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

+ **W.P.(C) No. 64/2002**

% Judgement reserved on: 15.01.2015

Judgement pronounced on: 29.01.2015
DTC Petitioner

Through: Ms Arati Mahajan and Ms Aswathi,
Advocates.

versus

MAHABIR PRASAD Respondent
Through: Mr Aditya Singh, Advocate.

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. It is a case where the unscrupulous litigant has by its intentional act of suppression has not only succeeded in playing fraud upon the Tribunal, but has also succeeded in obtaining an order in his favour from this court and has also reaped the fruit of that fraud.

2. The relevant facts of the case are that the respondent was working as a driver with the petitioner. On 19.11.1984, the respondent had committed the misconduct alongwith co-accused Sh.Ishwar Singh, ASK while driving bus no. DHR 3064. The charge sheet was issued to him on 28.12.1984. The departmental enquiry was conducted in which he had fully participated.

Statement of witnesses recorded. Opportunity to cross-examine witnesses was given. The opportunity to produce defence evidence was also given. Meanwhile, the employees went on strike in the year 1988, hence action on enquiry was stalled. The show-cause notice dated 11.06.1992 was also given to him. Instead of filing reply to show-cause notice, workman sent letter dated 17.06.1992, which was duly replied by petitioner vide letter dated 29.06.1992 and respondent/workman was again asked to furnish his reply to show-cause notice. Reminder dated 2.07.1992 and 04.07.1992 were sent. Respondent/workman sent letter dated 14.07.1992, which was not found satisfactory and vide order dated 16.09.1992, the service of workman was terminated.

3. Since an industrial dispute was pending before the concerned official, an application under Section 33(2)(b) of I.D. Act was moved by the petitioner. One month wages were also sent to the respondent through money order. The respondent/workman challenged the said application of the petitioner under Section 32 (2)(b) and filed its reply to the said application wherein he challenged his termination on several grounds.

4. On 25.11.1997, the preliminary issue was framed by the Tribunal relating to the validity of the domestic enquiry. Vide order dated 17th

February, 2000, the Tribunal set aside the enquiry. Vide another order of the same date, the approval petition under Section 32 (2) (b) of the I.D Act was dismissed.

5. These are the orders which are under challenge before this court. The respondent/workman has not filed any counter affidavit in the present writ petition but relied on his writ petition having W.P.(C) No. 6844/2000.

6. The dates in this case are very important. Chronology of events show that the respondent/ workman was dismissed from service vide order dated 16.09.1992. The petitioner filed the Approval petition under Section 33(2)(b) of the I.D. Act in case I.D No. 17/88 in the year 1996 which was registered as OP 30/96.

7. It was dismissed by the Tribunal vide its order dated 17.02.2000. Against this order the workman/respondent filed writ petition bearing W.P.(C) No. 6488/2000. The petitioner filed the present writ petition in the year 2002.

8. This writ petition remains pending before this court from 7th January, 2002 onward. In between the workman/respondent moved an application

under Section 17 B of the Industrial Disputes Act demanding full wages during the pendency of the present writ petition.

9. On the application of workman, this court vide order dated 29th September, 2004, directed the petitioner to deposit with the Registry the wages due to the respondent/workman till 30th September, 2004 and the operation of order dated 17th February, 2000 of Tribunal in OP No. 30/96 was stayed. It was also ordered that WP(C) No. 6844/2000 by which workman/respondent had sought the implementation of the order of tribunal dated 17.02.2000 in OP No. 30/96 be taken up with this writ petition. The petitioner in compliance with direction of this court deposited the wages with the Registrar. The respondent/workmen also moved an application C.M. No. 3222/2005 for release of the said amount and vide order dated 16th March, 2005, the deposited amount was ordered to be released to the respondent/workman. Since, the amount was released to workman/respondent unconditionally, the petitioner moved an application CM No. 11680/2005 for direction to the respondent/workman to furnish bank guarantee of the released amount. Despite matter being adjourned on several occasions, respondent did not file any reply to the said application and finally on closing his right to file reply, this court vide order dated 4th

December, 2007 directed the respondent/workman to furnish the bank guarantee for an amount of Rs. 8,04,800/- with interest (the released amount). The respondent/workman did not comply with the directions and did not furnish any bank guarantee.

10. Vide order dated 6th May 2010, this court dismissed WP (C) No. 6844/2000 of the respondent/workman whereby he sought the implementation of the order dated 17.02.2000 passed by the Tribunal in OP No.30/96, in view of the stay of the said order in this petition, giving liberty to respondent/workman to revive the said writ petition, in the eventuality of dismissal of this writ petition.

