

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

+ Judgment delivered on: March 31, 2016

% **W.P.(C) No. 6771/2004**

SHRI VINOD KUMAR SHARMA

..... Petitioner

Through: Mr. Sandeep Sharma and Ms. Risha
Mittal, Advocates.

versus

THE DELHI CONSUMERS COOPERATIVE WHOLESALE
STORE LIMITED

.....Respondent

Through: Ms. Sujata Kashyap and Mr. M. K.
Sharma, Advocates.

CORAM:
HON'BLE MR. JUSTICE I.S. MEHTA

JUDGMENT

I. S. MEHTA, J.

1. The present petitioner, i.e., Shri Vinod Kumar Sharma (*hereinafter referred to as the 'petitioner-workman'*) has preferred the present Writ Petition under Article 226 and Article 227 of the Constitution of India for setting aside the impugned Award dated 01.10.2003 passed by the Presiding Officer, Labour Court No. V,

Karkardooma, Delhi (*hereinafter referred to as the 'learned Labour Court/Industrial Adjudicator'*) in I.D. No. 320/1991.

2. The brief facts stated are that the petitioner-workman, i.e., Shri Vinod Kumar Sharma, was working under the respondent-management, i.e., Delhi Consumers Cooperative Wholesale Store Ltd., w.e.f. 05.07.1985 as a senior salesman, posted at liquor shop at I.N.A market, New Delhi and was assisted by other employees, i.e., Shri Dalip Singh, Shri Kamleshwar, Shri Sunil Bhagat and Shri Nam Singh (helper). Shri J.K. Kaushik was the Manager at the shop. On 09.06.1989, while the petitioner-workman was on duty at the shop, Shri J.K. Kaushik found that the petitioner-workman gave a case of whiskey to one person and after receiving the amount, the petitioner-workman kept the same in his pocket instead of depositing the same in the cash box. Shri J.K. Kaushik further made inquiries from the petitioner-workman and found that the petitioner-workman had also swindled an amount of Rs. 5000/-. Apart from the theft committed by the petitioner-workman in respect of cash, he was also found unauthorisedly selling crates of whiskey. Thereafter, being caught red handed by Shri J.K. Kaushik, the petitioner-workman admitted his

guilt about the theft of cash and unauthorized sale of whiskey by letter, i.e., Ex. MW1/7. The petitioner-workman was issued with a charge-sheet dated 11.08.1989. Thereafter, an inquiry was conducted wherein the inquiry officer, i.e., Shri Sunil Malhotra, found the petitioner-workman to be guilty of the charge. Consequently, the petitioner-workman was ordered by respondent-management to explain why suitable action should not be taken against him and after going through the reply and thoughtful consideration, the petitioner-workman was dismissed from service vide order No. DCCWS/ADM/Estt./90/1043-51 dated 07.09.1990. The petitioner-workman thereafter proceeded against his dismissal order by raising an Industrial Dispute before the conciliation officer but since no conciliation was effected, the matter was referred to the learned Industrial Adjudicator vide notification No. F.24(2310)/91-Lab./26729-34 dated 26.09.1991 on the following term of reference:-

“Whether the dismissal from service of Shri Vinod Kumar Sharma is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

3. On the pleadings before the learned Industrial Adjudicator, the following issues were framed:

“i. Whether a proper and valid enquiry was held?

ii. Relief in terms of reference.”

and the learned Industrial Adjudicator treated issue No. 1 as preliminary issue, and vide order dated 22.01.2001 held that the inquiry was not fair and the same was vitiated. Thereafter, the respondent-management preferred to lead the evidence before the learned Industrial Adjudicator on the issue of inquiry and moved an application dated 27.08.1998, which was allowed by the learned Industrial Adjudicator and the parties were given fair opportunity to adduce evidence on issue of inquiry and its rebuttal.

4. Thereafter, the learned Industrial Adjudicator after giving fair opportunity to both the parties to lead the evidence on respective issues, heard the parties on the matter in controversy and passed the impugned Award dated 01.10.2003. Hence, giving rise to the present Writ Petition.

5. The learned counsel on behalf of the petitioner-workman has pointed out that the learned Industrial Adjudicator has misdirected itself by adopting perverse approach in the matter of appreciation of the materials available and without following the guiding principles in

regard to the appreciation of the materials placed during domestic inquiry as laid down by the Apex Court in various cases.

6. The learned counsel for the petitioner-workman has further submitted that the learned Industrial Adjudicator overlooked the material evidence on record, i.e., letter dated 12.06.1989, written by the petitioner-workman to the respondent-management stating therein that he was forced to write the letter, i.e., Ex. MW1/7 and travelled beyond the judgement, i.e., ***Anna Transport Corporation Ltd., Salem vs. The Presiding Officer, Labour Court, Salem and R. Thangavel, MANU/TN/1554/2002.***

7. The learned counsel on behalf of the petitioner-workman has further submitted that instant is a case where the allegation against the petitioner-workman is of theft, therefore, the standard of proving the charge is higher and the same is to be proved by the one who alleges the charge. The reliance is placed upon the judgment in the case of ***P. B. Rocho vs. Union of India (UOI) and Ors., MANU/KE/0156/1984.***

8. On the other hand, the learned counsel on behalf of the respondent-management has submitted that the finding given by the learned Industrial Adjudicator is correct and the same is based on the

facts and law which requires no interference. It is further submitted that under Article 226 and Article 227 of the Constitution of India, the finding given by the learned Industrial Adjudicator cannot be re-appreciated, and, therefore, the present Writ Petition is liable to be dismissed.

