

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **W.P. (C) 7390/2011**
+ **Date of Decision: 21st August, 2012**

Delhi Development Authority**Petitioner**
! **Through: Mr. Arun Birbal, Adv.**

Versus

\$ **Pratap Singh** ...**Respondent**
Through: Mr. Anuj Aggarwal, Adv.

CORAM:

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

JUDGMENT

P.K.BHASIN, J:

This writ petition has been filed by the petitioner for setting aside the Award dated 7th May, 2011 passed by the Labour Court whereby the termination of services of the respondent was held to be illegal and he was directed to be reinstated with full back wages and continuity of service.

2. Briefly stated, the facts which led to the filing of the present petition are that the respondent worked with the petitioner from 25th January, 1986 onwards till as a

chowkidar and w.e.f. 3rd April, 1987 he was not permitted to report for duty by the officials of DDA. The respondent felt that his services had been terminated suddenly without any reason and so he raised an industrial dispute which in due course came to be referred by the Government to the Labour Court for adjudication. The following was the term of reference made to the Labour Court:-

“Whether the termination of the services of Shri Pratap Singh is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this regard?”

3. The respondent filed a statement of claim before the Labour Court claiming that he was employed by the Delhi Development Authority on 25th February, 1986 at a monthly salary of Rs. 900/- and his services had been terminated w.e.f. 3rd April, 1987 and since termination of his services was without any cause and without holding any kind of enquiry he was entitled to be reinstated in service with all consequential benefits.

4. The petitioner refuted the claim of the respondent by filing a written statement. Its stand was that no appointment order of the respondent was available in his personal file

and that the respondent had obtained bogus orders of his posting/transfer as a chowkidar in collusion with other people and he had obtained salary also illegally and, therefore, he was not entitled to get any relief. It was also the case of DDA that a large scale scam was detected and it was found that many people had got employment with DDA on the basis of fake documents. It was further pleaded that when these facts came to knowledge his services were not availed of thereafter. The petitioner had annexed with its written statement a copy of an Establishment Order No. 47 dated 24.01.1986(Ex.R-1) whereby he was relieved from Housing Division-XIV and was required to report to the Executive Engineer, RD-I for further posting. This document was alleged to be forged. Copy of another Establishment Order dated 26.07.1986 issued by the Executive Engineer of RD-1, Jhandewalan Extn. Mr. R.D.Mohindra was also filed with the written statement which showed that the respondent had been transferred to another Division(Construction Division-II) with immediate effect. It was also claimed that a criminal case was also registered with the police against the respondent. The respondent in

his replication had simply denied the allegations made against him in the written statement of the petitioner but did not specifically deny the allegation that his entry into DDA was on the basis of the above referred Establishment Order dated 24.01.1986.

5. The Labour Court after trial passed had passed an Award on 07.09.1995 in favour of the respondent but the same was set aside by this Court when the DDA had challenged the same by filing a writ petition (being CWP No. 1133/1996) and the Labour Court was directed vide order dated 19.03.2010 to pass a fresh Award after giving opportunity to the parties to adduce evidence. Thereafter, a fresh Award was passed on 7th May, 2011 by the Labour Court on the basis of re-constructed record of the trial since by that time the original record stood destroyed in the routine weeding out of old records at the District Courts and no controversy was raised before this Court regarding the re-constructed record. The Award dated 7th May, 2011 was once again in favour of the respondent and the Labour Court held that the petitioner-DDA had failed to adduce any evidence to show that the respondent had obtained

employment with DDA on the basis of forged documents and that on the basis of evidence of the respondent relationship of employer-employee between the petitioner and the respondent stood established. It was further held that the services of the respondent were terminated illegally and consequently he was directed to be reinstated with full back wages and continuity of service.

6. Aggrieved by the Award dated 7th May, 2011 passed by the Labour Court the petitioner-DDA filed the present writ petition. The main thrust of the submissions of the learned counsel for the petitioner was that it was for the respondent to show that he had any appointment letter issued by DDA and having failed to produce any appointment letter he had failed to discharge the burden which lay on his shoulders and, therefore, the conclusion of the Labour Court that the workman was entitled to succeed since the management had not led any evidence to show that he had obtained employment on the basis of forged documents was perverse and liable to be quashed by this Court.

7. On the other hand, learned counsel for the respondent fully supported the Award of the Labour Court and contended that the Labour Court having given a finding of fact after proper appreciation of the evidence adduced before it that the respondent had not got employment with DDA on the basis of forged documents and that services of the respondent were terminated without holding any enquiry, which should have been held even if there were allegations of fraud etc. there was no scope for this Court to interfere in those findings of facts in exercise of the writ jurisdiction which is limited in such like cases where Awards of industrial adjudicators are under challenge.

