill on 10th June, 1994, and that the petitioner got leave sanctioned for the period 15th to 19th June, 1994. He also stated that the report of 30th June, 1994, which was issued by the respondent regarding the petitioner's absence, clearly states that the petitioner had given information of his absence for the period from 15th - 19th June, 1994, i.e. for four days. Nothing further is stated by counsel for the petitioner in reply to the above query or with regard to the remaining days, out of a total of 136 days, on which his client remained absent. The aforesaid report also states that the petitioner last attended his duties on 9th June, 1994, meaning thereby, that the petitioner did not attend his duties from 9th June, 1994 onwards. Not only that, there was also no information from 9th June, 1994 to 14th June, 1994 with regard to the status of the petitioner's health.

11. Furthermore, the Standing Orders state, inter alia, that, "if the illness lasts or is expected to last for more than three days at a time, application for leave should be duly accompanied by medical certificate from the registered medical practitioner or the medical officer of the DTC." In order to justify his conduct in the light of the Standing Orders, the petitioner relies on the answers to two questions which were asked by the Enquiry Officer to the petitioner. The first question was whether the petitioner had given any application with regard to the leave, to which the petitioner replied that he had sent a medical certificate to the office of the DTC. The second question was whether the petitioner had given information about the leave on time. To this, the petitioner answered that he had sent an application for leave through UPC within time. An examination of these answers shows that no particulars whatsoever have been given by the petitioner in his answers. Not only that, no particulars have been furnished even before the Labour Court.

12. Counsel for the petitioner states that his client has annexed the relevant UPC receipts, through which he had sent his medical certificate to the respondent, along with the writ petition. According to counsel for the petitioner, these receipts are dated 28th June, 1994, which would mean that they were despatched on 28th June, 1994. An examination of the medical certificate which is relied

upon by the petitioner, and which, according to counsel for the petitioner, was also inserted and dispatched along with the other documents by UPC to the respondent, shows that it was issued on the night of 25th October, 1994. It was, therefore, not possible for this document to have been transmitted on 28th June, 1994, even assuming that this UPC receipt is to be relied upon. When this aspect was brought to the notice of counsel for the petitioner during the course of hearing, he stated that it is possible that the medical certificate of the petitioner, which is dated 25th October, 1994, "might not have gone". Further, the last endorsement on another the document, which seems to be the treatment sheet, also purported to have been sent through the same UPC on 28th June, 1994, is dated 28th September, 1994. This makes it obvious that this document was also not sent. The only document which is dated before 28th June, 1994 is a diagnostic report dated 10th June, 1994. Counsel for the petitioner further states that when the UPC was sent, no covering letter was sent along with the Medical Certificate.

13. It is the case of the respondent that it had not received any information with regard to the petitioner's alleged illness. Admittedly, no allegations of any bias or malafides or of the petitioner being singled out on account of enmity with anyone have been made. Hence, there is nothing to presume that the respondent

would have suppressed any record regarding the documents or the medical certificate or had not maintained its records in the normal course.

14. There was no acceptance or finding by the Enquiry Officer to the effect that the petitioner had acted in conformity with the Standing Orders applicable to him or that he had given due intimation of his illness, in terms thereof, to the respondent. Furthermore, there is no finding that there was any acceptance of the request for leave, if the same was sent through UPC. These facts have not been proved by the petitioner despite opportunity given by the trial court.

15. The Supreme Court, in the **Sardar Singh** case, observed that unauthorized leave, or remaining absent for a long period without sanctioned leave, showed that the employee was habitually negligent in his duties and exhibited lack of interest in the work and therefore, it amounted to misconduct within paragraph 4(ii) and 19(h) of the Standing Orders of the DTC and the management in a given case would be well within its right to terminate the services of the workman. It was also held therein that the only exception to the requirement of prior permission is in case of sudden illness. However, even there, conditions have been stipulated, non-observance of which renders the absence

unauthorized. Under the circumstances, I do not think that the finding in the impugned order is perverse or irrational requiring interference by a writ court.

16. This petition is, therefore, dismissed.

SUDERSHAN KUMAR MISRA, J

FEBRUARY 14, 2011