

\$~7.

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

+ **Date of Decision: 20.02.2013**

% **W.P.(C) 343/2007**

THE MANAGEMENT OF HOTEL ASHOK
THRU' ITS GENERAL MANAGER Petitioner

Through: Mr. Karunesh Tandon, Advocate.

versus

KASHIMIRI LAL Respondent

Through: Ms. Rashmi Priya, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (ORAL)

C.M. No. 2103/2013

Issue notice. Learned counsel for the respondent accepts notice. She fairly does not object to the Costs being waived.

Accordingly, the application is allowed and stands disposed of.

W.P.(C) 343/2007 and C.M. Nos.609/2007 & 11007/2007

1. The petitioner management has preferred the present petition to assail the award made by the Labour Court-XX (Fast Track), Karkardooma Courts, Delhi in I.D. No.36/2006 (old I.D. No.182/1994), whereby the reference made by the Appropriate Government with regard to the

11

termination of the services of the respondent workman Sh. Kashmiri Lal has been answered in favour of the respondent by holding that the punishment of termination imposed upon him was too harsh and by directing that he be reinstated with continuity of service and 50% back wages since the date of termination, i.e., 09.03.1998 till the date of reinstatement, with stoppage of three increments with cumulative effect.

2. The respondent workman was appointed as Room Attendant in the year 1977 with the management. He remained in employment till 09.03.1988. On 03.02.1987, the petitioner claims to have found the respondent involved in arranging a girl for an in-house guest in Room No.751 of the hotel through one Mr. Ramesh Kumar, proprietor, S.R. International, Rajendra Place, New Delhi for immoral purposes. The statements of the respondent, the girl who had been brought to the hotel, and her accomplice were recorded on 03.02.1987, which were all signed by the respondent as well. Thereafter he was issued a charge-sheet dated 27.02.1987.

3. The charge-sheet alleged that on 03.02.1987, the respondent was on duty from 03:00 P.M. to 10:00 P.M. on the seventh floor of Ashok Hotel. While the respondent was on duty, he arranged a girl for a guest of Room No.751 and made her (name of the girl given, which is abbreviated as RS) and a pimp (name given as Ajay Singh) wait in Room No. 758 – another adjacent room as, at that time, the guest of Room No.751 were not available in the said room. At about 1445 hrs. on that day, while Mr. Lohiya – the Assistant Manager was getting the planters replaced on seventh floor, he noticed a girl & boy coming out of the main lift and going towards the 'F'

42✓

Wing. They stopped outside Room No.751. When there was no reply, they went into the lift. After some time the respondent was found with the girl & boy and he came down after leaving them in Room No.758. The charge-sheet alleged that on interrogation, it had come to notice that at about 2:00-2:30 P.M. on the same day, the respondent had made a call from Ashok Hotel to Mr. Ramesh Kumar, who is running a travelling agency at Rajendra Place and asked him to send a girl to be offered to the guest at Ashok Hotel. Accordingly, Mr. Ramesh Kumar had sent the girl with Ajay Singh to the respondent, and the respondent made them wait in Room No.758 as, at that time, the guest of Room No.751 was not available. The said conduct of the respondent was alleged to be in violation of the Certified Standing Orders of the Hotel, particularly Standing Order No. 14 (xliv), (l).

4. The petitioner management appointed one Mr. Hardam Lal as the Inquiry Officer. Mr. Hardam Lal after giving opportunity to the respondent to meet the charges levelled against him in the inquiry made his Inquiry Report dated 11.08.1987, wherein he held the respondent guilty of the charges levelled against him. He concluded that the charge against the respondent *"insofar as it alleges acts of subversive of discipline and prejudicial to the best interest and reputation of the hotel is held established"*. This conclusion was founded upon the finding returned by him in para 12.1 of his report, which reads as follows:

"12.1 Considering the evidence that has come on record in the case, it appears that:

- 1. Sh. Kashmiri Lal himself was not the direct procurer of the call girl in the sense that he did not have direct contact with that girl.*

2. *He also did not know the particular call girl personally till she met him on not finding the guest in room No.751.*

3. *Sh. Kashmiri Lal was having contact with the agent supplying call girls through whom he could arrange a girl."*

5. Following the making of the said Inquiry Report, the services of the respondent were terminated by the management, which led to the raising of the aforesaid industrial dispute by him. The case set up by the respondent in his statement of claim was that Mr. Lohiya – the Assistant Manager of the Hotel, was inimical towards him and, consequently, he was embroiled in a false fabricated and baseless case.

