

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

+ Judgment delivered on: February 11, 2016

% **1. W.P.(C) No. 5845/2005**

DELHI TRANSPORT CORPORATION Petitioner

Through: Mr. Uday N. Tiwari and Mr. Sunil Ojha,
Advocates.

versus

SHRI RAM KUMAR Respondents

Through: Mr. Y.S. Chauhan and Mr. Sachit Arora,
Advocates.

AND

2. W.P.(C) No. 5912/2004

DELHI TRANSPORT CORPORATION Petitioner

Through: Mr. Uday N. Tiwari and Mr. Sunil Ojha,
Advocates.

versus

SHRI RAM KUMAR Respondents

Through: Mr. Y.S. Chauhan and Mr. Sachit Arora,
Advocates.

CORAM:

HON'BLE MR. JUSTICE I.S. MEHTA

JUDGMENT

I. S. MEHTA, J.

1. Challenge in the present Writ petitions is to the impugned Award and order passed in I. D. No. 688/96 and O.P. No. 301/94 respectively arising from a single incident, i.e., allegation of misconduct *qua* against the respondent-workman.
2. The brief facts stated are that the respondent-workman, i.e., Shri Ram Kumar was in the employment of the petitioner-management, i.e., Delhi Transport Corporation as a conductor, B. No. 15879. On 10.05.1994, while the respondent-workman was on duty in bus No. DL 1P 9606 on route No. 094/B, the said bus was intercepted at Wazirpur Depot by the checking officials of the petitioner-management, i.e., Shri Rajvir Singh, T.I. (who was reporter of the case), Shri Braham Dutt, Shri Bheh Ram and Shri Dhan Pal Singh (A.T.I.'s) and Shri G.K. Tyagi, Shri Ram Krishan and Shri Mahavir Singh (conductors), and it was found that ten passengers in two groups of five each who had been travelling from Rohini Outer and I.S.B.T. to Railway Station were found without ticket although the fare had already been collected by the respondent-workman and the abovementioned conduct of the respondent-workman tantamount to misconduct within the meaning of para 19 (b), (f) and (m) of the standing orders governing the conduct of Delhi Transport Corporation employees.

3. On the basis of the report of the reporting officer, a charge-sheet was issued to the respondent-workman, an inquiry was conducted and the respondent-workman was found guilty of the alleged misconduct and thereafter he was terminated w.e.f. 27.09.1994.
4. Since an Industrial Dispute was pending before the learned Industrial Adjudicator, it was *sine qua non* to move an approval application under Section 33(2)(b) of the Industrial Disputes Act, 1947. Consequently, an application under section 33(2)(b) of the said Act was moved by the petitioner-management and remitted one month wages vide money orders No. 2023 & 2024 dated 27.09.1994. The said dismissal order was challenged by the respondent-workman.
5. During the pendency of the abovementioned application, the respondent-workman preferred to raise an Industrial Dispute under Section 10 of the Industrial Disputes Act, 1947, i.e., I. D. No.688/96 and the appropriate government referred the same to learned Industrial Adjudicator and the learned Industrial Adjudicator passed an Award dated 10.03.2004.
6. In the petition under Section 33(2)(b) of the Industrial Disputes Act, 1947, after completing the pleadings, both the parties have led their respective evidence on the following issues:

“(1) Whether the respondent has committed the misconduct?OPA

(2) Whether the applicant has remitted one month's salary as required U/s 33(2)(b) of I.D. Act? OPA

(3) Relief."

7. The petitioner-management has examined AW1, i.e., Shri Lakshmi Narain, AW2, i.e., Shri Dhan Pal Singh and AW3, i.e., Shri Tarun Kumar Verma, whereas the respondent-workman examined himself as RW1.
8. In Industrial Dispute No. 688/96, after completing the pleadings, only the preliminary issue, i.e., "*Whether the domestic enquiry was conducted according to principal of natural justice and is fair, valid & proper.*" was framed on 19.12.1997 and the parties were given opportunity to lead the evidence on the preliminary issue only and the respondent-workman has led its evidence as WW1 and the petitioner-management has not led any evidence.
9. On the perusal of the record pertaining to the petition under Section 33(2)(b) of the Industrial Disputes Act, 1947, which shows that the learned Industrial Adjudicator has rejected the approval application of the petitioner-management vide order dated 31.07.2003, whereas the learned Industrial Adjudicator passed an impugned Award dated 10.03.2004 without framing the main issues arising out of the pleadings or giving opportunity to the parties on the main issue, i.e., terms of reference, to which the learned Industrial Adjudicator is expected to

reply/communicate the answer to the concerned government on the terms of reference.