8. There is no dispute about the fact that the respondent had worked with DDA as a chowkidar for little over a year and that during that period he had been paid his wages also and also that he was not allowed to report for duty w.e.f. 02.04,1987 without conducting any enquiry as to whether he had got entry into DDA on the basis of forged documents or not. But that fact itself was not sufficient for the Labour Court to order his re-instatement. The submission of the learned counsel for the respondent that since his services

had been terminated without any enquiry and so on this ground alone he was entitled to be reinstated is not the correct position in law. It was laid down by the Supreme Court that even if no enquiry is held by an employer before terminating the services of some workman and the dispute raised by the dismissed workman comes to the Labour Court or Industrial Tribunal for adjudication either under the provisions of Section 10 of the Industrial Disputes Act, 1947, as is the case here, or under Section 33, the entire controversy between the parties becomes open for adjudication by the Labour Court/Industrial Tribunal and both the parties then get an opportunity to substantiate their rival stands and the employer can justify its action. It was so held by the Hon'ble Supreme Court in **“Workman of M/s Firestone Tyre & Rubber Company of India (P.)Ltd. Vs. Management & Others”**, 1973 (3) S.C.R. 588. The Apex Court after noticing its various judgments on the point rendered earlier had summarized the legal position as under:-

“From those decisions, the following principles broadly emerge:-

1. The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.
2. Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.
3. When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.
4. Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action; and it is open to the employee to adduce evidence contra.
5. The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal

and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

6. The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

7. It has never been recognized that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective."

(emphasis laid)

9. In view of these observations of the Supreme Court, particularly which have been highlighted by me, the argument of the learned counsel for the respondent that he was entitled to a direction for his reinstatement straightaway because of the petitioner having not conducted any enquiry before removing him from service is liable to be rejected and the Labour Court also should have rejected the same.

10. In the present case, the petitioner DDA after entering appearance before the Labour Court had taken a stand that the very entry of the respondent into the its establishment was on the basis of forged documents and in collusion with some other persons(who could be DDA officials only) and so no relationship of employer-employee between the parties came into existence. The onus of proving the existence of employer-employee relationship was upon the respondent and the Labour Court had itself also observed so in its award while dealing with issue no. 1.

11. The respondent had claimed before the Labour Court in his examination-in-chief that he had been appointed by DDA on 25.01.1986 as a security guard on regular basis by one Mr. Mahindru, XEN and his police verification was also got done by the management but he was not given any appointment letter. He also stated that his provident fund was also being deducted from his salary. He further deposed that he was not allowed to report of duty w.e.f. 03.04.1987 by Mr. S.K.Sood and Mr. Mahindru. He also claimed that he was not paid his salary for the months of February and March and so he had sent notices to the management

protesting against the verbal illegal termination of his services.

12. In cross-examination, the respondent had claimed that in July, 1986 he was moved to CD-VII Division as per an order of transfer. He denied the suggestion that he was never appointed by the management and that he had forged documents of his posting.

13. The management had examined three witnesses in support of its defence. Through those witnesses the petitioner had sought to prove that the respondent had got entry into DDA on the basis of one forged Establishment Order no. 47 dated 24.01.1986(Ex.R-1) and had got himself posted at one of the Divisional Offices of DDA, R.D.-I, and then had also managed to get himself transferred to CD-II on the basis of transfer order dated 26.07.1986, Ex. R-2.

14. During the course of arguments learned counsel for the respondent had not disputed that he had joined DDA on the basis of Establishment Order No. 47 dated 24.01.1986. That Establishment Order No. 47 reads as under:-

“OFFICE OF THE EXECUTIVE ENG.

HOUSING DIVISION-XIV
DELHI DEVELOPMENT AUTHORITY

E.O. NO. 47

DATED THE 24.1.1986

OFFICE ORDER

In compliance of E.O. no. 32 dated 23.1.86 issued by A.D. to C.E's (E.Z.) Sh. Pratap Singh W/c Chowkidar is hereby relieved from this division dtd. 24.1.85 (A/N) and is directed to report to E.E./R.D.-I/D.D.A. for further posting.

Sd/
EXECUTIVE ENGINEER
H.D.-XIV/D.D.A.
Dated: 24.1.86"

No. F6(20/84/H.D.-XIV/D.D.A.

15. A bare look at the said Establishment Order No. 47 dated 24.01.1986 makes it clear that it is not a genuine document and required no evidence from the side of the petitioner-DDA to establish that. It was the respondent's own case that he had joined DDA on 25th January, 1986 while this Establishment Order shows that he was already in employment of DDA and posted at the Housing Division No. XIV and vide this Establishment Order he was being required to report to the Executive Engineer, RD-I, Jhandewalan for further posting. Thus, this document cannot be said to be genuine. It was also the case of the respondent that he was

posted at the Jhandewalan office of DDA. It appears that by producing the Establishment Order No. 47 the respondent had managed to join duty at RD-I at Jhandewalan and remained posted there till the date of termination of his services. The Labour Court itself should have noticed this glaring defect in the respondent's case and rejected the same instead of holding that the management had not adduced any evidence to show that the respondent had gained entry into DDA on the basis of fake posting order.

16. Even though the respondent had also taken a plea that he was given regular appointment but had not been issued any appointment letter but that plea also should have been rejected as highly improbable and the respondent should have been called upon to show how he could get regular employment if DDA without going through regular selection process. On the face of it this stand of the respondent was absurd. Still, the Labour Court gave him the benefit of reinstatement in service by a perverse reasoning that the management had failed to adduce any evidence to establish that the respondent's entry into DDA was on the basis of fake documents. And, just because the respondent had

received wages for some period in collusion with some officials of DDA it could not be said that a contract of service came into existence with those payments. Those payments had been received by him as a result of fraud having been played by him and employment obtained by fraud was no employment in the eyes of law but the learned Labour Court had shut its eyes to that fraud which was apparent on the face of record. Therefore, the award of the Labour Court is totally unsustainable and is liable to be set aside.

17. This writ petition, therefore, succeeds. The award of the Labour Court is set aside and consequently the reference made to the Labour Court by the Government shall stand answered in favour of the petitioner-DDA.

P.K. BHASIN, J

AUGUST 21, 2012