

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

% W.P. (C) 1188/2010

+ Date of Decision: 16th July, 2012

Delhi Transport Corporation Petitioner

! Through: Mr. S.K.Bansal, Advocate

Versus

\$ Jai Prakash Respondent

Through: Mr. Ajit Nair, Advocate

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J:

The petitioner (DTC) by way of this writ petition has sought quashing of the award dated 2nd September, 2009 passed by Labour Court whereby the respondent-workman, who was employed as a Cleaner with DTC and was removed from service by the management for his having remaining unauthorisedly absent from duty for long periods, was ordered to be re-instated in service with all consequential benefits.

2. The facts which led to the filing of this petition and which only were highlighted from both sides during the course of hearing may be set out at the outset. The respondent was served with a charge-sheet on the allegations that he during the year 1991 he availed leave for 173 days without pay and had remained unauthorisedly absent for 21 days in the year 1992 and had also availed 119 days leave without pay which reflected his lack of interest in his duties. He filed his reply to the charge-sheet giving the reasons for remaining absent from duty during the period mentioned in the charge-sheet. However, that explanation was not found to be satisfactory by the management of DTC and so a regular departmental enquiry was ordered. Enquiry was then initiated against the respondent and he accepted the allegations made in the charge-sheet the enquiry officer submitted his report to the Disciplinary Authority to the effect that charges stood established against the respondent. The Disciplinary Authority agreeing with the findings of the Enquiry Officer imposed the punishment of removal of the respondent from service w.e.f. 26.03.1993.

3. Feeling aggrieved, the respondent raised an industrial dispute which was referred for adjudication to the Labour Court.
4. The respondent-workman filed a statement of claim before the Labour Court claiming that his services had been illegally terminated on the ground of his remaining absent unauthorisedly despite his informing the management about the reasons and circumstances due to which he had not attended his duties during the period in question and which circumstances were beyond his control. He also pleaded that the enquiry conducted by the petitioner was nothing but an eye wash.
5. The petitioner-management filed its written statement and refuted the allegations made by the respondent-workman and claimed that he was removed from service since he had remained absent unauthorizedly which allegations he had admitted also during the enquiry. It was also pleaded that the past record of the respondent-workman was also not good.
6. The Labour Court decided the respondent's challenge to the validity of the enquiry as a preliminary issue and decided it

in favour of the management vide order dated 31.07.09. In that order the Labour Court had observed that:-

“Nothing is stated by the workman as to how the enquiry was not fair and violative of principles of natural justice. Workman is further unable to establish that the findings were perverse. From the reply to the charge sheet at Ex.MW-1/5, it is revealed that the workman was unable to produce the medical certificate of his mother which was lost in the bus. Workman admitted the charges in his reply to the charge sheet. In view of the above, I do not find any perversity or violation of principles of natural justice in conducting the enquiry.”

7. Thereafter, the parties were heard on the point of punishment given to the respondent-workman for remaining absent from duty and quite strangely the Labour Court once again went into the question of reasons for absence of the workman from duty and came to the conclusion that his absence was because his mother had been terminally ill and which fact was established from medical papers submitted by him and his remaining absent did not depict his lack of interest. This conclusion was arrived at even though while deciding the enquiry issue it had been held that the workman had not produced medical certificates of the illness of his mother which had forced him to sit at home for

such a long period. Thus, in the final award the Labour Court directed respondent's reinstatement in service without back wages.

8. Feeling aggrieved, the petitioner-management came before to this Court with the present writ petition.

9. After hearing the learned counsel for the parties I have unhesitatingly come to the conclusion that this is a fit case for interference by this Court in the impugned award which is wholly unsustainable and unreasonable. No person would have come to the conclusion which the Labour Court had arrived at in the final award after holding that the enquiry officer's findings holding the respondent guilty were not perverse.

10. The learned counsel for the workman-respondent supported the impugned award and relying upon two judgments of the Supreme Court in **"MAVJI C. LAKUM Vs. CENTRAL BANK OF INDIA"**, (2008) 12 SCC 726 and **"KRUSHNAKANT B. PARMAR Vs. UNION OF INDIA & ANR."**, Appeal No. 2106 of 2012, 2012 Law Suit(SC)110 contended that the Labour Court had the discretion to interfere

with the punishment under Section 11-A of the Industrial Disputes Act, 1947 and that discretion cannot be said to have been exercised arbitrarily by the Labour Court justifying interference by this Court in exercise of writ jurisdiction which is not in the nature of appellate jurisdiction. It was also contended that under Section 11-A the Labour Court was empowered to pass any order including that of reinstatement of the workman even after coming to the conclusion that he was removed for some misconduct after a proper enquiry.

11. However, I am unable to persuade myself to accept the above argument of the learned counsel for the respondent-workman. The Labour Court having upheld the management's case that the respondent-workman was removed from service after holding a fair and proper enquiry and that the enquiry officer's conclusion was not perverse had no option to once again enter into the question of reasons for the absence of the respondent and to let off the respondent-workman without any punishment for the misconduct which had been found to have been committed by him. If at all the Labour Court was of the view that the absence of the respondent-workman for such long

period was justified it should have held the conclusion of the enquiry officer to the contrary to be perverse while deciding the enquiry issue. Section 11-A does empower the Labour Court to give any relief to a workman who has been discharged, removed or dismissed from service for some misconduct but the said provision does not empower the Labour Court to reward a guilty workman and that is what has been done by the Labour Court in the present case. The Labour Court can substitute the punishment awarded by the employer with any lesser punishment but to hold that no punishment deserved to be given to the delinquent workman even though found guilty of misconduct is not within the powers of the Labour Court. In fact even in the final award also it was observed by the labour Court that the workman could not claim any benefit for his 'follies'.

12. And considering the exceptionally long period of respondent's absence from duty during the 1991-92 it cannot be said that the punishment of removal from service was shockingly disproportionate to the alleged misconduct and

highly excessive which justified interference by the Labour Court, what to talk of letting him go scot free.

13. I, therefore, allow this writ petition and set aside the impugned award passed by the labour Court.

P.K.BHASIN, J

JULY 16, 2012