10. The learned counsel for the petitioner-management in I.D. No. 688/96 has drawn this Court's attention that the terms of reference were sent to the learned Industrial Adjudicator "*Whether the removal from services of Sh. Ram Kumar is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?*" and the learned Industrial Adjudicator did not frame the issue pertaining to the terms of reference and without leading the evidence on the terms of reference had passed the impugned Award dated 10.03.2004, which is illegal in itself and liable to be set aside.
11. The learned counsel for the petitioner-management has further submitted that without following the due/reasonable opportunity to lead the evidence, the learned Industrial Adjudicator in haste has passed the impugned Award against the petitioner-management which is contrary to the facts on the record and is liable to be set aside.
12. The learned counsel on behalf of the petitioner-management has further submitted that the conclusion drawn in the petition of the petitioner-management in O.P. No. 301/94 is against the facts and in law as the learned Industrial Adjudicator has not given any reason for ignoring the statement of AW1, i.e., Shri Laxmi Narain (one of the checking officials), and the existence of the document on record, i.e.,

challan No. 134412 dated 10.05.1994, on which the signature of the respondent-workman was obtained at the place where he was misconducting himself while on duty. The counsel for the petitioner-management has placed reliance upon the judgments in the cases of *State of Haryana vs. Rattan Singh*, (1977) 2 SCC 491, *North-West Karnataka road Transport Corporation vs. H. H. Pujar*, (2008) 12 SCC 698 and *Delhi Transport Corporation vs. Shri Gian Chand*, 153 (2008) DLT 360.

13. On the other hand, the learned counsel for the respondent-workman has vehemently opposed the contentions advanced by the counsel for the petitioner-management and submitted that the learned Industrial Adjudicator has rightly passed the impugned Award dated 10.03.2004 in favour of the respondent-workman, as the petitioner-management failed to prove the alleged misconduct which was to be proved by the petitioner-management. Therefore, once the misconduct is not proved by the petitioner-management, in law the service of the respondent-workman cannot be terminated. Consequently, both the impugned Award and the impugned order passed by the learned Industrial Adjudicator are as per law and submitted that both the Writ Petitions, i.e., W.P.(C) No. 5845/2005 and W.P.(C) No. 5912/2004 are liable to be dismissed.

14. Instant is the case where allegation of misconduct *qua* against the respondent-workman is made during the existence of pending industrial

dispute, i.e., I.D. No. 17/1988 between the petitioner-management and the union of workers, i.e., the employees of petitioner-management, wherein, the petitioner-management was under legal obligation to approve its act of dismissal *qua* against the respondent-workman, i.e., under Section 33(2)(b) of Industrial Disputes Act, 1947.

15. Consequently, the petitioner-management moved an approval application under Section 33(2)(b) of the said Act dated 27.09.1994. However, the respondent-workman, i.e., Shri Ram Kumar, himself raised an Industrial Dispute, i.e., I.D. No. 688/96 between the petitioner-management and the respondent-workman. The said Industrial Dispute was referred by the competent government to the learned Industrial Adjudicator vide reference No. F. 24(3613)/96-Lab./41878-82 dated 30.08.1996 to which the learned Industrial Adjudicator was to reply/communicate its answer through an Award.

16. The object of incorporating Section 33(2)(b) of Industrial Disputes Act, 1947 is to maintain the peace during the existence of industrial dispute between the workman and its management/institution and to avoid the victimisation or unfair labour practice *qua* against the workman during the relevant period.

17. Whereas Section 10 of Industrial Disputes Act, 1947 talks about reference. The reference is, i.e., issue which is to be determined by Industrial Adjudicator. The determination is of the workman's right *qua*

against the management and once the same has been determined, its reply is in the form of an Award. Therefore, the reference under Section 10 of Industrial Disputes Act, 1947 is much more wider than the approval application under Section 33(2)(b) of the said Act where victimisation of the workman is the core issue of the dispute in pendency of an Industrial Dispute between the workman and its management.

