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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 19.07.2022
Pronounced on: 17.08.2022

+ W.P.(C) 4216/2003

LRS INST. OF TUBERCULOSIS & ALLIED
DISEASES THR. ITS DIRECTOR Petitioner
Through: Mr. Jasbir Bidhuri, Advocate

versus

THE PRESIDING OFFICER LABOUR
COURT NO. X & ANR. Respondents
Through: Ms. Konica Gupta and Mr. Ashok
Kumar, Advocates for R-2

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T**GAURANG KANTH, J.**

1. By this Writ Petition, the Petitioner/Management (hereinafter referred to as "**Management**") seeks quashing of the Award dated 10.10.2002 passed by the learned Presiding Officer, Labour Court- X, Karkardooma Courts, Delhi in ID No. 2011/1995 (hereinafter referred to as "**Impugned Award**"). Vide the Impugned Award, the learned Tribunal directed reinstatement of the Respondent/Workman with continuity in service. However, no back wages have been granted as the Respondent/Workman remained



gainfully employed in Kingdom of Saudi Arabia for about 5 years without the permission of the Management.

Facts relevant for the consideration of the present Writ Petition

2. The Respondent/Workman was appointed as an Auxiliary Nurse at M/s Lala Ram Sarup T.B. Hospital with effect from 01.12.1964. In response to her communication dated 30.11.1983, the Management issued a 'No Objection Certificate' vide its communication dated 01.12.1983 so as to enable the Respondent/Workman to apply elsewhere for better prospects.
3. Subsequently, on being selected for a job in Saudi Arabia, Respondent/Workman, on 13.12.1983, she sought permission of the Management to proceed on leave or on deputation with effect from 16.02.1984 till 17.02.1987 to join the said service in Saudi Arabia. The Management, vide its communication dated 16.12.1983 asked the Respondent/Workman to submit the communication received by her from the Government of India regarding her selection for employment in an Arabian country along with her appointment letter.
4. It is the case of the Management that without submitting the aforesaid details regarding her employment and without taking due permission from the Management, the Respondent/Workman joined her duties at Tabarjal General Hospital, ALJOUF, Saudi Arabia with effect from 08.01.1984, as admitted in her affidavit dated 13.07.1984 before the Labour Court.



5. It is also the case of the Management that to join the service at Saudi Arabia, the Respondent/Workman sent a leave application dated 12.01.1984 requesting for leave from 10.01.1984 to 31.01.1984, on the pretext that her father is in serious condition. The Respondent/Workman did not disclose her correct whereabouts and stated her address as 'Church House, P.O. Awagarh District, Etah, Uttar Pradesh. Another leave application dated 06.02.1984 was also sent by her seeking extension of leave for 29 days i.e., from 01.02.1984 to 29.02.1984 again on account of her father being unwell. The Management did not sanction the leave sought for by the Respondent/Workman and had issued a Memorandum dated 05.03.1984 pointing out that she had left the station without permission and without proper sanction and asked her to report back on duty immediately on the receipt of the memorandum.
6. Since the Respondent/Workman neither responded to the said Memorandum dated 05.03.1984 nor joined her duties with the Management. The Management issued Memorandum dated 12.02.1985 directing her to report back on duty immediately on receipt of the memorandum failing which it shall be presumed that she is not interested to work with the Management and necessary action to terminate her service would follow. In response to Memorandum dated 12.02.1985, another leave Application dated 13.03.1985 was submitted by the Respondent/Workman stating that she is not in a position to join back her duty till 31.03.1985. Thereafter, the Management issued another Memorandum dated 19.03.1985 asking the Respondent/Workman to join back her duties. She was also asked



to submit her explanation for her unauthorized absence from duty and also asked to submit a declaration stating that she was not employed anywhere else, either in India or abroad during the period of her absence. In response, the Respondent/Workman vide letter dated 04.04.1985 again requested the Management for another three months leave from 01.04.1985 to 30.06.1985 on account of family responsibilities because of demise of her father in the month of January 1985.

7. Management issued another Memorandum dated 16.04.1985 to the Respondent/Workman asking her to submit her explanation within 48 hours. Another Memorandum dated 17.05.1985 was issued to the Respondent/Workman in response to her application dated 04.04.1985. It is the case of the Management that the Respondent/Workman had refused to acknowledge and receive the Memorandums being issued by them through Registered A.D. posts.
8. The Respondent/Workman again vide letter dated 01.07.1985, requested for grant of leave till September 30, 1985. Consequently, the Management issued Memorandum dated 12.08.1985 to the Respondent/Workman asking her to submit the requisite explanation and declaration regarding the unacknowledged letters sent to her between February 1985 to May 1985 failing which the entire period of her absence shall be treated as unauthorized. However, the Respondent/Workman failed to give any response to the said Memorandum.



