

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

Date of Decision: 15.09.2015

+ **W.P.(C) 3235/2011**

UMESH KUMAR TIWARI

... Petitioner

Through: Ms Anita Singh Kalkal and Ms Aditi Gupta,
Adv.

versus

HYATT REGENCY HOTEL

.... Respondent

Through: Ms Poonam Das, Adv.

+ **W.P.(C) 689/2012 & CMs 1513/2012 & 1999/2012**

HOTEL HYATT REGENCY

... Petitioner

Through: Ms Poonam Das, Adv.

versus

UMESH KUMAR TIWARI

.... Respondent

Through: Ms Anita Singh Kalkal and Ms Aditi Gupta,
Adv.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. These writ petitions are filed under Articles 226 and 227 of the Constitution of India by both the parties challenging the award dated 05.06.2010. The National Capital Territory of Delhi through its Secretary (Labour) vide reference number F-24 (92)/04/Lab./2874 – 78 dated 17.05.2004 referred the dispute for adjudication between the Management – M/s Hyatt Regency Hotel and its workman – Shri Umesh Kumar Tiwari in the following terms of reference.

“Whether the services of Shri Umesh Kumar Tiwari s/o Shri S.V. Tiwari have been terminated illegally and or unjustifiably by the management, if so, to what relief is she entitled and what directions are necessary in this respect?”

2. After the notice of reference was issued to both the parties, the workman – Umesh Kumar Tiwari appeared and filed statement of claim alleging therein that he joined the establishment of the management on 21.07.1986 and later on he was promoted to the post of Fire Safety Coordinator. On 26.11.1993, the management selected him as ‘the employee of the month’. He was congratulated by the management on his achievement of earning ‘the employee of month award for November, 1993’. In June, 1999, ‘News Flash’, issued by the management, it was published by the management that “the workman is an asset to the organization and his team mates appreciate him for his friendly and helping nature”. He was promoted as Fire Safety Coordinator in 1997 due to his diligence and outstanding work performance. On 26.03.1999, Asian Hotel Employees’ Union was formed by the employees of M/s Asia Hotel Ltd. and the said union was registered on 24.04.1999. He also got himself enrolled as a member of the said union. The General Secretary of employees’ union in its meeting held on 23.06.1999 decided to raise the demand with the management to set aside the settlement of 1998. Since the management failed to respond to the demand, a dispute was raised before the competent authorities. In the meantime, the said union started adopting all legitimate means, including *dharnas* and strikes for settling the demand / dispute with the management. On 29.04.1999, the management filed a Civil Suit No.917/99 in this Court against the union. This Court restrained the union, their employees and office bearers from holding any demonstration / *dharnas* within the radius of 250 meters from the boundary wall of Hyatt Regency. Later on this order was modified vide order dated 08.10.1999 and the union was permitted for staging any demonstration / *dharna* beyond 80 meters from the boundary wall of the management. As a result of agitations, *dharnas* and strikes, the office bearers and some active members of the union were dismissed / suspended and some of them forcibly made to resign from the office of the union and the union membership. In the aforesaid background, the workman was compelled to go back from Hotel gate on 12.08.1999 on special leave from 12th to 16th August, 1999 and when he reported on 16.08.1999 for duty in the management office, he was served with charge-sheet-cum-suspension order dated 16.08.1999. Vide his reply dated 18.08.1999 to the charge-sheet – cum suspension order, the workman denied all the allegations levelled against him in the charge-sheet. Vide letter dated 04.09.1999, the management informed