18. It is apparent from the available records of the I.D. No. 688/96 that the reference, i.e., *“Whether the removal from services of Sh. Ram Kumar is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”* was sent to the learned Industrial Adjudicator vide reference No. F. 24(3613)/96-Lab./41878-82 dated 30.08.1996.

19. The learned Industrial Adjudicator after receiving the said reference proceeded by adopting the procedure for determination of the said reference by taking the claim petition and reply thereof from the petitioner-management and further rejoinder on behalf of the respondent-workman too was taken on record and subsequently preliminary issue, i.e., *“Whether the domestic enquiry was conducted according to principal of natural justice and is fair, valid & proper.”* was framed on 19.12.1997 and never bothered to frame the issue pertaining to the terms of reference.

20. The dispute in hand of the aforesaid Industrial dispute was *“Whether the removal from services of Sh. Ram Kumar is illegal and/or*

unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?” and learned Industrial Adjudicator was to answer to this term of reference after giving fair opportunities to both the parties to lead the evidence and place on record the documents and thereafter to determine whether the removal was justified or unjustified.

21. However, in the instant case, the learned Industrial Adjudicator, without framing the issue on terms of reference and giving opportunity to the parties on respective issue, decided the matter without looking into the file pertaining to the O.P. No. 301/94 by placing reliance on ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma and Ors., AIR 2002 SC 643.***

22. The ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma and Ors.(Supra)*** case is based on Section 33(2)(b) of the Industrial Disputes Act, 1947 which is in the narrow campus in presence of present Industrial Dispute, i.e., I.D. No.688/96 in which the reference under Section 10 was made to the learned Industrial Adjudicator to determine “*Whether the removal from services of Sh. Ram Kumar is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?*” and it was never the subject matter to frame the preliminary issue, i.e., “*Whether the domestic enquiry was conducted according to principal of natural justice and is fair, valid & proper.*” by bypassing the terms of reference of the said Industrial

Dispute. In the petition under Section 33(2)(b) of the said Act, ordinarily a *prima facie* view is to be taken, whereas under Section 10 of Industrial Disputes Act, 1947 an appropriate course for adjudication for determination of the rights of the workman is to be made.

23. Where the approval application under Section 33(2)(b) and a reference under Section 10 of the Industrial Disputes Act, 1947 is made to learned Industrial Adjudicator, the learned Industrial Adjudicator is still required to reply/communicate the finding on the terms of reference “Whether the removal from services of Sh. Ram Kumar is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”. The reliance is placed on ***Dharampal vs. National Engg. Inds. Ltd., AIR 2002 SC 510, All India Women’s Confrence vs. Raj Karan & Ans., 2010-IV LLJ 467 (Del)*** and ***Hotel Taj Palace vs. Shri Jagat Singh & Ors., MANU/DE/3589/2015.***
24. The petitioner-management in O.P. No. 301/94 placed the material documents on record and examined AW1, i.e., Shri Laxmi Narayan and placed on record the document, i.e., Challan No. 134412 dated 10.05.1994, which is duly signed by respondent-workman himself and was prepared at the spot while the respondent-workman was misconducting on 10.05.1994 while on duty. The learned Industrial Adjudicator did not give any reason for discarding the material evidence on record. Consequently, the impugned order dated 31.07.2003 as well as

the impugned Award dated 10.03.2004 are set aside and both the files are sent back to the learned Industrial Adjudicator to pass a fresh order/Award after giving fair opportunities to both the parties in I.D. No. 688/96. It is further directed that both the I.D No. 688/96 and the O.P. No. 301/94 be decided by the same Court as the allegation of the misconduct is arising from the single incident, i.e., dated 10.05.1994. The present Writ Petitions are disposed off accordingly.

25. Parties are directed to appear before the learned Industrial Adjudicator on 28.03.2016.

One copy of this judgment be placed on the file of W.P.(C) No. 5912/2004. The Lower Court record be sent back with a copy of this Judgment. No order as to costs.

I.S. MEHTA, J

FEBURARY 11, 2016

j