9. The allegation against the petitioner-workman by the respondent-management is that firstly, the petitioner-workman has stolen the amount of Rs. 5000/- from the cash box while he was on duty at I.N.A. branch of IMFL wine shop, New Delhi. Secondly, on 09.06.1989, the petitioner-workman was caught red handed by the incharge/complainant Shri J.K. Kaushik of the I.N.A. branch while he was unauthorisedly selling the cases of whiskey. Thirdly, on verification of the stock in the aforesaid shop, it was found that the six cases of IMFL were found short and lastly, during the inquiry the petitioner-workman admitted the guilt in writing, which is Ex. MW1/7.

10. The contention of the learned counsel for the petitioner-workman that the finding of the learned Industrial Adjudicator is perverse does not seem to be correct as the respondent-management

opted to lead the evidence before the learned Industrial Adjudicator to prove the misconduct and the petitioner-workman participated in the said proceedings and both the parties were given fair opportunities to lead the evidence before the learned Industrial Adjudicator. Since the impugned Award is based on the evidence led before the learned Industrial Adjudicator where fair and proper opportunity was given to both the parties, it cannot be said that the finding given by the learned Industrial Adjudicator on the basis of evidence adduced before him was perverse. The learned Industrial Adjudicator had examined the complainant, who was witness to the incident dated 09.06.1989. The complainant/witness, i.e., Shri J.K. Kaushik, had supported the version of the respondent-management for committing the misconduct. The plea taken by the petitioner-workman that the letter, i.e., Ex. MW1/7, was forcefully obtained as the same was disclosed by him in his subsequent letter dated 12.06.1989 seem to be a false plea taken for want of rebuttal evidence of Shri Dalip Singh, Shri Kamleshwar, Shri Sunil Bhagat and Shri Nam Singh who were also the employees at the liquor shop.

11. The contention of the learned counsel for the petitioner-workman that the allegation against the petitioner-workman is that of theft and the same has not been proved by respondent-management in terms of the judgement, i.e., ***P. B. Rocho vs. Union of India (UOI) and Ors., MANU/KE/0156/1984*** is not convincing.
12. In the instant case, there is an allegation by the respondent-management against the petitioner-workman of theft and a similar allegation of misappropriation of cash amounting to Rs. 1500/-, Rs. 1000/- and Rs. 150/-. The respondent-management examined the complainant/witness to the incident, i.e., Shri J.K. Kaushik, in person whose oral statement is on record and directed *qua* against the theft, seen through his naked eye in his presence and the subsequent conduct of the petitioner-workman by tendering an apology through letter, i.e., Ex. MW1/7, to him wherein the petitioner-workman has admitted the allegations alleged by the respondent-management, which leaves no doubt in discharging the onus of proving of required standard of the balance of probabilities in the instant disciplinary proceedings to show that the petitioner-workman has misconducted as admitted in the letter, i.e., Ex. MW1/7, losing the faith of the respondent-management, and

the learned Industrial Adjudicator has rightly appreciated the material evidence on record.

13. The pointing out of the petitioner-workman that the learned Industrial Adjudicator appreciated the evidence on different occasions differently and reached to the contrary conclusion which leads to perversity and illegality in the impugned Award does not seem to be correct.

14. Bare perusal of the record *ipso facto* clarifies that the learned Industrial Adjudicator framed two issues in the presence of both the parties on 19.04.1993, which is reproduced as under;

- “i. Whether a proper and valid enquiry was held?*
- ii. Relief in terms of reference.”*

15. Both the parties after framing of the aforesaid issues treated the issue No.1 to be the preliminary issue and led the evidence. The respondent-management has examined the inquiry officer, i.e., Shri Sunil Malhotra, as MW1 and the petitioner-workman examined himself as WW1.

16. During the adjudication on issue No.1 before the learned Industrial Adjudicator, the petitioner-workman has raised the objection that the inquiry carried out by the inquiry officer was not proper and

the statements of the witnesses alleged to be recorded in presence of the inquiry officer were not recorded factually by the inquiry officer in presence of the inquiry proceedings. Consequently, three witnesses gave common statement, which means the statement recorded during the inquiry proceedings was nothing but the statement recorded at the back of the petitioner-workman.

17. Another objection raised by the petitioner-workman before the learned Industrial Adjudicator was that the witnesses examined during the inquiry proceedings were not cross-examined by the petitioner-workman, rather it was the inquiry officer himself who cross-examined the management witnesses as if he is working as an agent of the respondent-management.

