

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

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W.P.(C) 8746/2010

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Date of Decision: 7th March, 2012

D.T.C.

....Petitioner

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Through: Mr. Anand Nandan, Advocate

Versus

\$ **HARISH BABU**

...Respondent

Through: Ms. Rashmi B. Singh, Advocate

CORAM:

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

JUDGMENT

P.K.BHASIN, J: (ORAL)

The petitioner is aggrieved by the Award dated 02.02.2010 passed by learned Labour Court whereby reinstatement of the respondent/workman in service and payment of ₹ 50,000 also to him has been ordered.

2. The relevant facts are that the respondent-workman was charge-sheeted on 21.03.1994 while in the employment of the Delhi Transport Corporation('the management' in short) as a conductor on the allegation that he had remained absent from duty unauthorisedly for 171 days from 1.1.1993 to 30.11.1993 which showed his lack of

interest in the job. The respondent-workman had refuted that allegation in his reply to the charge-sheet. In his reply to the charge-sheet, 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 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.

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 proper enquiry in which he was found guilty of the charge of unauthorized absence

for duty for 171 days.

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 8th August, 2008, 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 02.02.2010 holding that the alleged misconduct had not 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 be reinstated in service with lump sum payment of ₹ 50,000 as back wages.

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

9. Learned counsel for the petitioner has made submissions to convince this Court that the decision of the labour Court on the issue of enquiry is not sustainable as there was no infirmity in the conduct of the enquiry by the enquiry officer and further that in any event, on the basis of the evidence adduced by the management before the

Labour Court the misconduct of unauthorised absence from duty for 171 days had been duly established and consequently his reinstatement in service should not have been ordered.

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

11. The learned counsel for the petitioner-management had during the course of hearing had not disputed that no employer can arbitrarily reject the leave application of any employee since availing of leave is a valuable right of the employees.

12. I have gone through the enquiry record as also the evidence adduced before the Labour Court and find that the alleged misconduct had not been proved at all either in the enquiry or before the labour Court and the Labour Court was justified in answering the Reference against the management.

13. In the enquiry, the enquiry officer had at the commencement of the enquiry asked the respondent-workman whether he was admitting the charges or not to which his reply was that he had availed of leave because of his sickness and he had submitted leave applications with medical certificate. Thereafter, the enquiry was closed without recording any evidence from either side. It alleged that after closing the enquiry proceedings the enquiry officer got some file from the management and after perusing the same at the back of the workman he held him guilty and he also observed that even the past record of

the respondent was bad. The enquiry officer had no business to go into the past record of the respondent and surprisingly, even the observation was not made on the basis of any material brought on record before the enquiry officer in the presence of the respondent. In my view, that was no enquiry at all and the enquiry officer could not have taken into consideration any record which nobody had produced in the enquiry from the side of the management. There was thus total violation of the principles of natural justice. Even the learned counsel for the petitioner could not seriously defend the enquiry officer's approach in the conduct of the enquiry.

14. Now, I come to the evidence adduced by the petitioner before the labour court to establish the alleged misconduct of the respondent. The evidence which the management had adduced for proving the misconduct was that of MW-2 Ms. Raj Kumari, a junior clerk in DTC who simply proved a report (Ex.MW-1) showing that for 117 days, out of the total period of absence of 171 days, the respondent-workman had submitted leave applications but the same were rejected and for the rest of 54 days of absence, no leave applications had been submitted. The learned Labour Court has observed in the impugned Award that the management despite having admitted that leave applications for at least 117 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 117 days. I find no illegality in this conclusion of the learned Labour Court on the basis of evidence adduced before it and I fully endorse the

same.

15. During the course of hearing of this matter, the learned counsel for the management had submitted that the statement produced by the management-witness (MW-2) 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 on authenticity of that document could not be doubted. Learned counsel for the management had also submitted that all the leave applications submitted by the respondent 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. Non-production of the leave applications 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 and had been sanctioned also, as was the suggestion put to MW-2 in her cross-examination on behalf of the respondent-workman.

16. As far as the other part of the charge that for 54 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 had claimed in his reply to the charge-sheet, claim statement filed in labour Court and in his evidence also he had deposed that he had given leave applications for the entire period of leave which he had taken. In his cross-examination nothing could be

elicited from him which could discredit him and I see no reason to reject his testimony particularly when the management itself had not produced the material documentary evidence in its possession. 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.

17. 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.

18. This petition, therefore, being devoid of any merit is dismissed.

P.K. BHASIN, J

MARCH 07, 2012

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