

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

Reserved on: 6th February, 2015
Date of Decision: 09th March, 2015

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+ W.P.(C) 1120/2012

BIJENDER SINGH

..... Petitioner

Through: Mr. Arvind Kumar Sharma,
Advocate.

versus

HARYANA ROADWAYS

..... Respondent

Through: Mr. Yashpal Rangi, Advocate.

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. By way of the present petition the petitioner assails the order dated 22.12.2011 passed by learned Additional District & Sessions Judge, Presiding Officer, Labour Court, Karkardooma Courts, Delhi in I.D. No.124/2005 whereby both the issues framed before the learned trial court were decided against the workmen/petitioner and he was held not entitled to any relief.

2. In a nutshell the facts of the present case are that the petitioner was appointed to the post of driver w.e.f. 06.07.1999 with the respondent authority on the basis of driving license bearing number 14692/LA/UNA/HP issued by R.T.A., Una, Himachal Pradesh and the said driving license was renewed by DRTA, District Karnal (Haryana), LA(RTA), Gurgaon, District (HR), Sonapat LA(RTA) and finally by

LA(RTA), Gurgaon, District Haryana on 13.01.2003. On 08.01.2002, the respondent issued instructions in reference of false report regarding the license enquiry to all the DTO and GM of Haryana Roadways vide his letter No.6685/II dated 08.01.2002. Pursuant to the said instructions, a letter dated 05.12.2002 was addressed by General Manager, Haryana Roadways to the Secretary, Regional Transport Authority, Una (Himachal Pradesh) requesting the verification and truthfulness of the license of the petitioner and one Rajinder Singh. The Registering and Licencing Authority, Una (HP) in return replied by stating that licences bearing numbers DL No.31470/86/LA/Una and 14692/LA/Una/HP were not issued from their office. It was further stated by the authorities at Una in their reply that the said driving licenses seem to be “illegal/ fake”.

3. Thereafter, vide order dated 23.07.2003 the services of the petitioner was terminated by the General Manager, Haryana Roadways, Delhi. On 02.08.2003, the petitioner filed an appeal before the Transport Commissioner, Chandigarh, Haryana against the said order of termination. The petitioner also sent a legal notice dated 17.01.2004 to the respondent challenging his termination and praying for reinstatement with all benefits. Vide order dated 9.06.2004 the appeal of the petitioner was rejected. Against the said order the petitioner approached the learned Labour Court. In the said industrial dispute an award dated 25.04.2006 was passed granting the petitioner the relief of reinstatement with continuity of service along with 50% back wages and all other benefits. The respondent filed a writ petition

bearing W.P.(C) No.3023/2007 against the said award and the petitioner filed W.P.(C) No.8158/2007 for its implementation.

4. Vide order dated 18.02.2010, the matter was remanded back by this Court for fresh adjudication. Thereafter the written statement was filed by the respondent before the learned Labour Court, rejoinder by the petitioner and evidences were adduced by both the parties. Finally, vide order dated 22.12.2011 award rejecting the claims of the petitioner was passed which is impugned in the present petition.

5. Learned counsel for the petitioner contended that the impugned award fails to take into consideration that the principles of *audi alteram partem* were violated by the respondent and that the order was passed against him without affording him any opportunity of hearing. No inquiry was conducted by the respondent authority before the termination order was passed against him.

6. It was further contended by the learned counsel for the petitioner that the trial court has failed to consider the fact that the driving license of the petitioner was renewed from time to time by various authorities at Karnal, Gurgaon and Sonapat and was last renewed on 13.01.2003 by LA(RTA), Gurgaon. The termination order dated 23.07.2003 was passed solely on the basis of the petitioner having a fake license which fact was not proved nor were any evidence led which could have led to the termination of the petitioner. The documents and the evidence adduced by the petitioner were not appreciated while passing the impugned award. The RTA, Una (HP) issued driving license to other workmen as well, i.e., Rajender Kumar (D-202), Dharambir (D-166)

and Jagdish Chander (DSPL-19), who are still working with the respondent authority. Various other drivers having license issued from Una (HP), DRT Authority and outside the State Authority are working with the Management. Having a license from other State cannot be a criterion for termination of services of the petitioner workmen. The impugned award was based on the evidence of Mr. Phool Kanwar (MW-1), who has admitted that the petitioner had never worked under him. He has also stated that he was not aware of the fact that whether the driving license issued by Una, HP was renewed from different RTA, i.e., Karnal, Gurgaon and Sonapat.