6. The Labour Court framed a preliminary issue on 03.10.1996, i.e., whether the domestic inquiry was not conducted in accordance with the principles of natural justice and was not valid. The respondent examined himself as WW-1, whereas the management examined the Inquiry Officer Mr. Hardam Lal as MW-1. The Labour Court vide order dated 18.11.2002 held the domestic inquiry to be bad. The reason for holding the inquiry to be bad was that Clause III of Section 16 of the Certified Standing Orders of Ashok Hotel provides that in case, after considering the reply of the delinquent, the management is not satisfied, "*an inquiry shall be held by an officer/employer not lower in status than the accused*" (emphasis supplied). It was held that Mr. Hardam Lal was not an employee of the management and, on that account, his appointment was bad. Consequently, the inquiry conducted by him and the report submitted by him stood vitiated.

7. I may note that no other ground for vitiating the departmental inquiry

was cited by the Labour Court or considered by it.

8. After passing of the order dated 18.11.2002, the Labour Court granted an opportunity to the petitioner to independently establish the charge against the respondent. Further evidence was led by the parties. On the basis of the evidence recorded by the Labour Court, the Labour Court held that the management had failed to prove the charge that the respondent had committed any act subversive of discipline or prejudicial to the best interest & reputation of the petitioner, but the management had succeeded in established that the respondent had unauthorisedly used Room No.758 by permitting the said boy & girl, who allegedly came to meet the guest of Room No.751, to sit in Room No.758. The Labour Court held that even though the said charge to the aforesaid extent stood established, the penalty of termination of service was too harsh. Accordingly, the penalty was reduced, as aforesaid, to stoppage of three increments with cumulative effect while directing reinstatement of the respondent with continuity of service & 50% back wages since 09.03.1988.

9. The submission of learned counsel for the petitioner is that the statement of the respondent, the boy & the girl who had visited the hotel had been contemporaneously recorded on 03.08.1987. The respondent had not only signed his own statement, but had also signed the statements of the boy and the girl. It is also submitted that, in his statement, Mr. Ajay Singh (the boy accompanying the girl) had stated that at around 02:00 – 02:30 P.M., the respondent gave a call from Hotel Ashok and had talk with Mr. Ramesh and requested him to send a girl. Accordingly, his owner/Mr. Ramesh directed Mr. Ajay Singh to accompany the girl on three-wheeler to go to Ashok

45

Hotel and further directed Ajay Singh to leave the girl with the respondent at seventh floor of the hotel. He further stated that the boy and the girl along with the respondent visited Room No.758 but the guest was not there. He further stated that since the respondent is well-known to Mr. Ramesh, Mr. Ramesh said that respondent will take care of the money issue. He disclosed that Mr. Ramesh was having 3-4 girls, who are operating like this and they take Rs.800 to Rs.1,000. He stated that though it was his first visit to Ashok Hotel, he used to visit Hotel Centaur quite often. Various questions were put to Ajay Singh, which were answered by him and, apart from him, the respondent also signed the said questionnaire. The girl RS made her statement that she had come with her friend to visit the hotel. However, she did not know anything else. The statement made by the respondent under his signatures on 03.02.1987 reads as follows:

"STATEMENT OF KASHMIRI LAL

Kashmiri Lal token No. 3948 room attendant.

