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

% *Judgment delivered on: 6th February, 2015*

\+ **W.P.(C) 8383/2014**

ARVIND KUMAR ARORA ..... Petitioner

Represented by: Mr. Jitin Sahni and Mr. Vikas Yadav, Advocates.

Versus

THE MANAGEMENT MOTHER DAIRY (NOW KNOWN AS FRUIT & VEGETABLE PVT. LTD.) ..... Respondent

Represented by: Mr. Lalit Bhasin, Ms. Ratna S. Dhingra and Ms. Bhavna Dhami, Advocates.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the present petition, petitioner seeks setting aside of the impugned order dated 21.08.2008 passed in ID No. 216/2010 (old ID No.03/2005), whereby the learned Labour Court held that the enquiry was fair and proper being conducted after appreciating the evidence on record and giving appropriate opportunity to the petitioner.

2. Also seeks to set aside the impugned order dated 07.07.2014 passed by the Labour Court to the extent for not granting back wages and continuity of service to the petitioner.

3. Mr. Jitin Sahni, learned counsel appearing on behalf of the petitioner submitted that the petitioner was working with the respondent Management since 1984 on the salary of Rs.16,00/- per month. His last designation was Senior Superintendent (Marketing) and the last drawn salary was Rs.7,500/- per month.

4. On 19.11.1999, the petitioner was suspended and thereafter on 27.11.1999, he was served with the chargesheet levelling following charges:-

> ***"CHARGE No.1***
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> *The above facts would show that being an employee of this Dairy since 25th May, 1984 and at present working as Senior Superintendent (Marketing), you have opened the said Current Account with the said Bank in the fictitious/pseudonymous name of "Arun Kumar" and having dealings with this Dairy in connection with the supply of milk to the said Insulated Container have been getting pecuniary benefits. Thus you have committed a grave act of misconduct of engaging in private work or trade for profit to personal gain while still in the service of the Dairy. Clause 20(b) x.*

CHARGE NO. 2

You, by signing the said agreements and the said two cheques in the name of "Arun" (in Hindi), you have committed a grave act of misconduct of falsification of the said record. Clause 20(b) xxviii.

CHARGE NO. 3

You signed the said agreements dated 7th September, 1998 and 7th September, 1999 in connection with the said Insulated Container as "Arun" (in Hindi) and also signed as one of the witnesses in respect of the said agreements. Thus by signing the said agreements, as mentioned above, you have misrepresented the facts to this Dairy and committed a grave act of misconduct of bad faith towards the employer/Dairy. Clause 20(b) xxxiii.

CHARGE NO. 4

In view of the above background and the documents viz. Agreements, two cheques and photocopy of current A/c No.2738 provided by Indian Bank, you have committed a grave act of misconduct of fraud and dishonesty in dealing with the Dairy's business. Clause 20 (b) iii."

5. Learned counsel submitted that on the same very day, i.e., 27.11.1999, the respondent Management also appointed Mr. M.G. Sharma as Enquiry Officer.

6. Learned counsel further submitted that on 03.12.1999, the respondent Management wrote a letter to the Chief Manager, Indian Bank, Nehru Place Branch, with a request to provide photocopies of

the account opening form duly filled in by the person, namely, Arun Kumar alongwith photograph so produced by the said person at the time of opening Bank Account No.2738.

7. Learned counsel has asserted that the chargesheet was issued on 27.11.1999 prematurely, however, photocopies of the current account and photograph of the account holder on the basis of which the said chargesheet was issued, were subsequently demanded by the respondent Management on 03.12.1999. Therefore, the documents on the basis of which the alleged chargesheet was issued were not in possession of the respondent Management. Hence, the chargesheet issued by the Management cannot be sustained in the eyes of law.

8. He further submitted that on 13.01.2000, the Bank informed the respondent Management that they were unable to give the required information unless there is an order from a competent court of law or from an officer authorized by Statute to call for such information.

9. The domestic enquiry was started w.e.f. 17.01.2000 and the Enquiry Officer gave his findings on 15.04.2003. Learned counsel submitted that the domestic enquiry was conducted entirely on the basis of those documents which were never in possession of the respondent Management.

10. Learned counsel further submitted that on 04.05.2000, the respondent Management also lodged an FIR bearing No. 149/2000 at P.S. Mandawali under Sections 419/420/468/471 IPC. The trial

emerging from the said FIR was decided on 08.05.2013, wherein the petitioner has been acquitted by the Criminal Court by holding as under:-

> *"The present case has no hesitation in holding that accused has not committed any offence and has rather suffered present trial for no fault on his own part. Accordingly, the accused is hereby acquitted for the offence U/s 419/420/468/471 IPC."*

11. Learned counsel submitted that allegations of the chargesheet issued by the Management and the FIR were same and both of them were based on same facts and also on same evidence, i.e., the account opening form of the Bank and other Bank documents.

