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

Date of Decision: 15th October, 2015

+ **W.P.(C) 7269/2011**

DELHI TRANSPORT CORPORATION

..... Petitioner

Through: Mr.Manish Garg and Mr.Akshay, Advs.

versus

SUNIL KUMAR

..... Respondent

Through: Mr.G.S.Charya, Adv.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Challenge in this writ petition is to the award dated 15.02.2011 passed by learned Presiding Officer, Labour Court, Karkardooma Courts in ID 627/96/2010 whereby the termination of the respondent (hereinafter referred as 'workman') was held to be illegal. He was directed to be reinstated in job and granted full backwages from the date of his removal i.e., 30.06.1995 till his reinstatement in job with continuity of service.

2. The facts leading to the passing of the impugned award are that the workman Sunil Kumar was employed with petitioner-Delhi Transport Corporation as a conductor. On 31.12.1993 he was on duty on a bus route Delhi-Kanpur when the bus was intercepted by a team of checking officials and he was challaned on the allegations that ten passengers had given Rs.5/- each to him but the tickets were not issued. The workman claimed that the passengers did not pay him the fare. On the basis of report of the checking staff, a chargesheet dated 19.01.1994 was issued to the respondent charging him with misconduct within the meaning of Para 15(2) of DRTA (Conditions of Appointment of Service) Regulation, 1952.

3. The chargesheet issued to the respondent-workman reads as under:

(i) On 31.12.1993 you were on duty on bus route No.DLP 728 Delhi-Kanpur route. The checking staff checked the passengers getting down at Chapra More at

about 1910 hrs., 10 passengers were found travelling without tickets. On enquiry they informed that they had given the full fare of Rs.5 to you but you did not issue ticket to them.

(ii) When the checking staff started recording the statement of the passengers then you threatened them and made them to run away, therefore, their statements could not be recorded.

4. A reply to the chargesheet was submitted by the workman. Finding the same to be not satisfactory, a domestic enquiry was conducted and the workman was held guilty of the charges. On the basis of the report of the enquiry officer, a show cause notice dated 16.05.1994 was issued to the workman as to why he should not be removed from the services of the corporation to which a reply was submitted, however, the workman was removed from the services of the corporation with effect from 30.06.1995. An industrial dispute was raised by the workman. The Secretary (Labour), Govt. of NCT of Delhi referred the industrial dispute for adjudication to the Labour Court vide order No.F.24(3340)/96-Lab./40713-17 dated 27.08.1996 with the following terms of reference:

"Whether the removal of Shri Sunil Kumar from service is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?"

5. The workman filed his statement of claim stating therein that his services were wrongly terminated by the management on false and frivolous grounds. The management filed the written statement alleging *inter alia* that the services of the workman were terminated as he had failed to issue tickets to the passengers after charging the fare on 31.12.1993 while he was on duty at Delhi-Kanpur route.

6. On the pleadings of the parties, following issues were framed:

"1. Whether the domestic enquiry was not conducted according to the principles of natural justice and is therefore, not fair, proper and valid?"

2. As per terms of reference."

7. Issue No.1 was treated as a preliminary issue.

8. Parties led their evidence. The workman examined himself whereas the corporation examined Shri Tej Pal, Maru Singh and Hari Singh. After scrutinizing the

testimony of the management witnesses, the Labour Court arrived at the conclusion that the testimony of Tej Pal does not inspire confidence for the reason that he had failed to observe the basic requirements before charging a delinquent employee for misconduct. He had not recorded the statement of any passenger which was vital for proving the misconduct alleged against the workman. The explanation given by the checking officials in their report Ex.MW1/2 that the delinquent employee had threatened the passengers and made them run away and, therefore, they could not record their statements was not believable to the effect that a conductor who was alone could threaten 10 passengers who were found without tickets and that too in the presence of three checking officials. Even during the enquiry proceedings, this charge was not proved by the corporation. It was further held that although the enquiry cannot be held to be vitiated on the sole ground that passengers could not be examined as they were not traceable but in the instant case even the statement of the passengers were not recorded at all by the checking officials at the time of preparing of challan at the spot. In the absence of examining any passenger even at the time of preparing the challan, the workman was seriously prejudiced as he could have summoned the passengers during the course of enquiry to prove his innocence but he was denied this opportunity. Moreover, the charge against the delinquent employee was that he had charged fare from the passengers but did not issue the tickets. However, even the cash of the delinquent employee was not checked by the checking officials. Thus, it was not proved that the delinquent employee charged the fare but did not issue the ticket. As such, the enquiry proceedings were not conducted in accordance with the principles of natural justice.

