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

Date of decision: 3rd December, 2015

+ W.P.(C) 3912/2011
DTC

..... Petitioner

Through: Mr Sunil Kumar Ojha, Advocate

Versus

RAJENDER KUMAR

..... Respondent

Through: Mr H.K. Chaturvedi, Advocate

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. By virtue of this writ petition under Article 226 r/w Article 227 of the Constitution of India, the petitioner seeks quashing/setting aside of the impugned award dated 9th December, 2009 in ID No. 251/08/92 passed by the Presiding Officer, Labour Court, KKD Courts, Delhi.

2. The respondent (hereinafter referred to as 'the workman') was working as a sweeper/cleaner with the petitioner/Delhi Transport Corporation (hereinafter referred to as 'Corporation') since April, 1983. His services were terminated vide letter dated 6th July, 1990. As such, an industrial dispute was raised by him which was referred by the Govt. of NCT of Delhi to Labour Court vide reference No. F.24(938)/92-Lab./12378-83 dated 30th April, 1992 with following terms of reference:-

"Whether the removal of Sh. Rajender Kumar from service by the management is illegal and/or unjustified and if so to what relief is he entitled and what directions are necessary in this respect?"

3. The workman filed a statement of claim alleging *inter alia* that he was working as a sweeper cleaner. He was given a charge sheet dated 29th November, 1988 on the ground that he was availing leave without wages. The workman replied the charges and explained that he submitted leave applications due to his own sickness and that of his son and wife during November, 1987 to October, 1988. Inquiry was held and the findings were in favour of the workman but management rejected the findings of the inquiry officer. Without giving any reasons, *de novo* enquiry was ordered. Thus, the second inquiry is illegal which held the workman guilty of the charges. He was removed from service by letter dated 6th July, 1990.

4. Management contested the claim by stating that workman was not showing any interest in work. He availed 118 days leave without pay. He submitted medical certificate for 41 days only. It was admitted that second inquiry was conducted since first inquiry was not satisfactory. The inquiry officer had afforded full opportunities to the workman. Workman accepted the charges without any pressure. The order of removal is justified.

5. On the basis of above reference, the Labour Court-I in ID 183/92, passed an award dated 25th May, 1999 holding the termination to be illegal and that the workman was entitled for reinstatement with full back wages.

6. The award was challenged by the management by filing WP No.4030/2001. Vide order dated 10.11.2004, this Court set aside the award and remanded the matter back to the Labour Court to proceed in accordance with law.

7. The workman filed WP No. 7620/2000 for implementation of the award in ID No.183/92 and for initiating penal action against the management. This Court vide order dated 3rd February, 2005, directed that the workman be

reinstated in terms of the award.

8. CMP No.6143/05 was filed by the Corporation in aforesaid writ petition bearing WP No.7620/2000 and the High Court vide order dated 3rd February, 2005 passed the following order:-

“Be that as it may, once the writ petition filed by the DTC against the award dated 25.05.1999, was remanded back for fresh adjudication, therefore, the order dated 03.02.2005, could not have been passed giving directions for the implementation of the same very award.”

9. Parties were directed to appear before the Labour Court on 25.05.2009 in terms of the order in WP No.4030/2001.

10. Pursuant to the directions given by the Court, the parties led their evidence and vide impugned award dated 9th December, 2009, the management was directed to reinstate the workman with continuity of service in the same post by paying the workman a lump sum amount of Rs.50,000/- towards back wages.

11. Challenging this award, present writ petition has been filed.

12. Learned counsel for the petitioner submits that the workman remained absent from his duty without intimation/prior approval for 118 days during the period November, 1987 to October, 1988 which reflected his complete indifference and carelessness towards duty and his action amounted to misconduct within the meaning of paras 4 and 19 (h) & (m) of Standing Orders governing the conduct of the DTC employees. The reply submitted by the workman was not found to be satisfactory. As such, the disciplinary inquiry was conducted against him. The first inquiry report was submitted whereby the workman was let off, as such, *de novo* inquiry was conducted wherein the workman admitted having taken leave without pay due to his illness and illness of his children. He was found guilty in the second inquiry. Pursuant thereto after affording opportunity to the

workman of showing cause as to why he should not be removed from service of the Corporation, vide letter dated 6th July, 1990 he was removed from service. Counsel submits that mere making leave application does not tantamount to sanction of leave. Moreover, it was admitted by the workman that for a period of 37 days he did not submit any application for grant of leave. Reference was also made to his past conduct which was not found to be unblemished. As such there was no justification for directing the reinstatement of the workman along with lumpsum compensation amount towards back wages. Reliance was placed on **DTC vs. Sardar Singh**, (2004) 7 SCC 574 and a judgment passed by this Court in WP No.3798/2011, **Delhi Transport Corporation vs. Nain Singh** on 20th October, 2015.