the workman that his explanation has been found to be unsatisfactory and an enquiry notice was given and the charges levelled against the workman were of major misconduct and called for severe punishment. Mr Alok Bhasin was appointed as the Enquiry Officer. His appointment was objected by the workman on the ground that Mr Alok Bhasin was working with Bhasin & Bhasin company, who was legal advisor of the management and Bhasin & Bhasin company had filed the aforesaid suit representing the management and they were also representing the management in some other criminal and industrial disputes cases. The workman also requested the management to allow him the assistance of a person in the departmental enquiry to defend him which request was declined. A detailed narration was made that thereafter the enquiry was conducted by Ms Jyotika Bhasin, Advocate and the enquiry was abruptly closed on 28.02.2002. On 01.04.2002, the management passed the order without affording opportunity of hearing to the workman on the punishment. It was indicated in the dismissal order that the workman's conduct during enquiry was most arrogant and has been grossly misbehaving with the Enquiry Officer. The said observations in the dismissal order are without any justification because the Enquiry Officer has not submitted enquiry report. Secondly, false accusations were levelled against the workman and he was not granted opportunity to explain the allegation levelled in the dismissal order which was in grave violation of principles of natural justice. The management also served one more charge-sheet dated 13.11.1999 on the allegations that he had participated in the *dharna* outside Hyatt Hotel on 02.11.1999. The said charge-sheet when replied by the workman, the management closed the issue and no further enquiry was conducted. It was alleged by the workman that the dismissal order dated 01.04.2002 passed by the management is illegal, arbitrary and based on malafide considerations.

3. The claim was contested by the management and in the written statement filed by the management, it was stated that the claimant was working with the management as a Fire Safety Coordinator. He was issued a charge-sheet dated 16.08.1999 on account of certain charges of gross misconduct. Since the charges levelled against him were extremely serious in nature, a domestic enquiry was instituted into the charge-sheet. The enquiry was conducted by Ms. Jyotika Bhasin, Advocate. Ever since the enquiry

commenced, the claimant adopted totally non-cooperative attitude. Subsequently, he started shouting and using derogatory language against the Enquiry Officer which virtually made it impossible for the Enquiry Officer to proceed with and conduct the enquiry further. Moreover, the claimant wrote a letter dated 28.02.2002 making deliberate and wilful assault on the honour of the Enquiry Officer, with the result, the enquiry could not be completed. The conduct of the claimant during the enquiry as well as the charges levelled against him merited his dismissal from service. Moreover, the Claimant by his conduct had forfeited the confidence in him, therefore, in the absence of any extraneous circumstances which could not merit the lesser punishment, he was dismissed from service vide letter dated 01.04.2002.

4. After completion of pleadings, the following issues were framed on 28.01.2005:

- (i) Whether the management conducted unfair and improper enquiry against the Claimant, if so, its effect?
- (ii) As per terms of reference.

5. The enquiry issue was treated as the preliminary issue. However, during the proceedings both the parties stated that the enquiry was not concluded and the services of the claimant were dismissed without any enquiry report. A prayer was made in the written statement by the management that since the enquiry could not be concluded because of misbehaviour of the claimant with the Enquiry Officer as such they wish to prove the charges before the court. In view of the same, on 29.07.2005, the enquiry issue was struck off. Instead following fresh issue was framed:

“Whether the claimant committed misconduct as per the charge-sheet dated 16.08.1999 on record of the case file?”

6. Both the parties led their respective evidence. Vide impugned order dated 05.06.2010, the learned Presiding Officer, Labour Court – XVI, Karkardooma Courts, Delhi held that there was violation of principles of natural justice during the enquiry proceedings and the enquiry was not conducted in a fair and proper manner. Moreover,

no show cause notice was issued to the claimant about the proposed punishment which was again in violation of principles of natural justice. Further, the dismissal order dated 01.04.2002 reflects that the incident with respect to which the enquiry was conducted was not the main basis for the dismissal rather extraneous factors were taken into account. In the facts and circumstances of the case, the workman cannot be reinstated and, therefore, the compensation is the only alternative. Accordingly, a sum of Rs.5 lac was awarded as compensation to the workman.

7. Feeling aggrieved by this award, the workman filed a writ petition being W.P.(C) 3235/2011 whereas the management challenged the impugned award by filing W.P.(C) 689/2012.

8. Since the common award is under challenge in both the writ petitions, therefore, both the writ petitions were heard together.