Today i.e. 3.2.87 I am having my duty at 7th floor from 2.00 p.m. to 10:00 P:M. When I was busy in work around, a boy and girl visited me around 3:30 p:m, both of them have been sent by Ramesh. Then I allowed both of them to sit in room no. 758 only for five minutes, but they asked to leave, as I was not having time. Thereafter they left the room and I do not know where they had gone after this. I am giving this statement with my own consent.

Kashmiri Lal"

3/2/87"

10. Learned counsel for the petitioner submits that since the Labour Court itself has found the conduct of the respondent to be blameworthy, in

allowing two strangers to enter and sit in a hotel room bearing No.758, that itself is serious enough to warrant the punishment of removal from service, particularly when, from the statement of the respondent, it appeared that he knew Mr. Ramesh and the fact that the said persons had been sent by Mr. Ramesh. He submits that in the context of the hotel industry, the misconduct of the respondent was serious enough as the strangers were permitted to enter into and sit in a guest room.

11. Learned counsel submits that the reinstatement of the respondent with 50% back wages since 09.03.1988 (i.e. after more than 18 years) was not called for in the facts of the case, and that the punishment of stoppage of three increments with cumulative effect was too less a punishment for the respondent's conduct.

12. Learned counsel for the respondent, on the other hand, defends the impugned award by submitting that the petitioner had failed to establish the charge in the inquiry conducted before the Labour Court. She submits that the two management witnesses did not depose on the basis of their personal knowledge. They did not see the respondent interact with the said two persons.

13. Having heard learned counsel for the parties, perused the impugned award, the order of the Labour Court dated 18.11.2002 – whereby the domestic inquiry was held to be invalid, and the other documents on record, I am of the view that the impugned award cannot be sustained and is liable to be set aside. First & foremost, while passing the order dated 18.11.2002 – whereby the domestic inquiry has been set aside, the Labour Court has

47

completely failed to appreciate that the issue: whether the Inquiry Officer was duly appointed, or not, since he was not an officer/employee of the petitioner employer, was not raised by the respondent at any stage during the inquiry proceedings. The said aspect was, for the first time, raised before the Labour Court. It is clear that the respondent acquiesced in the inquiry and waived all such challenges by not raising the said aspect during the course of the inquiry proceedings. Had the objection been raised contemporaneously, the management would have had the opportunity to replace the Inquiry Officer to obviate such an objection. Even more important it is to note that the respondent did not show as to what prejudice he has suffered due to the inquiry being conducted by a person who was not an employee/officer of the management, but an outsider. The fact that the Inquiry Officer was from outside organisation of the petitioner was a factor in favour of the respondent, since such a person is less likely to be under any influence of the higher authorities than an officer/employee of the management. Clause III of Section 16 of the Certified Standing Order, which was interpreted and applied reads as follows:

"An employee against whom an enquiry has to be held shall be given a charge-sheet clearly setting forth the charges against him indicating therein the nature of offence as laid down in any of the subsections of Section 14 above and the full particulars thereof. The charge sheet will invariably end up by calling upon the employee to give his explanation in writing by a stipulated date. If his reply is not considered satisfactory by the department head concerned an enquiry shall be held by an officer/employer not lower in status than the accused."

(Emphasis supplied)

14. The interpretation of the aforesaid clause, in my view, cannot be that

48

the same mandatorily requires that the Inquiry Officer should be from within the organisation of the petitioner. There is no requirement that he necessarily has to be an officer or employee from within the organisation. The correct interpretation of the said clause, in my view, is that in case the Inquiry Officer is from within the organisation of the employer, he should be an officer/employee not lower in status than the accused. The objective behind this rule is only to safeguard the inquiry from being vitiated with the appointment of an Inquiry Officer lower in rank than the accused, since such an Inquiry Officer may get influenced/overawed by the accused himself. However, there is no specific clause in the Certified Standing Orders to say that the Inquiry Officer should necessarily be an officer/employee of the management. If the Inquiry Officer is from outside the organisation, he would not suffer from the same disability from which the Inquiry Officer who is lower in rank or status than the accused would suffer. There would be no question of his being lower in status than the delinquent. Pertinently, it was not the respondent's case that the Inquiry Officer was ever subordinate to him.