9. As regards Issue No.2, it was observed that in the written statement the management had not made any prayer to the effect that they be allowed to prove the misconduct if the enquiry is held to be vitiated, therefore, the management cannot be granted any opportunity to lead evidence in this regard. An application filed separately by the corporation seeking permission to lead evidence on this aspect was dismissed vide order dated 13.02.2002 by relying upon *Karnataka SRTC vs. Smt.Lakshmiddevamma & Anr. (2001) SCC 433*, however, the management was permitted to lead evidence only on the aspect as to whether the workman was gainfully employed or not. It was held that since the enquiry issue stands decided against the corporation as such, the workman's

services were illegally terminated. Accordingly, he was ordered to be reinstated with continuity of service and full backwages.

10. Feeling aggrieved, W.P.(C) No.108/2004 was filed by the corporation. The main issue was whether the Labour Court was justified in rejecting the application of the petitioner to lead additional evidence to prove the charge of misconduct of the respondent-workman when the petitioner did not seek leave in the written statement filed before the Labour Court to lead additional evidence in the event of the domestic enquiry is held to be vitiated by the Labour Court. Vide order dated 19.04.2010 the impugned award was set aside and the matter was remanded back to the Labour Court for fresh consideration on the application moved by the petitioner to lead additional evidence to prove misconduct of the respondent-corporation.

11. Thereafter, the management examined two witnesses. Vide impugned award dated 15.02.2011 the Labour Court again came to the conclusion that the management has failed to prove the misconduct on the part of the workman as such, removal of the workman from services is both illegal and unjustified. The workman was accordingly held entitled to reinstatement with continuity of service and full backwages. This is how the parties are again before this Court in this second round of litigation.

12. Challenging the impugned award, learned counsel for the petitioner submits that the termination of the workman has been held to be illegal merely on the ground that testimony of MW-1 Bishwajeet Dass was not relevant to prove the alleged misconduct on the part of the workman as he was not a member of the checking team when the bus was checked and passengers were intercepted. The only material witness examined was MW-2 Shri Tej Pal whose testimony was not considered to be sufficient to prove misconduct. Non-examination of two other members of the checking team was also held to be fatal to the case of the corporation. It was submitted that even if the other members of the checking team were not examined by the corporation, there was no reason to discard the testimony of the challaning officer Shri Tej Pal. Moreover, this witness had duly proved the challan and the report to which there was no effective cross-examination. As such, misconduct of the workman was duly proved. In the chargesheet itself, the workman was made aware of the fact that his past conduct will also be considered and, therefore, taking into consideration the misconduct of the workman coupled with his past record, the order

for removal of service was passed which does not call for interference. Alternatively, it was submitted that the workman is not entitled for full backwages as the workman is gainfully employed as per his own admission. Reliance was placed on a judgment given by this Court in **Vikram Kumar vs. Delhi Transport Corporation** 222(2015)DLT438 and **Nepal Singh vs. Delhi Transport Corporation** ILR (2013) 5 Del 4006.

13. Learned counsel for the respondent, on the other hand, submitted that no ground has been given by the petitioner-corporation to show any perversity in the award of the Labour Court and this Court does not sit as an appellate court over the findings of fact given by the Labour Court. It could interfere only when the award is perverse or there is error of law on the face of the award. The Labour Court has fully evaluated the evidence as produced by the petitioner-corporation. Statement of none of the passengers was recorded to show that they had paid the fare but were not issued tickets. Moreover, MW-2 had nowhere deposed that the workman had threatened the passengers not to give the statement. Even the cash of the workman was not checked to find out whether in fact the workman had received Rs.50 which could be excess of the cash with him. As such, the award of the Labour Court does not suffer from any infirmity which warrants interference. As regards gainful employment is concerned, it was submitted that it was wrongly mentioned in the ordersheet that the workman was gainfully employed whereas he had filed an affidavit denying his gainful employment. Moreover, for his survival the workman was required to do some work, therefore, even if full wages is not given, he be awarded some backwages. Reliance was placed on **DTC vs. Anup Singh** 133 (2006) DLT 148 (DB).

14. I have given my considerable thoughts to the respective submissions of learned counsels for the parties and perused the record.