9. The workman challenged the impugned award primarily on the ground that the Labour Court did not set aside the order of dismissal dated 01.04.2002 even after finding that the dismissal order is based on ulterior motives, malafide considerations and holding that the workman had not committed any misconduct as per the charge-sheet dated 16.08.1999 on the basis of which the enquiry proceedings were initiated by the respondent and granted compensation to the workman. The award was also assailed on the ground that the Tribunal erred in holding that the compensation is the only alternative left to be given to the workman whereas the workman had sought the relief to quash the dismissal order dated 01.04.2002, the charge-sheet dated 16.08.1999 and 13.11.1999 and prayed for reinstatement with full back-wages and consequential benefits.

10. The management, on the other hand, challenged the impugned award on the ground that the Labour Court committed a manifest error by holding that the enquiry conducted by the management was improper. The enquiry issue which was wrongly framed in the first instance was deleted by the Labour Court itself vide order dated 29.07.2005. Since there was no issue relating to the fairness of the enquiry, the question of recording any finding on the same could not arise. The impugned award thus passed

by the Labour Court holding the enquiry as improper and granting compensation of Rs.5 lac was not in accordance with law. The challenge is also made on the ground that the management had led sufficient evidence to substantiate the acts of misconduct committed by the workman. The evidence of Mr Arun and Mr Alok Kumar as well as the Enquiry Officer Ms Jyotika Bhasin proved the acts of misconduct committed by the workman. It was also alleged that the impugned award granting a huge compensation of Rs.5 lac is bad in law. There was no justification for granting such a huge compensation to the workman who committed acts of gross misconduct leadings to loss of confidence reposed in him by the management.

11. There is force in the challenge made by the management in the writ petition to the fact that although initially the issue regarding the enquiry proceedings was framed by the Labour Court but vide order dated 29.07.2005 this issue was struck off as it was jointly submitted by the parties that the enquiry was not concluded. Thereupon, a fresh issue in place of enquiry issue was framed as to whether the claimant / workman committed misconduct as per the charge-sheet dated 16.08.1999. On account of allegations and counter-allegations made by the parties, the enquiry could not be concluded by the Enquiry Officer and, therefore, the management in the written statement made a prayer that they be allowed to prove the charge regarding misbehaviour before the Labour Court and, therefore, a fresh issue was framed. Despite the fact that the issue pertaining to the enquiry report was deleted, yet the Labour Court decided the issue of enquiry as being not fair and proper according to principles of natural justice and despite framing of a new issue, the thrust of conclusion in passing the impugned order was the enquiry proceedings. Moreover, the Secretary Labour had referred the disputes to the Labour Court with the terms of reference whether the service of Umesh Kumar was terminated illegally or unjustifiably by the management and Issue No.2 was also framed as per terms of reference, but no finding was given regarding this issue. The findings of the Labour Court are erroneous and will require fresh adjudication.

12. Similarly, there is a force in the challenge made to the impugned award by the workman on the ground that although the Labour Court observed that the workman had not committed any misconduct as per the charge-sheet dated 16.08.1999, however, as far

as the dismissal order dated 01.04.2002 is concerned, except for mentioning that the basis of enquiry was something else and the dismissal order was something else, no finding was given regarding the dismissal order dated 01.04.2002 and the basis on which the compensation was awarded.

13. Under the circumstances, both the petitions are allowed and the impugned award dated 05.06.2010 passed by the Labour Court – XVI, Karkardooma Courts, Delhi in ID No. 282/06/04 is set aside and the matter is remanded back to the learned Labour Court – XVI, Karkardooma Courts, Delhi with the directions to pass a fresh award after affording an opportunity of hearing to both the parties.

14. Keeping in view the fact that the dismissal order was passed as far back as on 01.04.2002, it is impressed upon the learned Labour Court to decide the matter afresh within a period of three (3) months from the date of this order.

15. The parties are directed to appear before the concerned Labour Court on 01.10.2015.

16. Trial Court record be sent back immediately through a special messenger.

Both the petitions stand disposed of accordingly.

Pending applications, if any, also stand disposed of.

(SUNITA GUPTA)
JUDGE

SEPTEMBER 15 2015/rd