15. I may refer to the decision of the Supreme Court in ***Union of India & Ors. Vs. P.C. Ramakrishnayya***, Civil Appeal No.6743/2010 decided on 18.08.2010, which decision has been followed by me in ***S.K.Taqi Vs. The Cement Corporation of India***, W.P.(C.) No. 7748/2010 decided on 31.01.2013. The relevant extract from the said decision reads as follows:

"11. Coming back to the merits of the case, we must point out that the issue is no longer res integra. The question of validity of appointment of a retired officer from a panel prepared for appointment of inquiry officers for holding departmental

49

enquiry was examined in great detail in a recent decision of this Court in Union of India v. Alok Kumar [(2010) 5 SCC 349 : (2010) 2 SCC (L&S) 22] . It may be clarified that the decision in Alok Kumar [(2010) 5 SCC 349 : (2010) 2 SCC (L&S) 22] was rendered in a case under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 and the present case arises from Rule 14(2) of the CCS (CCA) Rules. But it needs to be pointed out that the provisions of Rule 9(2) of the Railway Servants (Discipline and Appeal) Rules, 1968 dealing with the appointment of inquiry officers are in pari materia with Rule 14(2) of the CCS (CCA) Rules. Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 is as follows:

“9. Procedure for imposing major penalties.—(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 6 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and Rule 10, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850) where such inquiry is held under that Act.

*(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a railway servant, it may itself inquire into, **or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, a Board of Inquiry or other authority to inquire into the truth thereof.***

(3) Where a Board of Inquiry is appointed under sub-rule (2) it shall consist of not less than two members, each, of whom shall be higher in rank than the railway servant against whom the inquiry is being held and none of whom shall be

50

subordinate to the other member or members, as the case may be, of such Board.

Explanation.—Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (12) and in sub-rule (14) to sub-rule (25), to the inquiring authority shall be construed as a reference to the disciplinary authority.”

Rule 14(2) of the CCS Rules is reproduced hereinbelow:

“14. Procedure for imposing major penalties-

(1)***

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a government servant, it may itself inquire into, or appoint under this rule, or under the provisions of the Public Servants(Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.”

12. It is, thus, to be seen that the only difference between Rule 14(2) of the CCS (CCA) Rules and Rule 9(3) of the Railway Servants (Discipline and Appeal) Rules is that in the former the words “a Board of Inquiry or” are not there. But that is of no significance for the issue in hand.

13. In *Alok Kumar [(2010) 5 SCC 349 : (2010) 2 SCC (L&S) 22]* this Court considered in great detail, the meaning of the word “authority” occurring in Rule 9(3) and came to find and hold that a retired officer could also be vested with the delegated authority of the disciplinary authority (see paras 26-62) to hold the inquiry. It may also be noted that in *Alok Kumar [(2010) 5 SCC 349 : (2010) 2 SCC (L&S) 22]*, this Court also considered the decision in *Ravi Malik v. National*

5\

Film Development Corpn. Ltd. [(2004) 13 SCC 427 : 2006 SCC (L&S) 882] and distinguished it by pointing out that it was in the context of Rule 23(b) of the Service Rules and Regulations, 1982 of National Film Development Corporation. In SCC para 45 of the judgment, the Court observed as follows: (Alok Kumar case [(2010) 5 SCC 349 : (2010) 2 SCC (L&S) 22] , SCC p. 367)

“45. Reliance placed by the respondents upon the judgment of this Court in Ravi Malik [(2004) 13 SCC 427 : 2006 SCC (L&S) 882] is hardly of any assistance to them. Firstly, the facts and the rules falling for consideration before this Court in that case were entirely different. Secondly, the Court was concerned with the expression ‘public servant’ appearing in Rule 23(b) of the Service Rules and Regulations, 1982 of the National Film Development Corporation. The Court expressed the view that ‘public servant’ should be understood in its common parlance and a retired officer would not fall within the meaning of ‘public servant’, as by virtue of his retirement he loses the characteristics of being a public servant. That is not the expression with which we are concerned in the present case. Rule 9(2) as well as Section 3 of the Act have used a very different expression i.e. ‘other authority’ and ‘person/persons’. In other words, the absence of the words ‘public servant’ of the Government are conspicuous by their very absence. Thus, both these expressions, even as per the dictum of the Court should be interpreted as understood in the common parlance.”