12. Mr. Sahni submitted that on 22.07.2003, petitioner was dismissed, who raised an industrial dispute and vide order dated 25.11.2004, the Competent Authority sent the following reference to be executed:-

> *"Whether dismissal of services of Sh. Arvind Kumar Arora S/o Sh. Ramesh have been terminated illegally and/or unjustifiably by the management, and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/govt. Notifications and to what other relief is he entitled and what directions are necessary in this respect?"*

13. Learned counsel further submitted that during trial of the criminal case, PW6 Sh. J.M.L. Mathur, Chief Manager, deposed that

original form for opening Current Account No. 2738, original specimen signature card with original photo of Arun Kumar and original cheque bearing No.748047, exhibited vide seizure memo Ex. PW6/A, were produced by him before the Investigating Officer of the case. Whereas, the enquiry was decided against the petitioner on the basis of photocopies of above mentioned documents and without examining above-named Bank official.

14. PW7, Sh. Sanjay Dahiya, Investigating Officer of the case, admitted in his evidence that during trial he had collected the documents in original from Chief Manager, Sh.Mathur of Indian Bank, Nehru Place Branch, vide seizure memo dated 07.02.2001. The Investigating Officer specifically deposed that Arun Kumar and Arvind Kumar Arora (petitioner herein) are two different persons.

15. Learned counsel further submitted that vide order dated 21.08.2008, the Labour Court held that the inquiry was fair and proper. Being aggrieved, the petitioner challenged the same before this Court vide WP(C) No.168/2013, which was dismissed vide order dated 11.01.2013.

16. Learned counsel further submitted that when the order dated 21.08.2008 was passed by the Labour Court and the same was affirmed by this Court vide order dated 11.01.2013, order of acquittal of the petitioner was not in existence, therefore, there was no opportunity

either for the Labour Court or this Court to consider the judgment dated 08.05.2013 passed by the Criminal Court.

17. Learned counsel also submitted that the chargesheet dated 27.11.1999, wherein it was mentioned that details of the documents were provided by the Bank whereas the fact remains that the respondent Management had asked the Bank to furnish the documents on 03.12.1999. Learned counsel submitted that if the respondent Management had everything with it, then where was the question to ask for the documents from the Bank, upon which the chargesheet was based.

18. It is an admitted fact that the Bank refused to give the documents to the respondent vide letter dated 13.01.2000.

19. Learned counsel further submitted that Mr. Avilesh Kumar, complainant, was the witness in enquiry as well as in the criminal case. However, the fact is that he is a Transporter of the respondent Management. Thus, the testimony of said witness cannot be relied upon being an interested witness. Similarly, Mr. R.T.Wadhwa, Assistant Manager and Co-ordinator in enquiry, was also witness in both the domestic enquiry and the criminal case. Likewise, Shri. Divya Sharma, Dy. Manager and Sh. C.D. Semwal, Manager (Sales) have entered into agreement to sell the milk with respondent Management and both were witness in the domestic enquiry.

20. Moreover, Sh. Arun Kumar has been examined as DW1. He deposed that petitioner is his cousin and he applied for allotment of insulated milk container from Mother Dairy in the year 1994. He further stated that after his application was deposited with the Mother Dairy, people from Mother Dairy visited his shop where the container was to be installed and then container was allotted in his name at 16, Jeevan Jyoti Camp, Okhla, Delhi. He further deposed that he opened an account in Indian Bank, Nehru Place and had seen the original account opening form of his bank account No.2738, Ex.PW6/C, which bears his signature at point P3. He also admitted that original specimen card bears his signature. He deposed that he had given photograph Ex. PW6/DA to the Bank at the time of opening of account. He had been making the payment through cheque on day-to-day basis to the Mother Dairy as and when milk was supplied. Agreements of Mother Dairy dated 07.09.1998 and 07.09.1999, Ex.DW1/1 (OSR), also bear his signatures. He also produced the original ration card and election card, photocopies of which are exhibited as Ex.DW1/2 (OSR) and Ex.DW1/3 (OSR) respectively. He further deposed that he had entered into an agreement with Mother Dairy on year-to-year basis from 1994 to 1999 and had been running the business of selling milk through his insulated milk container No. 1069 till 1999. No person in the name of Avilesh Kumar ever worked in his allotted insulated container. He denied the suggestion that the petitioner was running booth in his name.