15. The scope for the jurisdiction of this Court under Article 226 of the Constitution of India while examining the industrial award is limited. This Court does not sit in appeal over the findings returned by the domestic inquiry Tribunal or Industrial adjudicator. In **Municipal Corporation of Delhi v. Asha Ram & Anr.**, 117(2005) DLT 63, the jurisdiction of this court while dealing with an industrial award has been laid down as under:-

“6. The position of law in respect of interference by Writ Court under Article 226 of the Constitution is well settled in view of the following:- (a) The Supreme Court in para 5 in ***Sadhu Ram v. Delhi Transport Corporation***, AIR 1984 SC 1967 observed :

" nor we think that it was right for the High Court to interfere with the Award of the Labour Court under Article 226 on a mere technicality. Article 226 is a device to secure and advance justice and not otherwise. In the result, we allow the appeal, set-aside the judgment of the High Court and restore the Award of the Presiding Officer."

(b) The Supreme Court in ***Harbans Lal v. Jag Mohan*** (1985) 4 SCC 333:

"The limitations on the jurisdiction of the High Court under Article 226 of the Constitution are well settled. The Writ Petition before the High Court prayed for a Writ in the nature of certiorari, and it is well known that a Writ in the nature of certiorari may be issued only if the order of the inferior tribunal of subordinate court suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach finding of fact contrary to those rendered by an inferior court or subordinate court. When a High Court proceeds to do so, it acts plainly in excess of its power."

(c) The Supreme Court in ***Calcutta Port Shramik Union v. Calcutta River Transport Association and Ors.***, 1988 (Supp.) SCC 768 in para 10 observed:

".....The object of enacting the Industrial Disputes Act, 1947 and of making provision therein to refer disputes to Tribunals for settlement is to bring about industrial peace. Whenever a reference is made by the Government to the Industrial Tribunal, it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases, an attempt should be made by Courts exercising powers of judicial review to sustain as far as possible the Awards made by the Industrial Tribunal instead of picking holes here and there in the Awards on

rival points and ultimately frustrating the entire adjudication process before the Tribunals by striking down the Awards in hyper technical grounds. Unfortunately, the orders of the Single Judge and of the Division Bench have resulted in such frustration and have made the Award fruitless on an untenable basis."

(d) The Hon'ble Supreme Court in *Sudhoo v. M/s Haji Lal Mohd. Biri Works and Ors.* 1990 Lab. I.C. 1538 in para 8 ruled :

"8. We have gone through the statements of two witnesses produced by the appellant before the authority. The findings of the authority are based on appreciation of evidence produced by the parties before the authority. We do not agree with the High Court that the finding recorded by authority are based on no evidence. The High Court should not have interfered with the findings of the fact reached by the prescribed authority on appreciation of evidence."

Thus in accordance with the above position of law no interference in findings of facts recorded by the Tribunal is called for. In any event, the petitioner having died and the monetary benefits accruing under the award as per the above claim being confined limited up to the date of the death and payable to his widow, no interference is called for even otherwise under Article 226 of the Constitution."

16. In view of the aforesaid decisions, it is clear that in exercise of its powers under Section 226 of the Constitution, this Court is not to act as an appellate court. An award can only be set aside if it is based on no evidence or contrary to any substantive law or it is in violation of principles of natural justice.

17. Reverting to the case in hand, the charge against the workman was of non-issuance of tickets to 10 passengers despite taking fare from them and threatening them not to give statements against the workman. In order to substantiate this charge, the corporation examined MW-1 Bishwajeet Dass and MW-2 Tej Pal. It was rightly observed by the learned Labour Court that testimony of MW-1 Bishwajeet Dass was not relevant to prove the misconduct as he was not the member of the checking team and as such, was not a witness to the incident. The only material witness was MW-2 Shri Tej Pal who testified that he had checked a DTC bus at Chapra More alongwith TI Maru Singh and TI