7. It was lastly contended by the learned counsel for the petitioner that the General Manager of the respondent had issued a letter dated 30.04.2014 wherein he had stated that if the petitioner is taken back on work due to shortage of drivers, then the Management would have no objection.

8. *Per contra*, learned counsel for the respondent urged that the order of termination of services was passed on the basis of reply submitted by RTA, Una (HP) to the letter of the respondent asking about the verification of license of petitioner. In the said reply, it was stated that they did not issue a license to the petitioner and that the said license seemed 'illegal/ fake'.

9. It was further contended on behalf of respondent that the petitioner has failed to prove that his license was genuine. The onus to prove that his services were illegally terminated and that he did not have a fake license was on the petitioner, which he failed to discharge.

It was lastly contended by the learned counsel for the respondent that the petitioner was issued a show-cause notice and was thoroughly examined. The service was terminated after following the due procedure of law and the principles of natural justice were not violated.

10. I have carefully considered the submissions made by learned counsel for both the parties and have also perused the material on record.

11. The termination order of the petitioner is based on the report of the RTA, Una (HP) on his initial license No.14692/LA/UNA/HP wherein it was stated that the said license was not issued by them and that it “seem fake or illegal”. In this context, the submission of learned counsel for the petitioner that the license was renewed by the competent authority RTA, Haryana and that his termination after three years of his satisfactory service is not justified does not find favour with this court.

12. The Hon’ble Supreme Court in various judgments has put to rest the issue of renewal of fake license by the authority concerned in the matters of insurance claims. It is settled in those cases that a fake license cannot get its forgery stripped off merely on the account of some officer renewing the same with or without the knowledge of it being fake. A licensing authority does not have the power to transform a fake license as genuine. Merely for the reason that some statutory authority acted on a fake document with or without the knowledge of its genuineness would not grant legal sanctity or truthfulness to it. A counterfeit document would forever remain counterfeit. It is pertinent

to observe at this stage that the opinion expressed by the Hon'ble Supreme Court in insurance cases would apply as an analogy even to the renewal of fake license by the authority in cases involving industrial disputes.

13. The Hon'ble Supreme Court in '**New India Assurance Co., Shimla vs. Kamla & Ors., etc.**', (2001) 4 SCC 342, with regards to renewal of a fake license by an authority in a case involving insurance claim observed as under: -

“12. As a point of law we have no manner of doubt that a fake licence cannot get its forgery outfit stripped off merely on account of some officer renewing the same with or without knowing it to be forged. Section 15 of the Act only empowers any Licensing Authority to “renew a driving licence issued under the provisions of this Act with effect from the date of its expiry”. No Licensing Authority has the power to renew a fake licence and, therefore, a renewal if at all made cannot transform a fake licence as genuine. Any counterfeit document showing that it contains a purported order of a statutory authority would ever remain counterfeit albeit the fact that other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine.”

14. It is true that the Industrial Disputes Act, 1947 was enacted with an object to facilitate the workmen/ labourers to present their case. Its provisions are directed to secure industrial peace and harmony by providing machinery and procedure for investigation and settlement of industrial disputes by negotiation. The workmen are given a beneficial status under its provisions and the said Act is essentially pro-workmen.

However, its provisions cannot be extended to grant a license to the wrongful acts on the part of the workmen and in no case they can act as a device to grant legal sanctity to acts which are outrightly illegal and speak of fraud.

15. In the instant case the respondent has proved the license No.14692/LA/UNA/HP as fake or illegal on the basis of the reply by RTA Authority, Una to their inquiry into the matter vide letter dated 05.12.2002. Once that was done the onus to prove that the said driving license was not genuine shifted on the petitioner, which he has failed to discharge. As I have already observed above in the light of '**New India Assurance India's case**' (*supra*) the fact of renewal of a fake license would not grant legal sanctity to it. As observed above, a fake document would always remain to be so and cannot gets its forgery outstripped just because some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine.

