

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

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W.P.(C) NO. 4433 OF 2007

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Date of Decision: March 5, 2012

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SUDESH YADAV

..... Petitioner

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Through: Ms. Anita Sharda, Advocate

Versus

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OBEROI FLIGHT SERVICES

..... Respondent

Through: Mr. Jayant K. Mehta & Mr. Sukant
Vikram, Advocates

CORAM:

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HON'BLE MR. JUSTICE P.K.BHASIN

JUDGMENT

P.K.BHASIN, J

This writ petition has been filed under Article 226 of the Constitution of India by the petitioner for issuance of a writ of certiorari quashing the order dated 18.07.2006 and final award dated 19.12.2006 passed by the Labour Court in a case relating to the industrial dispute about the dismissal of the petitioner from service by her employer, the respondent herein, which had been referred to it by the appropriate Government under Section 10 of the Industrial Disputes Act.

2. The relevant facts are that the petitioner was employed with the respondent as 'Cutlery Packer' in the Kitchen Stewarding Department. After having worked for almost 19 years with the respondent she was served with a charge-sheet dated 24.07.2000 in which the following charge was levelled against her:-

"You were on general shift-duty from 0930 hrs to 1800 hours of 19th July, 2000. While leaving the work premises after completing your duty on 19th July, 2000 at about 1810 hrs, Mr. Vinay Kumar, Security Guard, at the Security Office, subjected your bag and belongings to routine search. While searching your bag and the bag containing umbrella, Mr. Vinay Kumar found a polythene bag containing chocolates inside your umbrella(eleven numbers of chocolates CRUNCHIE, of British Airways, for which we are the custodian). When Mr. Vinay Kumar and Mr. R.S. Yadav, the Duty Security Supervisor, enquired about the contents of the polythene bag, you said you don't know any thing about it. Mr. Vinay Kumar immediately took possession of the polythene bag of chocolates. The matter was reported to the Duty Officer, Mr. S. Trivedi. The items were sealed and signed by the concerned witnesses and handed over to the Chief Security Officer for safe custody."

3. In the reply submitted by the petitioner to the charge-sheet she had refuted the aforesaid allegation levelled against her. Thereafter, an enquiry was held against her and on the basis of the report of the enquiry officer holding her guilty of the aforesaid charge, she was dismissed from service by the respondent-management on 14.12.2000.

4. Feeling aggrieved, the petitioner raised an industrial dispute challenging the legality of her dismissal from service. That dispute came to be referred to the Labour Court in due course. The petitioner in her statement of claim filed before the Labour Court alleged that she had been illegally dismissed from service and that in the enquiry

even the charge against her was not proved. The respondent filed a written statement to the petitioner's statement of claim refuting her claim that the enquiry was not held fairly or that the charge against her had not been established during the enquiry.

5. The Labour Court had framed the following issues for trial:

- (i) *Whether the enquiry conducted against the workman/claimant was not fair or proper?*
- (ii) *Whether the dismissal of Smt. Suresh Yadav is illegal or unjustified?*
- (iii) *Relief.*

6. Issue no. 1 was treated as a preliminary issue and vide order dated 18.07.2006 it was held by the Labour Court that a fair and proper enquiry was conducted and in that enquiry the charge against the petitioner had been duly proved. However, the Labour Court while passing the final Award came to the conclusion that the punishment of dismissal from service given to the petitioner was shockingly disproportionate to the charge levelled against her and passed the following order:-

“.....I am of the view that it will be appropriate to give direction to the management to reconsider the penalty imposed. I am accordingly directing the management to reconsider the penalty imposed in this case and give her any other punishment to the workman proportionate to the misconduct committed which may not necessarily mean taking the workman back on duty and communicate the same to the workman within three months from now failing which the workman would be entitled to reinstatement in the service with continuity of service.”

7. Aggrieved by the Award of the Labour Court holding that the petitioner had been rightly held guilty in the enquiry of the charge leveled against her for which she needed to be punished with a punishment 'short of her dismissal from the service proportionate to the misconduct committed service which may not necessarily mean taking the workman back on duty', the present writ petition was filed by the petitioner praying for setting aside the findings of the Labour Court on the issue of enquiry as also the final Award.