9. Even after issuance of several Memorandums by the Management, the Respondent/Workman did not join her duties and kept on requesting the Management for the extension of her leave from time to time vide various letters dated 01.10.1986, 01.02.1987, 01.06.1987, 01.10.1987, 01.06.1988 and 01.10.1988. It is the case of the Management that the Respondent/Workman came to the Hospital on 28.12.1988 when she was called upon to submit a declaration regarding employment elsewhere during the period of unauthorized absence. But instead of submitting the aforesaid details, the Respondent/Workman, on 02.01.1989, sent a letter to the Management stating that she would be resuming her duties with effect from 03.01.1989. Respondent/Workman submitted another letter dated 06.01.1989 to the Management wherein it was stated that she had not been allowed to join duties w.e.f. 28.12.1988 by the Management.
10. The Management issued another Memorandum dated 23.05.1989 to the Respondent/Workman stating that the workman has been absenting herself unauthorizedly for a period of four years and eleven months to which an explanation has been pending since long. Furthermore, the memorandum strictly advised her to report back for duties immediately.
11. The Respondent/Workman once again failed to report back on duty and hence the Management vide its order dated 09.08.1989 terminated the services of the Respondent/Workman with effect from 09.08.1989. The Management also paid her one month's salary in lieu of the notice



period in accordance with the terms of her appointment letter dated 22.09.1970.

12. Being aggrieved by the termination, the Respondent/Workman raised an industrial dispute and the appropriate Government referred the said dispute to the Industrial Tribunal with the following reference:

“1) Whether the Smt. J. Malik has abandoned her services or her services have been terminated illegally and or unjustifiably by the management and if so, to what relief is she entitled and what directions are necessary in this respect?”

13. The Respondent/Workman filed the Statement of Claim explaining her case. The Management of Lala Ram Sarup T.B. Hospital filed the Written Statement justifying the termination of the Respondent/Workman. Based on the pleadings, learned Tribunal framed the reference terms as the issue.

14. The parties led their respective evidences and produced documents to substantiate their cases. The Respondent/Workman examined herself as WW1 by tendering her affidavit **Ex. WW1/A** to prove her case whereas, the Management examined MW1 Sh. H.S. Parmar, Administrative Officer, who filed his affidavit **Ex. MW1/A** along with documents **Ex. MW1/1** to **Ex. MW1/9**.

15. After the conclusion of the evidence, the learned Tribunal, vide Impugned Award dated 10.10.2002, directed for the reinstatement of the Respondent/Workman with continuity in service without back



wages. Being aggrieved by the impugned Award, the Management filed the present Writ Petition.

Submission on behalf of the Petitioners

16. Mr. Jasbir Bidhuri, learned counsel for the Petitioner/Management argued that admittedly the Respondent/Workman had joined the service of a hospital in the Kingdom of Saudi Arabia for five years without obtaining the leave from her employer i.e., Management. He further submits that the Workman was repeatedly warned by the Management about her conduct and unauthorized absence.
17. The learned Counsel states that the claim of the Workman was allowed by the learned Tribunal merely on the ground that domestic enquiry was not conducted by the Management and the same amounts to violation of natural justice. Learned Counsel further submits that the learned Tribunal failed to appreciate that as per the settled law, the Tribunal could have gone into evidence or material on record wherein no domestic enquiry was conducted and further relies on the judgment of *Syndicate Bank Vs. General Secretary, Syndicate Bank* (2000) 5 SCC 65 to support his submissions.
18. Learned counsel for the Management further submits that the applicability of the principle of natural justice differs from case to case based on the facts and circumstances of each case. In the present case, the Respondent/Workman left the country for a job in the Kingdom of Saudi Arabia without appropriate sanction of the Management. Thereafter, Respondent/ Workman submitted ten leave applications



from 12.01.1984 to 01.06.1988 and gave her address as Church House, P.O. Awagarh District, Etah, Uttar Pradesh and House No. 556, Ladoo Sarai, New Delhi. All this while she was abroad for her job. The Management issued seven Memorandum from 05.03.1984 to 23.05.1989 asking her to report for duty immediately yet the same were never honored. Learned counsel states that the reliance of the learned Tribunal on the judgment in the case of *M/s Scooters India Ltd Vs. M. Mohammad Yarubis* reported as (2001) LLR 54 has no application in the present case as in the said judgment there was no notice given to the workman before termination. Whereas, in the present case, various notices were sent to the workman before the termination. Learned Counsel further submits that in case of unauthorized absence from work, it is presumed, that the candidate has abandoned the job and further no enquiry is required, as held by single bench of Punjab and Haryana High Court in CWP No. 8120/2016 titled *Tejinder Kaur vs. State of Punjab & Ors* decided on 04.10.2016. In view thereof, it has been argued on behalf of the Petitioners that learned Tribunal has failed to apply its mind while granting reinstatement to the Respondent/Workman, despite the fact that Respondent/Workman had joined the assignment at Saudi Arabia without obtaining prior sanction with regard to her leave.