13. Rebutting the submission, learned counsel for the respondent submits that the first award was passed on 25th May, 1999 whereby the workman was ordered to be reinstated with full back wages. The workman applied for implementation of the award by filing writ petition No.7620/2000. This Court took into consideration the findings recorded by the Labour Court to the first inquiry conducted against the workman where it was recorded as under:-

“Besides in the findings of the 1st Enquiry Officer, Shri A.S. Bains, proved as Ex.MW1/8 by the claimant he has also taken the same view when he observed as under:-

“So the charges levelled against the D.E. that he availed leave without pay for 118 days, is not proved and established as the leave have been regularized and has been duly sanctioned. Clause 19(h) is not applicable to the D.E.”

It is a case of conduct of enquiry against an employee without misconduct. The enquiry as such is vitiated and so is the fate of the findings of the 2nd Enquiry Officer who found the claimant guilty of the charges on which basis the management removed the claimant from service.”

Relying upon these findings, it was observed that the leave without pay for 118 days was sanctioned and regularized by the management. If the leave was

sanctioned and regularized in accordance with rules by the competent authority then it would not have the element of misconduct and, therefore, the case of **Sardar Singh**(supra) was distinguished. Counsel further submits that in the first inquiry, the workman was exonerated of the charges levelled against him, there was no occasion to have *de novo* fresh inquiry. Moreover, as per the charge sheet itself, there is no allegation of the workman remaining absent from duty. Referring to the scope of interference by this Court while exercising writ jurisdiction, it is submitted that there is no warrant for interference with the findings of the Labour Court and, as such, the petition deserves to be dismissed.

14. In response, counsel for the petitioner submits that the workman cannot get any benefit from the observations made in the Writ Petition No.7620/2000 filed by the workman for implementation of the earlier award since this order was set aside pursuant to the review application filed by the petitioner/Corporation.

15. I have given my considerable thoughts to the respective submissions of the learned counsel for the parties and have perused the record. It is not in dispute that after the charge sheet dated 29th November, 1988 was served upon the workman for availing leave without wages during the period November, 1987 to October, 1988, a domestic inquiry was conducted against him and the findings were given in favour of the workman. None of the parties have placed on record the findings of the first inquiry. However, as stated above, in writ petition No.7620/2000, the findings of the first inquiry officer which were referred by the Labour Court while passing the award dated 25th May, 1999 were reproduced which reflected that the leave for the period 118 days was regularized and was duly sanctioned. That being so, clause 19(h) of the standing order was not applicable. No reason has been assigned by the petitioner/Corporation as to why this inquiry report was not accepted and what was the reason for conducting a *de novo* inquiry which gave a finding against the workman. That is not the end of the

matter. After the matter was remanded back by this Court to the Labour Court setting aside the earlier award dated 25th May, 1999, both the parties led their evidence. The charge against the workman was that of availing 118 days leave without pay and thereby showing lack of interest in the working of the Corporation. However, the evidence reflected that the workman had submitted medical certificates for 41 days. Except for 37 days for which no leave application was moved, for the balance period, leave was taken for different reasons. In view of this evidence coming on record, the Labour Court opined that the order of penalty of removal from service passed by the management is not justified for the following reasons:-

a) The explanation given by the workman that he was suffering and was made to take leave is proved by the very documents of leave application and copies of medical certificates produced by the management.

b) The period of leave for which leave applications were submitted is covering the period of accusation in the charge sheet.

c) The workman cannot be said to have availed intentional leave so as to exhibit lack of interest for the entire period of 118 days as contained in the charges, since the workman had submitted leave applications for a part period.

d) The evidence reveals that the management could only establish that the workman had not submitted the leave applications for 37 days. In the present case, this is not precise charge to impute lack of interest on the part of the workman in the duties of the corporation.

e) The charge as it is framed is not proved to the hilt except for a period of 37 days.

f) The documents and the explanation given by the workman to the charge sheet and that of the contention of the workman in the rebuttal evidence are seemingly probable that he was suffering from ailment which cannot be held as showing lack of interest.

h) The rebuttal evidence of the workman that he had never lost interest in the working of the corporation is to be reckoned in view of the above which shows that the charges as framed by the management are not proved completely before this Court. Hence, for the aforesaid reasons, I find that the order of

removal is not justified and the workman is entitled for reinstatement.