8. I have heard the learned counsel for the parties and also examined the record. The learned counsel for the petitioner argued that the petitioner was merely found to be in possession of eleven chocolates at the time when her bag was checked by the security guard but the management had not proved by any evidence that those chocolates were stolen by her and, therefore, the enquiry officer's conclusion that the charge of theft against the petitioner stood established merely on the basis of evidence that she was found in possession of chocolates was a perverse conclusion.

9. Learned counsel for the management, on the other hand, had submitted that though there was no evidence adduced in the enquiry by the management to show that actually there was any shortage of chocolates, which were to meant for being served to the passengers in the flights of British Airways, in the stocks of the management on the day when the petitioner's bag was checked while leaving her work place but that fact was of no consequence since it was for the petitioner to show that the chocolates recovered from her possession

were not stolen ones and she having failed to discharge that burden during the enquiry had been rightly held guilty by the enquiry officer as well as the Labour Court and therefore there was no scope of any interference by this Court in exercise of its writ jurisdiction which is quite limited in service matters and particularly in cases of dismissal etc. of industrial workers on account of serious misconduct after proper enquiry.

10. After having perused the impugned order on the issue of enquiry and the evidence adduced during the enquiry, I find myself in full agreement with the submission of the learned counsel for the petitioner that the only thing established during the enquiry was that the petitioner was found in possession of some chocolates at the time when her bag was checked by the security guard Mr. Vinay Kumar and that mere possession of chocolates by the petitioner did not mean that those chocolates were stolen by her. In fact, during the enquiry the security guard Mr. Vinay Kumar Sharma(MW-3) himself had stated in his evidence that when he had asked the petitioner to show him her bag she had told him that she was having chocolates in her bag and before the enquiry also when he had informed his Chief Security Officer about the recovery of chocolates from the petitioner vide his complaint dated 19.7.2000(marked as Ex.M-7 in the enquiry) it had been stated by him that when he had asked the petitioner to get her bag checked she had told him that there were chocolates in her bag. Therefore, it was rightly submitted by the counsel for the petitioner that when the petitioner herself had told the security guard

before checking that she was having chocolates in her bag then it became all the more necessary for the management to have led further evidence by examining someone to show that there was theft of chocolates from the store where eatables were being stored. That having not been done, the enquiry officer's decision that she was guilty of having stolen the chocolates was clearly a perverse decision.

11. This argument was raised before the Labour Court also but was rejected in the following manner:-

“The present case cannot by any stretch of imagination said to be a case based on no evidence.....It is not for this Court to see whether the evidence available with the enquiry officer in the domestic enquiry was sufficient to reach the findings given by him This Court is not sitting in appeal.....

In my opinion, the fact that there was no report made by British Airways that its chocolates had been stolen or there was no record to prove shortage in the stock, cannot be a ground to vitiate the findings of the enquiry officer.”

12. In my view, these findings of the learned Labour Court are totally unreasonable and so unsustainable since it was required to be seen by the Labour Court whether the charge of theft of chocolates, and not merely the recovery of chocolates, had actually been established or not in the enquiry since as far as the possession of chocolates by the petitioner is concerned, the same even as per the management's own witnesses was made known to them by the petitioner herself when she was asked to have her bag checked. In the entire order on the issue of enquiry the learned Labour Court did not even notice as to what evidence was adduced by the management to establish the charge of theft and after simply the argument raised on

behalf of the petitioner that theft was not established it rejected that argument by simply observing that it was not its duty to go into the evidence adduced in the enquiry. Since the Labour Court had failed to discharge its duty to deal properly with the submission of the petitioner that the enquiry officer's report was perverse being based on no evidence of theft, this Court had to examine that evidence to satisfy itself whether there was any merit in this contention of the petitioner or not and it was then found that the enquiry had proceeded only to establish that some chocolates were recovered from the bag of the petitioner and not that those were stolen ones. So, the Labour Court's order on this issue are totally unsustainable as it could not be concluded on the basis of evidence of the checking officials only that the petitioner had stolen the recovered things, which, in fact, even the Labour Court had accepted in the final Award to be meant to be thrown in the garbage which had led it to conclude that the punishment awarded to the petitioner for stealing garbage items was shockingly excessive.