18. The non cross-examination to the management witnesses by the petitioner-workman has been admitted by the inquiry officer, i.e., Shri Sunil Malhotra as MW1, which ultimately resulted in the vitiation of the domestic inquiry and the respondent-management opted for proving the misconduct of the petitioner-workman before the learned Industrial Adjudicator himself only vide order dated 22.01.2001 leaving behind adjudication in terms of the reference.

19. The only recourse left out in the adjudication before the parties was whether the petitioner-workman has misconducted as alleged before the learned Industrial Adjudicator in terms of the reference.
20. The evidence led by both the parties twice was firstly, issue pertaining to the domestic enquiry, i.e., whether the inquiry officer carried out the domestic inquiry properly after giving due and fair opportunities to both the parties in relation to the incident and secondly, both the parties were given opportunity to prove the allegation of the misconduct in presence of the learned Industrial Adjudicator himself pertaining to the alleged misconduct.
21. The respondent-management examined the inquiry officer, i.e., Shri Sunil Malhotra, whose deposition is not *qua* the incident but pertains only to the manner of carrying out his domestic inquiry, whereas the witness examined MW2, i.e., Shri J.K. Kaushik, who is the author of the written complaint Ex. MW1/6 and witness to the incident dated 09.06.1989.
22. The deposition of MW2, i.e., Shri J.K. Kaushik is in relation to the manner of misconduct committed by the petitioner-workman in his presence as well as other employees, i.e., Shri Dalip Singh, Shri

Kamleshwar, Shri Sunil Bhagat and Shri Nam Singh posted at the said liquor shop. Therefore, the aforesaid set of evidence cannot be said to be contradictory to each other.

23. The MW2, i.e., Shri J.K. Kaushik, is witness to the incident dated 09.06.1989 and author of the complaint, i.e., Ex. MW1/6 as well as witness to the manner of the misconduct committed by the petitioner-workman.

24. As per MW2, i.e., Shri J.K. Kaushik, he has seen the petitioner-workman selling a case of whiskey to a customer and putting the sale amount in his personal pocket on 09.06.1989 and after catching him red-handed at the said liquor shop, the petitioner-workman made the admission of stealing the cases of whiskey from the shop on different occasions and the petitioner-workman admitted the same in his presence.

During the cross-examination of MW 2, i.e., Shri J.K. Kaushik, he has suggested that the letter, i.e., Ex MW1/7 was written in his presence.

25. The letter, i.e., Ex. MW1/7, is made in favour of the complainant, i.e., Shri J.K. Kaushik, who was then the incharge of the

said liquor shop, wherein the petitioner-workman has admitted that he has stolen cash on three occasions amounting to Rs. 1500/-, Rs. 1000/- and Rs. 150/- from the cash counter and also admitted that he has sold two cases of whiskey and further admitted that on 09.06.1989 he was caught red-handed.

26. The statement of MW2 is directed towards the misconduct on the part of the petitioner-workman and his subsequent letter dated 12.06.1989, i.e., Ex. WW1/3, is a result of afterthought version which smells the false plea taken and nothing else in presence of his own suggestion that the letter, i.e., Ex. MW1/7 was written in presence of MW2, i.e., Shri J.K. Kaushik, which is reproduced as under:

“It is correct that the worker wrote the letter MW1/7 in my presence.”(Underlining Supplied)

27. The plea of the learned counsel of the petitioner-workman that the impugned Award is perverse loses significance in presence of the ocular statement of MW2, i.e., Shri J.K. Kaushik, and the complaint, i.e., Ex. MW1/6, and the admission letter, i.e., Ex. MW1/7.

28. The judgment relied upon by the petitioner-workman in the case of *Anna Transport Corporation Ltd., Salem vs. The Presiding*

Officer, Labour Court, Salem and R. Thangavel (Supra) loses its significance in the present context as the petitioner-workman was a senior salesman posted at liquor shop at I.N.A market, New Delhi was found indulging in stealing and misappropriation of respondent-management's money, which amounts to a serious misconduct and requires no interference in quantum of punishment awarded by the respondent-management. The reliance is placed on the judgment of the Apex Court in the case of ***Depot Manager, A.P.S.R.T.C. vs. Raghuda Siva Sankar Prasad, AIR 2007 SC 152*** wherein the Apex Court has made the following observation:

“As held by this Court, in a catena of judgments that the loss of confidence occupies the primary factor and not the amount of money and that sympathy and generosity cannot be a factor which is permissible in law in such matters. When the employee is found guilty of theft, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of removal. In such cases, there is no place of generosity or place of sympathy on the part of the judicial forums and interfering with the quantum of the punishment.”

29. As discussed above, this Court finds no infirmity under Article 226 and Article 227 of the Constitution of India to interfere in the impugned Award dated 01.10.2003 passed in I.D. No. 320/1991 and

the reliance is placed on the judgment of the Apex Court in the case of *Raj Kumar Dixit vs. Vijay Kumar Gauri Shanker, 2015 (146) FLR 158.*

30. Consequently, the present Writ Petition is dismissed. The Lower Court record be sent back with a copy of this Judgment. No order as to costs.

MARCH 31, 2016
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I.S.MEHTA, J