16. No fault can be found with these findings of the Labour Court. As per the report of first inquiry officer, the leave was regularized and was duly sanctioned, that being so, it cannot be said that clause 19(h) is applicable. Under the circumstances, **Sardar Singh's** case is distinguishable. The petitioner does not get any help from **Nain Singh's** case where on the peculiar facts and circumstances of the case, the termination was held to be legal. Moreover, keeping in view the fact that the charge against the workman remain confined to not submitting leave application for 37 days coupled with the past conduct showing obtaining excessive leave during the year 1986 for which he suffered minor penalty, instead of awarding back wages, the workman was granted only a lump sum compensation of Rs.50,000/- towards back wages. The aforesaid finding cannot be said to be perverse which warrants interference by this Court.

17. Moreover, this Court in exercise of writ jurisdiction would interfere with the orders of the Tribunals/Authorities under its jurisdiction only on finding the order to be in excess of jurisdiction vested in such Tribunal or Authority or in failure to exercise jurisdiction. The writ jurisdiction is not intended to be the same as an appellate jurisdiction. (See **Veerappa Pillai v. Raman and Raman Ltd.**, AIR 1952 SC 192; **Syed Yakoob v. K.S. Radhakrishnan**, AIR 1964 SC 477 and **Sadhu Ram v. Delhi Transport Corporation**, AIR 1984 SC 1467). Ordinarily, an order of the Tribunal/Authority if within its power and if based on reasons would not be interfered merely because this Court may have formed a different opinion.

18. The Hon'ble Supreme Court in **Ashok Kumar v. Sita Ram**, (2001) 4 SCC 478 held as under:-

"The question that remains to be considered is whether the High Court in exercise of writ jurisdiction under Article 226 of the Constitution was justified in setting aside the

order of the Appellate Authority. The order passed by the Appellate Authority did not suffer from any serious illegality, nor can it be said to have taken a view of the matter which no reasonable person was likely to take. In that view of the matter, there was no justification for the High Court to interfere with the order in exercise of its writ jurisdiction. In a matter like the present case where orders passed by the statutory authority vested with power to act quasi-judicially is challenged before the High Court, the role of the Court is supervisory and corrective. In exercise of such jurisdiction, the High Court is not expected to interfere with the final order passed by the statutory authority unless the order suffers from manifest error and if it is allowed to stand, it would amount to perpetuation of grave injustice. The Court should bear in mind that it is not acting as yet another appellate court in the matter. We are constrained to observe that in the present case the High Court has failed to keep the salutary principles in mind while deciding the case."

19. In the case of Iswarlal *Mohanlal Thakkar v. Paschim Gujarat Vij Co. Ltd. and Anr.*, (2004) 6 SCC 434, it was held as under:

"15. We find the judgment and award of the labour court well reasoned and based on facts and evidence on record. The High Court has erred in its exercise of power Under Article 227 of the Constitution of India to annul the findings of the labour court in its award as it is well settled law that the High Court cannot exercise its power Under Article 227 of the Constitution as an appellate court or re-appreciate evidence and record its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court. The Labour Court in the present case has satisfactorily exercised its original jurisdiction and properly appreciated the facts and legal evidence on record and given a well reasoned order and answered the points of dispute in favour of the Appellant. The High Court had no reason to interfere with the same as the award of the Labour Court was based on sound and cogent reasoning, which has served the ends of justice."

20. In the instant case, it cannot be said that the impugned award suffers from any perversity or suffers from any manifest error. That being so, there is no warrant for interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution. That being so, the petition is dismissed, however, with no order as to costs.

(SUNITA GUPTA)
JUDGE

DECEMBER 03, 2015/rs