

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

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W.P.(C) 1185/2012

+ Date of Decision: 28th February, 2012

MANAGEMENT OF M/S D.T.C. Petitioner

! Through: Ms. Arati Mahajan, Advocate

Versus

\$ RAMESH CHANDER ...Respondent

Through: None

CORAM:

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

JUDGMENT

P.K.BHASIN, J: (ORAL)

The petitioner is aggrieved by the Award dated 10.01.2011 passed by learned Labour Court whereby reinstatement of the respondent/workman in service without back wages has been ordered after coming to the conclusion that the termination of his services was unjustified.

2. The relevant facts are that the respondent-workman was charge-sheeted on 28.4.1995 while in the employment of the Delhi Transport Corporation('the management' in short) as a conductor on the allegation that he remained absent from duty unauthorisedly for 153

days from 1.4.1994 to 31.3.1995. The respondent-workman had refuted that allegation in his reply to the charge-sheet. In his reply, copy of which was produced before me today, the respondent workman had claimed that he had submitted leave applications for the entire period of his alleged unauthorized absence from duty and that he had to take leave because of his own sickness and of his wife as well as his daughter and he had submitted medical certificates also. The management did not feel satisfied with the reply to the charge-sheet given by the respondent-workman and so it decided to conduct a departmental inquiry. In the departmental inquiry, the Inquiry Officer found the allegation levelled against the respondent-workman having been proved and the Disciplinary Authority accepting the enquiry officer's report imposed upon the respondent-workman punishment of his removal from service.

3. The respondent-workman feeling aggrieved, raised an industrial dispute by approaching the labour authorities and in due course, the dispute raised by him to the effect that his services had been illegally terminated was referred for adjudication to the labour Court.

4. Before the labour Court, the respondent-workman filed his statement of claim wherein he had reiterated what he had stated in his reply to the charge-sheet that he had duly submitted his leave applications because of his own sickness and of his wife and daughter.

5. The management filed its written statement opposing the claim of the respondent-workman and it took the stand that the respondent-workman had been removed from service after holding an enquiry in

which he was found guilty.

6. Since the respondent-workman had challenged the fairness and validity of the departmental inquiry conducted by the management, the learned Labour Court tried that controversy as a preliminary issue and vide order dated 14.7.2009, that issue was decided against the management. Thereafter, an opportunity was given to the management to adduce evidence before the Court itself in order to establish the allegation of misconduct levelled against the respondent-workman. The management then examined two witnesses in support of its case while the respondent-workman examined only himself.

7. After examining the evidence adduced by the parties, the Labour Court, gave its Award on 10.01.2011 holding that the alleged misconduct had been proved and so the termination of the services of the respondent-workman by the management was illegal and unjustified. Consequently the respondent-workman was ordered to re-instated in service but without back wages.

8. Feeling aggrieved, the management filed the present writ petition.

9. Though in the writ petition, a prayer was also made by the management for setting aside the findings of the learned Labour Court on the preliminary issue of inquiry but during the course of hearing of this writ petition today the learned counsel for the management gave up the challenge to the findings on the issue of inquiry and she made submissions to convince this Court that on the

basis of the evidence adduced by the management before the Labour Court the misconduct of unauthorised absence from duty had been duly established and consequently his re-instatement in service should not have been ordered. Learned counsel for the management also cited one judgment of the Hon'ble Supreme Court in “**J.K. Synthetics Ltd. Vs K.P. Agrawal and another**”, (2007) 2 SCC 433 in support of her submission that if at all the Labour Court was inclined to order re-instatement of the respondent even then some lesser punishment at least should have been awarded to the respondent-workman.

10. On the other hand, learned counsel for the respondent-workman fully supported the impugned Award passed by the Labour Court.

11. Before proceeding further to find out whether on the basis of evidence adduced before the Labour Court to establish the misconduct of the respondent workman I may notice here that the learned counsel for the management had during the course of hearing had not disputed that no employer can arbitrarily reject the leave application of any employee since taking leave is a valuable right of the employees. I have gone through the evidence adduced before the Labour Court and find that the alleged misconduct had not been proved at all and the Labour Court was justified in answering the Reference against the management. The evidence which the management had adduced was that of one of its officials who simply proved a statement showing that for 120 days, out of the total period of absence of 153 days, the respondent-workman had submitted leave applications but the same were rejected and for the rest of 32 days of absence, no leave

application at all had been submitted. The learned Labour Court has observed in the impugned Award that the management despite having admitted that leave applications for 120 days were received from the respondent-workman, had not produced those applications and the decision of rejection was also not conveyed to him and, therefore, it could not be said that he had remained unauthorizedly absent from duty for 120 days. I find no illegality in this conclusion of the learned Labour Court on the basis of evidence adduced before it and in fact I fully endorse the same.

12. During the course of hearing of this matter, the learned counsel for the management had submitted that the leave applications which, even as per the management had been received from the respondent-workman, had been destroyed in the routine weeding out process of old records. It was, however, also contended that the statement produced by the management-witness showing the number of days for which leave applications were rejected and the number of days for which no applications at all had been submitted by the respondent workman should have been accepted being a part of the official records of the management authenticity whereof could not be doubted. Learned counsel for the management had also submitted that all those applications had been rejected because of the same having been submitted late. This submission also cannot be accepted in the absence of the leave applications and the orders of rejection. Their destruction during the pendency of the adjudication proceedings justifies raising an inference against the management that the leave applications were not submitted late and also that leave sought by the respondent-

workman was for good reasons.

13. As far as the other part of the charge that for 32 days of absence the respondent-workman had not even submitted any leave application is concerned, I am of the view that even that is not correct. The respondent-workman in his evidence had deposed that he had given leave applications for every leave which he had taken. The suggestion put to the respondent-workman in his cross-examination was to the effect that he had not submitted any leave application at all for any of the days of unauthorized absence from 01.04.1994 to 31.03.1995. That suggestion was contrary to the case of the management itself and it also shows that the management itself was not clear about its own stand. Management's witness MW-1 had stated in cross-examination that he had not prepared the statement MW-1/1 showing the number of leave applications received and rejected and the number of days of absence for which the respondent-workman had not submitted any leave application. He also stated that he had taken down the details contained in Ex.MW-1/1 from the relevant registers (MAR & SAR). Those registers were, however, not produced, as observed by the labour Court also. So, the material records had been withheld by the management. In these circumstances, the respondent-workman's statement on oath that he had submitted leave applications for the entire period in question has to be believed.

14. I am, therefore, of the view that the management having failed to establish the charge of misconduct levelled against the respondent workman, the learned Labour Court was justified in directing his

restatement in service.

15. The judgment of the Hon'ble Supreme Court relied upon by learned counsel for the petitioner in the case of J.K. Synthetics Ltd. (supra) does not fit into the facts of this case since this is not a case where the workman is being ordered to be reinstated after holding him guilty and reducing the punishment imposed on him by the management. On the contrary, he has been totally exonerated.

16. This petition, therefore, being devoid of any merit is dismissed *in limine*. The petitioner is also burdened with costs of ₹ 15,000/- which shall be deposited with the Delhi Bar Council within four weeks for being utilized in the Advocates Welfare Fund maintained by it. In case the costs are not so deposited there, the Chairman of the Delhi Bar Council shall be at liberty to recover it in accordance with law and for that purpose if any directions are required from this Court, he would be at liberty to move appropriate application. This direction be communicated to the Chairman of Delhi Bar Council.

P.K. BHASIN, J

FEBRUARY 28, 2012

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