(emphasis supplied)

16. From the aforesaid, it would be seen that similar phraseology is used in Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 and, in particular Clause 3 thereof, which has been underlined in the aforesaid

52 ✓

quotation. In spite of the same, the interpretation given to the said rule in *Alok Kumar* (supra) was that even a retired officer could be vested with the delegated authority of the Disciplinary Authority, to hold the inquiry.

17. Merely because the order dated 18.11.2002 may not have been separately assailed at an earlier stage is no ground for this Court to ignore this serious infirmity. It is well-settled that interlocutory orders passed by a Court can be assailed when the final order/award is assailed. A challenge to the interlocutory order need not be raised contemporaneously when it is passed, since, the party aggrieved thereby may still validly entertain the belief that the final decision would come in its favour. Interlocutory challenges are also discouraged as they delay the final disposal of the case. In any case, in the present writ petition, the petitioner has assailed the order dated 18.11.2002 as is evident from prayer (b) and ground (xii) in the amended writ petition.

18. Pertinently, the respondent did not urge any other grounds to assail the inquiry proceedings or the Inquiry Report, as no other ground has been recorded in the order dated 18.11.2002. The Labour Court while dealing with a domestic inquiry in judicial review is not concerned with the decision, but by the decision making process. Once the domestic inquiry is held to have been properly conducted in accordance with the principles of natural justice and fairness, the same cannot be interfered with by the Labour Court except in exceptional cases where the report is found to be perverse, or is based on no evidence, or the findings returned are found to be contrary to the evidence on record. A perusal of the Inquiry Report in the present case does not betray any of the said infirmities. The Inquiry Officer

43

has appreciated the evidence in an objective manner. A perusal of his findings, as quoted above, shows that he has taken a balanced and objective view in the matter. The findings recorded in para 12.1, as quoted above, were returned on the basis of the factual position, which emerged from the evidence brought before the Inquiry Officer. The same is recorded in para 9(ii), which reads as follows:

“ii) The following portion emerges from the abovementioned evidence on record:-

- 1. Sh. I. Lohia, had seen Sh. Kashmiri Lal with the boy and the girl for a short while going towards Room No. 758 and then coming out from that direction.*
- 2. Sh. Kashmiri Lal also admits having come across the boy and girl in front of room No. 751 and then guiding them to sofa and lobby. But that was, he would have it believed, in the course of his normal duty as Room Attendant.*
- 3. Miss. Saxena was a call girl and Sh. Ajay Singh was accompanying him as his escort on behalf of an agent (Pimp).*
- 4. The frequency with which the boy and the girl came in contact with Sh. Kashmiri Lal during the short time, they were in Hotel, the statement of Sh. Kashmiri Lal himself at Exb. M-3 and the movements of Sh. Kashmiri Lal as watched by Sh. Lohiya, give rise to the probability that Sh. Kashmiri Lal had some sort of a contact with the agent engaged in supplying girls for some guests in certain Hotels.*
- 5. The position at 4 above gets reinforced from the version of Sh A. Lamba in Exb. M-9 that during investigation on 3.2.87. Ajay Singh was asked to contact Ramesh with a factitious requirement of an additional girl, but Ramesh in turn wanted to talk to Sh. Kashmiri Lal as he had probably got suspicious and later Sh. Ramesh had given 3-4 calls for*

54

Sh. Kashmiri Lal which were intercepted by the security.”