21. The learned CMM in its judgement dated 08.05.2013 recorded that charges against the petitioner were that he impersonated as Arun Kumar and opened the Bank account as well as obtained the Mother Dairy container. However, at the time of defence evidence actual Arun Kumar appeared. Moreover, during final arguments, to avoid any injustice, the learned CMM had directed Arun Kumar to appear in person. When Arun Kumar and Arvind Kumar Arora (petitioner herein) appeared together, it was revealed that both resembles each other to the extent that both of them can be termed as identical twins. The learned CMM perused the photograph Ex. PW6/DA and held that at first instance it was very difficult to say that whether photograph pertains to the petitioner or DW1 Arun Kumar. Accordingly, the learned CMM held that the petitioner had not committed any offence and has rather suffered the criminal trial for no fault on his part.

22. Learned counsel further submitted that whether the enquiry was held fairly and properly is immaterial to the Labour Court, as while passing the impugned order dated 07.07.2014, it has relied upon order dated 21.08.2008 passed by his Predecessor Court and order dated 11.01.2013 passed by this Court. However, the fact remains that when both the aforesaid courts passed the orders noted above, the order of the Trial Court dated 08.05.2013 was not in existence.

23. Mr. Lalit Bhasin, learned counsel for the respondent submitted that since the petitioner did not challenge the order dated 11.01.2013,

hence, the same attains finality, therefore, this Court cannot allow the instant petition by setting aside the aforementioned order passed by this Court. Thus, the present petition is liable to be dismissed.

24. I have heard ld. Counsels for the parties.

25. The trial and the domestic enquiry were conducted on the same set of charges and same set of witnesses. The learned CMM has not acquitted the respondent / workman by giving him benefit of doubt or for lack of evidence, but has honourably acquitted the respondent / workman as he had produced the real Arun, who was allotted the alleged milk insulated container. Moreover, the learned CMM mentioned in the judgment dated 08.05.2013 that the petitioner had suffered the trial for no fault on his part.

26. Fact remains that there are three orders before this Court, one dated 21.08.2008 passed by the Labour Court whereby held that the inquiry was fair and proper, which has been affirmed by this Court vide order dated 11.01.2013 and the impugned order dated 07.07.2014. Now, question arises for consideration is that if a view had already been taken by this Court on the issue noted above, can that order be recalled in the present petition?

27. Taking into consideration the facts and circumstances of the case, this Court has no hesitation to record that while passing the impugned order dated 07.07.2014, the Labour Court was under the influence of the order dated 21.08.2008 passed by his Predecessor,

which has been affirmed by this Court vide order dated 11.01.2013. However, the actual position was that when the aforesaid order was passed by this Court, the judgment dated 08.05.2013 passed by the Criminal Court was not in existence, therefore, there was no occasion for this Court to take into consideration the findings of the learned CMM.

28. It is pertinent to note that the learned CMM has examined the witnesses and evidence led on behalf of both the parties and in fact DW1 Arun Kumar, the alleged fictitious person, also appeared before the criminal court. Accordingly, the learned CMM held that apparently the petitioner and DW1 Arun Kumar seems to be identical twin and from the photograph and appearance, it is very difficult to make out who is Arun Kumar and who is Arvind Kumar Arora (petitioner herein). Moreover, when actual Arun Kumar appeared in the trial court and asserted that he had opened the Bank account and is doing the business in his name, there was no question to hold the petitioner liable in domestic enquiry.

29. For the sake of repetition, the domestic enquiry and the criminal case were based on the same set of allegations and witnesses like Sh. Avilesh Kumar, Sh. R.T. Wadhwa, Sh.C.D. Semwal and Divya Sharma were examined in domestic enquiry and in the criminal case. They all were Management witnesses, therefore, their testimonies have been rejected by the trial court.

30. It is true that petitioner was given opportunity in the domestic enquiry, but the question is that keeping in view the facts noted above, whether he could be held liable for the misconduct alleged against him.

31. On perusal of judgment dated 08.05.2013 passed by the Criminal Court, it is clear that details of the documents mentioned in the chargesheet were not with the respondent Management, which fact stands proved from the letter dated 03.12.1999, whereby the Management itself asked from the Bank to furnish the documents but the said request was declined by the Bank vide its letter dated 13.01.2000. Therefore, if the respondent Management had no documents as alleged in the chargesheet dated 27.11.1999, then how the enquiry can be fair and proper.

32. Moreover, the main charge against the petitioner was that he impersonated as Arun Kumar and opened the Bank account as well as obtained the Mother Dairy container, stands falsified as said Arun Kumar is an existing person and is doing the business of selling milk in his name. Thus, the petitioner could be nowhere connected to any misconduct as alleged in the chargesheet dated 27.11.1999.

33. In view of the discussion above, I am of the considered view that the enquiry itself is vitiated and the same cannot be sustained in the eyes of law.

34. Accordingly, I modify the order dated 07.07.2014 to the extent that the petitioner is entitled for back wages with continuity of service.

35. The present petition stands allowed with no order as to costs.

SURESH KAIT
(JUDGE)

FEBRUARY 06, 2015
Sb/jg