13. When during the course of hearing of the writ petition it was asked from the learned counsel for the respondent-management as to why no evidence was adduced to show that there was a short-fall in the stock of chocolates on the day of the checking of the petitioner he had simply submitted that the management had adduced the best evidence it had and now it could not be explained as to why evidence of the store keeper or any one else was not adduced to show that there was theft of chocolates and perhaps it was not adduced since actually

there was no complaint of theft lodged by anyone from the side of the management of British Airways. However, it was also submitted that normally when an employee comes to duty he/she discloses her personal belongings at that time and in the evening when duty is finished and upon checking it is found that some employee was going out with something which had not been disclosed in the morning then it has to be presumed that that thing had been stolen and in any case, counsel further submitted, this Court while dealing with a writ petition is not expected to go into the sufficiency of the evidence adduced by the management during the enquiry as that was the duty of the Labour Court and all that was to be seen was whether there was some evidence against the petitioner or not and the Labour Court having not found it to be a case of no evidence this Court should not re-examine that evidence since the scope of interference in industrial awards by the High Court is very limited. In support of these submissions he also cited one judgment of the Supreme Court reported as (2011) 6 Supreme Court Cases 584 and of this Court reported as 140(2007) Delhi Law Times 336 and 2011 (VI) Apex Decisions(Delhi) 301. There is no dispute about the proposition urged by the learned counsel but this Court had to undertake the exercise of examining the evidence adduced in the enquiry since the Labour Court had failed to do that which it was expected to do. In this regard a useful reference can be made to the following observations made by the Supreme Court in the case of “ Khardah Co. Ltd. Vs Their Workmen”, AIR 1964 S.C. 719:-

“10..... The whole object of holding an enquiry is to enable the enquiry officer to decide upon the merits of the

dispute before him, and so, it would be idle to contend that once the evidence is recorded, all that the employer is expected to do is to pass an order of dismissal which impliedly indicates that the employer accepted the view that the charges framed against the employee had been proved. One of the tests which the Industrial Tribunal is entitled to apply in dealing with industrial disputes of this character is whether the conclusion of the enquiry officer was perverse or whether there was any basic error in the approach adopted by him.....Indeed, if the argument urged before us by the learned Solicitor General is accepted, it is likely to impair substantially the value of such domestic enquiries. As we have already observed, we must insist on a proper enquiry being held, and that means that nothing should happen in the enquiry either when it is held or after it is concluded and before the order of dismissal is passed, which would expose the enquiry to the criticism that it was undertaken as an empty formality.....”

14. Therefore, the Labour Court was obliged to see if there was some evidence adduced in the enquiry to establish the real charge levelled against the petitioner, which was that she had stolen chocolates, and it could not wash off its hands, like the way it has done, by simply observing that it was not sitting in appeal over the findings of the enquiry officer.

15. Upon examining the evidence adduced in the enquiry, this Court has found that this is not a case where there was some evidence before the enquiry officer on the basis of which the petitioner could be held guilty of having committed theft and, in fact, this is a case of no evidence at all, as far as the charge of chocolates found with the petitioner being stolen ones is concerned. There also is no force in the submission of the learned counsel for the respondent that once recovery of chocolates from the petitioner was established the burden shifted to the petitioner to show that those chocolates were not stolen

ones. It was for the management to prove that the chocolates in possession of the petitioner were stolen chocolates and not for her to show that they were not stolen and the management cannot be said to have discharged its burden even on the basis of preponderance of probabilities. And it was not even the case of the management at any stage that on 19.07.2000 the petitioner had disclosed her personal belongings kept in her bag while coming to duty, so the submission of the counsel in this regard cannot be accepted.

16. No other submission was made on the issue of enquiry by the learned counsel for the respondent-management.

17. Thus the findings of the learned labour court on the issue of enquiry to the effect that the guilt of the petitioner stood established during the enquiry cannot be sustained at all and are set aside. Considering the fact that there was actually no complaint of theft of chocolates, I do not consider to be necessary to send back the matter to the Labour Court now after more than a decade of the incident to give opportunity to the management to even now adduce evidence to establish the charge of theft when there was none when enquiry was being conducted.

18. Since the alleged misconduct of the petitioner cannot be said to have been established by the respondent-management, this petition deserves to be allowed and is accordingly allowed. The impugned Award of the labour court holding the petitioner guilty of committing theft of eleven chocolates and directing the management award her appropriate punishment other than dismissal from service is set aside.

The petitioner is ordered to be reinstated in service since by declining the relief of reinstatement to her this Court would be in fact punishing her even after she stands exonerated of the charge of theft. However, considering all the facts and circumstances and particularly the fact that she had not worked for the management all these years, she is awarded only 40% of back wages.

P.K.BHASIN, J

MARCH 5, 2012