19. The order dated 18.11.2001 is, therefore, set aside. On this short ground, the impugned award cannot be sustained and is liable to be set aside.

20. Even otherwise, it cannot be said that the charge as proved before the Labour Court was not serious enough to warrant the respondent's removal from service. It is clear that the respondent knew the two persons as those sent by Mr. Ramesh, since it had been established that he had permitted the two persons to sit in Room No.758 precisely for the reason that he knew who they were, and with whose reference they had come. The question that arises for consideration is as to why a Room Attendant in a 5-Star Hotel permitted strangers to enter into and sit in a room? If these persons were waiting for the guest of a particular room, who was not available, the Room Attendant should have directed them to wait in the Lobby or the Common Waiting Area. The Room Attendant would not take strangers into another room and allow them to wait in the room. The fact that these persons were made to wait in Room No.758 is a clear pointer to the respondent's acquaintance with the two persons as those who had come with the reference of Mr. Ramesh. When the said misconduct is viewed in the light of the industry in which the respondent was serving, it assumes a serious proportions as such dubious conduct can completely ruin the reputation of the hotel management and vitiate the atmosphere in the hotel. The same would keep away reputed and right-minded guests on account of the notoriety that the hotel would acquire.

21. While deciding the aspect of the final relief to be granted in matters where there is breach of discipline, the Court has not only to look at the

55

suffering of the workman but also to assess the impact that the proven misconduct would have on the aspect of discipline within the organisation. If such misconduct is treated with leniency – which the delinquent may not be deserving, the same would be destructive of the industry itself, and may eventually and adversely effect the larger body of workmen. Compassion for one has to be balanced with concern for the larger body of workmen involved in the industry.

22. The main defence of the respondent was that he was framed by Mr. Lohiya – the Assistant Manager. However, before the Labour Court the respondent could not establish the said allegation, which has been specifically rejected by the Labour Court. There was no reason for anyone to falsely frame the respondent. The statements of the two persons, namely Mr. Ajay Singh and Mrs. RS were recorded in the presence of the respondent and they also contain his signatures. In his own statement, the respondent had stated that these two persons had been sent by Mr. Ramesh and that he had allowed them to sit in Room No.758 for five minutes. This clearly shows that he knew Mr. Ramesh and the purpose for which the persons had come. In my view, the punishment of removal from service was the only correct punishment that should have been imposed upon the respondent keeping in view his conduct.

23. Directing reinstatement after 18 years of the respondent's removal was, even otherwise, not warranted. The direction to pay 50% back wages for 18 years – which translates to nearly 9 years of salary is a bonanza to the respondent, and not just compensation (even if it is assumed that he was entitled thereto) who has not worked for a single day during this period and

56

was not, in any event, free from blame for his removal from service. Even if the Labour Court was of the mind that the respondent deserved reinstatement which, in my opinion, he did not, the same could not be ordered with back wages. The Supreme Court in *O.P. Bhandari Vs. I.T.D.C. and Others*, (1986) 3 SCR 923, held that back wages of 3.33 years would suffice to compensate the workman whose termination was patently wrongful, as it was founded upon an ultra vires rule. In the present case, it cannot be said that the respondent had made no contribution in the evolution of the situation wherein he found himself removed from service. In fact, it was solely on account of his own misconduct that the respondent found himself in the situation that he did. Therefore, there was no justification to direct payment of any back wages to the respondent workman. Reinstatement of the respondent was also not justified as, by his conduct, there was reason good enough to shake the faith of the management in the respondent who was serving as a Room Attendant in a 5-Star hotel. The petitioner could not be justifiably expected to continue to take services from an Attendant on whom they could not have trust as it involved public dealing with in-house guests.

24. Accordingly, I allow this petition and set aside the impugned award dated 15.07.2006 as well as the order dated 18.11.2002 passed by the Labour Court in I.D. No.36/2006 (old I.D. No.182/1994).

25. The parties are left to bear their respective Costs.



VIPIN SANGHI, J

FEBRUARY 20, 2013

BSR