16. The petitioner has produced Mr. Manoj Kumar (WW-2) as a witness before the trial court and also contended that other drivers namely Rajender Kumar, Dharmbir and Jagdish Chander who were issued license from RTA, Una are still working with the Management while his services were terminated. A perusal of the records show that Manoj Kumar, (WW-2) has in his statement before the trial court stated that the petitioner also got his license issued from out of State. However, he has nowhere stated that the license of the petitioner was genuine. Otherwise also, the said witness was no authority to corroborate the genuineness of the driving license issued to the petitioner especially so when his own original license got issued in

Mathura. In his cross-examination the said witness has stated that about 70% of drivers had an out of State license and working with the respondent. However, this statement too does not favour the petitioner. Clearly, the service of the petitioner was not terminated for the reason that he had out of State license rather, he was terminated because of the fact that the initial license issued from the authority of Una, Himachal Pradesh was found to be fake or illegal on an enquiry conducted by the management. Further, the petitioner has also failed to prove that the driving license issued to the workmen namely Rajender Kumar, Dharmbir and Jagdish Chander were fake and they were still allowed to continue with the management.

17. The submission of learned counsel for the petitioner that since his services had been terminated without any enquiry and so on this ground alone he is entitled to be reinstated is not the correct position in law. It is an admitted fact that the Management did not conduct any inquiry in the present case, yet, the respondent had issued a show-cause notice dated 21.01.2003 to the petitioner which was duly replied by him (show cause notice dt. 21.01.2003 and its reply were duly placed on record with the permission of this court and consent of both the parties on 06.02.2015). In his reply, the petitioner has admitted that he got his license from Una issued through an agent (Dalal) and the same was renewed by the respondent from time to time. Thereafter, the petitioner had also preferred an appeal against his dismissal order followed by raising an industrial dispute before the Tribunal. Clearly, the petitioner had ample opportunity to present his case even in the absence of a domestic inquiry. It is not his case that no opportunity

was given to him to present his case at the stage of the appeal which fact was also observed by the labour court in its impugned award. In the order of dismissal dt.23.07.2003 (Ex.6 WW-1/4) it is mentioned that the petitioner was given an opportunity to present his case on 25.03.2003 and 16.06.2003 and the said order was passed only after the petitioner was heard on 16.07.2003.

18. It is now well settled that even if no inquiry is held by any employer before terminating the services of a worker 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 or Section 33 of the Industrial Disputes Act, 1947 the entire controversy between the parties become open for adjudication by the Labour Court or the Industrial Tribunal and both the parties, then, get an opportunity to substantiate their rival stand. In this regard, reference is made to the judgment of the Hon'ble Supreme Court in workmen of **'Workmen of M/s. Firestone Tyre and Rubber Co. of India (P) Ltd. vs. Management and others'**, 1973 AIR (SC) 1227, wherein the consequence of an employer holding a defective departmental inquiry or not conducting any inquiry at all before the services of a workmen for some misconduct as also the power of the industrial adjudicator for the grant of appropriate relief was considered. The Hon'ble Supreme Court observed as under: -

"27. 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 a 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, had 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 recognised that the Tribunal should straightaway, 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.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in *The Management of Panitole Tea Estate v. Workmens* [(1971) 1 SCC 742] within the judicial decision of a Labour Court or Tribunal.”

19. In the light of the aforesaid judgment even if it is to be presumed that the petitioner was deprived of an opportunity to present his case before the respondent in the absence of domestic enquiry the petitioner cannot be said to be prejudiced on this ground alone. The workman had raised an industrial dispute which was referred to the Labour Court. Before the Labour Court, the petitioner was given

opportunity to present his case. The petitioner presented his witnesses and only after providing him an opportunity of being heard, the impugned award was passed. The Labour Court had also rejected his contention that he was not afforded an opportunity to present his case.

20. Further, although this court is cognizant of the fact that the appellant authority is bound to give its reasons while deciding the appeal. However, mere non supply of reasons for its order would not be sufficient enough to set aside the impugned award which was passed after considering all the pleas of the petitioner.

21. So far as the letter No.76/EA/RK dated 30.04.2014 is concerned, it may be observed that it is in the nature of an internal circulation between the General Manager, Haryana Roadways and the Director and in all cases the opinions made in it are purely in a nature of recommendations. No right accrues to the petitioner merely on the basis of this letter.

22. In view of the aforesaid discussion, there is no illegality or infirmity in the impugned award dated 22.12.2011 passed by learned Presiding Officer, Labour Court, Karkardooma Courts, Delhi. Thus, the petition deserves to be dismissed and the same is hereby dismissed.

23. Trial Court record be sent back forthwith.

(VED PRAKASH VAISH)
JUDGE

MARCH 09th, 2015
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