11. The workman/respondent therefore by virtue of this application under Section 17B of the I.D. Act has successfully claimed the back wages and also got it released. Not only that, he refused to comply with direction of this court and did not furnish the bank guarantee. He also intentionally suppressed a very vital information from the knowledge of not only this court but also of Tribunal.

12. During the course of arguments in the present writ petition, the attention of this court has been drawn to the order of Division Bench in CM No. 5183/93 in W.P.C No.3261/93 dated 19th January, 1996. This order

was passed in the writ petition filed by respondent/workman, challenging his dismissal order dated 16.09.1992, approval of which was also sought under Section 33 2(b) of Act by the petitioner before Industrial Tribunal in ID 17/88 which was registered as OP No. 30/96.

This order is reproduced as under:-

“We do not think that this case deserves any consideration as the petitioner who was in charge of the bus has taken away it unauthorisedly. The contention is that the petitioner acted under the direction of the store keeper who has been also charged and who has been imposed minor penalty which the petitioner has been dismissed from service. We find that being driver of the bus it was his responsibility to see that no harm is done to the bus. The role of the petitioner is graver than that of the store keeper. We dismiss the writ petition in limine.”

13. It is clear that vide this order, the Division Bench of this court had upheld the dismissal order dated 16.09.1992 of the respondent/workman and the challenge to the dismissal order by respondent/workman was dismissed. This order was not challenged by workman and thus the order is final. I have deduced this fact (that order was not challenged in higher court) from the very fact that workman has nowhere contended this fact. Even in his writ petition no. 6844/2000, he has made no mention of dismissal of his WP(C) No. 3261/93 in which he challenged his termination order.

14. It is argued on behalf of the petitioner that this fact was within the knowledge of the respondent/workman but he had intentionally concealed this fact from the knowledge of the Industrial Tribunal. It is argued that since the writ petition of the respondent/workman was dismissed *in limine*, they were not aware of this order and it was the duty of the respondent/workman to bring it to the notice of the Industrial Tribunal. It is argued that the order of Industrial Tribunal, whereby it has declared termination illegal is contrary to the order dated 16.09.1992 of Division Bench i.e. the writ petition with WP.(C) No. 3261/93 whereby the Division Bench has upheld the termination order dated 16.09.92. It is argued that the order of Industrial Tribunal is thus a nullity. It is argued that the workman has played fraud not only upon Industrial Tribunal but also upon this court. It is argued that by concealing this order, he made this court pass orders dated 29.09.2004 and 16.03.2005 (depositing of wages of sum of Rs. 8,04,800/- and its unconditional release to him). It is prayed that the said amount be ordered to be refunded to the petitioner.

15. Despite the fact that matter had been listed on several dates for arguments, none on behalf of the respondent/workman has attended this court to argue the matter. The various order sheets starting from 8th January,

2010 shows that neither the workman nor any of his representatives had attended the court on subsequent dates. In order to secure the attendance of the workman, this court vide its order dated 23rd March, 2011 sent a notice to the respondent through his counsel. Despite the service of the said court notice upon the counsel for the respondent, none had attended the court proceedings on behalf of the workman/respondent till the date when the arguments were heard on behalf of the petitioner.

16. There is no dispute that the contention of the learned counsel for the petitioner finds support from the facts of this case. It is apparent that when the dismissal order dated 16.09.1992 was passed against workman, he had immediately challenged it by way of writ petition no. 3261/93 and his challenge was dismissed by the Division Bench *in limine* on 19.01.1996. Proceedings before the Tribunal continued till 2000 as the impugned order was passed on 17/2/2000. From the trial court record, it is apparent that the respondent/workman had filed its reply dated 9th January, 1997 to the application of petitioner under Section 33(2)(B) of Industrial Disputes Act before the Industrial Tribunal. It was thus filed by him after the dismissal of his writ petition *in limine* on 19.01.1996. Still the respondent/workman did

not mention this fact in his reply. This shows that he has intentionally concealed it from the knowledge of the Industrial Tribunal.

17. In the case of **State of Maharashtra and Another vs. Basantibai Mohanlal Khetan and Others** reported in AIR 1986 SC 1466, Hon'ble Supreme Court has held as under:-

“18. In view of this categorical finding in Chauhan's Case, it was not open to the direct recruits to re-agitate this point. Although by reason of the Explanation which was inserted in Section 141 of the Code of Civil Procedure, 1908, by the Code of Civil Procedure (Amendment) Act, 1976, Section 11 of the Code does not in terms apply to any proceeding under Article 226 of the Constitution, the principle of res judicata does apply to all writ petitions under Article 226. This point was, therefore, barred by the principle of res judicata and should never have been allowed by the High Court to be re-agitated.”