Hari Singh in the year 1993. He further deposed that he was not able to recollect the bus number, the date or the month or the name of the bus driver or the conductor. He just stated that the details have been mentioned in his report. He further stated that while checking the passengers who were getting down of the bus, he found 10 passengers who were not having bus tickets. Unpunched tickets of 10 passengers who were without ticket was given by the conductor as such, the conductor was challaned vide challan Ex.RW-1/1. Admittedly, statement of none of the passengers was recorded by the checking team allegedly on the ground that they were threatened by the workman. Even the enquiry officer did not believe this charge against the workman and the Labour Court also rightly did not believe this version on the ground that it was highly improbable that the workman would be able to threaten as many as 10 passengers in the presence of three checking officials not to make any statement against him. Moreover, Shri Tej Pal had not deposed in this regard in his examination before the Court. Even the cash of the workman was not checked in order to find out whether the workman had received Rs.50 in excess of the cash. The only plea taken was that it was not possible to check the cash in the moving bus. Similar plea was taken in *Anup Singh* (supra) and the explanation that the checking staff does not check the cash in a moving bus was not accepted. In the absence of examination of any of the passengers coupled with the fact that not even any of the co-passengers travelling in the same bus were examined, even the cash of the workman was not checked, it was rightly observed by the Labour Court that the testimony of Shri Tej Pal simplicitor was not sufficient to prove the misconduct against the workman and in that light, it was observed that the two other members of the checking team TI Maru Singh and TI Hari Singh have also not been examined by the management. The finding of fact given by the Labour Court does not suffer from any infirmity which calls for interference.

18. *Vikram Kumar* (supra) relied upon by counsel for the petitioner is clearly distinguishable as in that case on checking the bus, one passenger was found without ticket. The cash of the conductor was found to be in order. In order to prove the misconduct, the management had examined as many as five witnesses. At the time of preparing the challan even the statement of the passenger was recorded. Efforts were made to secure the presence of the passenger by the management but could not succeed.

Thereafter, the workman examined him however at that time he did not support the corporation. Considering the entire facts and circumstances of the case, it was held that the misconduct of the workman was duly proved.

19. *Nepal Singh* (supra) was a case where the Labour Court returned a verdict that the findings given by the enquiry officer were not based on acceptable evidence and this conclusion was arrived at by the Labour Court on the premise that the witness deposing before the enquiry officer merely adopted his report/statement made earlier. The Single Judge held that the Labour Court had miscondacted itself in law in coming to this conclusion. LPA was also dismissed.

20. In the instant case also, during the course of enquiry, one of the witness namely Hari Singh did not give any detailed statement and opted for the acceptance of the earlier report which was recorded at the spot. Relying upon *Khardah and Co. Ltd and its workmen* reported in *1962 II LLJ 452*, the Labour Court came to the conclusion that the statement of this witness cannot be relied upon. However, the Labour Court while deciding the enquiry issue against the corporation has also dealt in detail with the testimony of the other checking officials and thereafter passed the order dated 07.11.2001 holding the enquiry to be illegal. This order is not the subject matter of challenge in this writ petition. As such, the petitioner does not get any benefit from this judgment. The findings of the learned Labour Court is after due appreciation of the evidence led by the corporation which does not suffer from any infirmity or perversity which calls for interference.

21. In view of the fact that the termination of the workman was illegal as such, he is entitled to reinstatement in service with consequential benefits. However, as regards backwages are concerned, the workman was removed from services as far back as on 30.06.1995. Since then, he has not worked with the corporation. As per the ordersheet dated 22.02.2002, the workman had been gainfully employed. Learned counsel for the respondent, however, submitted that it was wrongly recorded, as in the affidavit, the workman has stated that he is not gainfully employed. No evidence to the contrary has been led by corporation. However during the course of arguments, it was fairly submitted that even if the respondent did some work during this period, it was for his survival and, therefore, even if full wages is not given, he be awarded some backwages. Record reveals

that during the pendency of this writ petition, order under Section 17 B of ID Act was also passed directing the petitioner to pay to the respondent-workman full wages last drawn by him or the minimum wages under the Minimum Wages Act whichever is higher, with effect from the date of award till further orders. It was admitted by counsel for the respondent that the said amount is being paid to him. Under the circumstances, a lump-sum compensation of Rs.50,000/- is awarded to the workman towards backwages. As per the record, while staying the operation of the impugned award, the petitioner was directed to deposit the amount payable to the respondent-workman under the impugned award, as such, out of the deposited amount, a sum of Rs.50,000/- be paid to the respondent-workman. Counsel for petitioner submits that balance amount be released in favour of petitioner to which counsel for respondent has no objection. As such, balance amount alongwith accrued interest be released in favour of petitioner.

22. With this modification, the writ petition stands disposed of.

(SUNITA GUPTA)
JUDGE

OCTOBER 15, 2015
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