18. Therefore, it is apparent that principle of *res judicata* is applicable. Even if any order is passed by a Supreme Court in exercise of its jurisdiction under Article 226 of the Constitution, the order acts as a *res-judicata* and the issue cannot be re-agitated before any court.

19. It is apparent that the Industrial Tribunal was not aware of the order of the Division Bench dated 19.01.1996. Since the order of 19.01.1996 acts as

a *res-judicata*, the order of the Tribunal dated 17.02.2000 is therefore bad in law.

20. The entire proceedings before the Tribunal continued because the respondent/workman had played fraud upon the Industrial Tribunal by intentionally concealing the dismissal of his challenge *in limine* by Division Bench. Respondent had played fraud upon the Industrial Tribunal.

21. In the case of **K.D. Sharma Vs. Steel Authority of India Limited and Ors.** reported in (2008) 12 SCC 481, the Supreme Court has defined ‘fraud’ as under:-

“The Court defined “fraud “as an act of deliberate deception with the design of securing something by taking unfair advantage of another. In fraud one gains at the loss and cost of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam.”

22. In the case of **A.V. Papayya Sastry Vs. Govt. of A.P.** reported in SCCp.231, para 22), the Supreme Court has held as under:-

“22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a

nullity and nonest in the eye of the law. Such a judgment, decree or order-by the first court or by the final court-has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.”

23. The Supreme Court has also held in para 24 of its another case titled as **Vijay Syal Vs. State of Punjab** reported in SCC p.420, para 24.

“24. In order to sustain and maintain the sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misinterpretation and is concealing material facts it does so at its risk and cost. Such party must be ready to take the consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters is either mistaken or lightly taken instead of learning proper lesson. Hence there is a compelling need to take a serious view in such matters to ensure expected purity and grace in the administration of justice.”

24. In view of the settled principles of law, it is apparent that the order of the Tribunal which had been obtained by the respondent in his favour by playing fraud is a nullity and therefore *non-est* in the eye of law.

25. The respondent thus had acted in a fraudulent manner. Apparently, he also played fraud upon this court and obtained favourable order on his application under Section 17 B of Industrial Disputes Act claiming back wages and its release concealing Division Bench order and got enriched by a sum of Rs. 8,04,800/- alongwith the interest accrued thereon. Since, he obtained these orders by playing fraud upon this court, he is liable to refund the said money alongwith interest accrued thereon to the petitioner. The respondent therefore is directed to refund the entire sum which had been released to him by virtue of the order dated 29.09.04 by the Registry, to the petitioner within four weeks from date of this order, failing which petitioner is at liberty to realise it by way of execution.

26. The settled principle of law is that the courts are within its power and jurisdiction to impose cost as an act of deterrence to vexatious, frivolous and speculative litigation and defence, in order to make other litigant think twice before filing vexatious, frivolous and speculative claim or defence. Exemplary cost can also be levied where the party is found to be guilty of misrepresentation, fraud or suppression of facts and reliance placed on the findings of the Supreme Court in the case of Satyapal Singh Vs. Union of India and Another reported in (2010)12 SCC 70.

27. The respondent in this case is guilty of suppression of material information from the knowledge of this court.

28. In view of the above discussed conduct of the respondent, I find it a fit case where while disposing of the present writ petition, the cost be imposed upon the respondent. It is apparent that in view of the conduct of the respondent, the petitioner had to go through this frivolous litigation as an issue which stood finally decided on dismissal of the writ petition of the respondent vide order dated 19.01.1996. Still he made the petitioners to continue with the litigation while suppressing this information from the respondent as well as from the knowledge of this court. Even before this court in the present writ petition, he had concealed this fact from the knowledge of this court. Although, an exemplary high cost is required to be imposed upon the respondent in view of his conduct but keeping in mind his social status, which admittedly is that he had been working as a driver and thus belongs to a lower middle class, I am of the opinion that imposition of sum of Rs. 25,000/- as cost upon the respondent would be sufficient to work as a deterrence. The cost be deposited by him with Delhi High Court Staff Welfare Fund within four weeks from the date of this order.

29. With these directions, the petition is allowed.

**DEEPA SHARMA
(JUDGE)**

JANUARY 29, 2015

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