Submission on behalf of the Respondents

19. Learned counsel for the Respondent/Workman supported the impugned Award and contended that the act of the Management in terminating the services of the workman without conducting any domestic enquiry was illegal and arbitrary. It has further been stated

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that the workman joined the service of the Management on 01.12.1964 as an auxiliary nurse and she performed her duties with sincerity and as per the satisfaction of the management for 19 years.

20. It is further stated by the learned counsel for the Respondent/Workman that the workman submitted an application in the year 1983, requesting the management for issuance of a 'No Objection Certificate' as the workman was seeking for a better opportunity and the same was issued on 01.12.1983. Learned counsel also points out that in the cross examination, MW1 admitted that 'No Objection Certificate' was issued to the workman for joining the service elsewhere.

21. Thereafter, the learned counsel states that the workman got a contract of service in the Kingdom of Saudi Arabia through the Ministry of Health with effect from 08.01.1984 for which, she had applied for leave for a period of three years but the management neither granted leave nor replied to the leave application. Hence, the workman was left with no alternative but to proceed to Saudi Arabia without waiting for the orders of the Management.

22. In view thereof, it has been argued by the learned Counsel for the Respondent that the Management failed to follow the principles of natural Justice as there should have been an enquiry before terminating the services of the Respondent and depriving of her livelihood. Learned Counsel for the Respondent/Workman in support of her contention placed reliance on the Judgements of the Hon'ble Apex Court in the case of *D.K. Yadav Vs. J.M.A. Industries Ltd.* reported as



(1993) 3 SCC 259 and *Uptron India Ltd. Vs. Shammi Bhan and Anr.* reported as (1998) 6 SCC 538. Learned Counsel for the Respondent/Workman accordingly prayed for the dismissal of the present Writ Petition.

Legal Analysis based on the facts of the present Petition

23. This Court heard the learned counsels for the parties at length and examined the documents as well as the judgments relied upon by the parties.

24. A perusal of the record shows that the Management never granted leave to the Respondent/Workman. Without waiting for the approval of the Management, the Respondent/Workman proceeded to Saudi Arabia and worked there for 5 years. The Respondent/Workman failed to even intimate the Management about her whereabouts. She kept on sending leave applications indicating her family issues and concealed the fact that she is working abroad. The Management issued several Memorandums asking the Respondent to join back her duties with immediate effect. However, the Respondent/Workman failed to respond to those Memorandums and comply with the same. The Respondent/Workman from time to time sent various leave applications to the Management without even bothering to see what is the outcome of those leave applications. From the conduct of the Respondent/Workman, it is very much evident that she abandoned the service of the Management for her better prospects. The learned Tribunal, based on the evidence, came to the conclusion that the Respondent/Workman abandoned the service of the Management.



However, the learned Tribunal is of the view that ‘*the termination of the workman on the ground of abandonment without holding any domestic enquiry is not proper*’.

25. The non-conducting of the domestic enquiry cannot be the sole reason for interfering with the decision of the Management. It is well settled principle of law that if an employer failed to conduct an enquiry before the dismissal or discharge of a workman, it is open for him to justify the action before the Labour Court by leading evidence before it. The entire matter would be open before the tribunal, which would have the jurisdiction to satisfy itself on the evidence adduced by the parties whether the dismissal or discharge was justified. The full bench of the Hon’ble Supreme Court recently in the case of ***State of Uttarakhand Vs Sureshwati*** reported as **2021 (3) SCC 108** has categorically held that the disciplinary action taken by the Management against an employee cannot be held as illegal on the sole reason that the Management has not conducted any domestic enquiry. The Apex Court reiterated the broad principles to be applied in such cases as held by Hon’ble Supreme Court earlier in the case of ***Workmen of Firestone Tyre & Rubber Co. of India (P) Ltd. v. The Management of Firestone Tyre & Rubber Co. of India (P) Ltd and Others*** reported as **(1973 (1) SCC 813)**. These principles are as follows:

“(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the



latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.



(6) *The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.*

(7) *It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.*

(8) *An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.*

(9) *Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.*

(10) *In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in Management of Panitole Tea Estate v. Workmens (1971) 1 SCC 742 within the judicial decision of a Labour Court or Tribunal."*

26. Coming back to the present case, the learned Tribunal on the basis of the evidences adduced before it, came to the conclusion that the Respondent/Workman is guilty of unauthorized absence and



abandoning the service of the Management. However, the learned Tribunal interfered with the decision of the Management on the sole ground that the Management failed to conduct a domestic enquiry. In view of the well settled position of law discussed hereinabove, this Court is of the considered view that the said finding of the learned Tribunal is perverse and not justified. The Management proved before the learned Tribunal that the Respondent/Workman abandoned the service and hence justified the termination order. Therefore the learned Tribunal after recording the satisfaction of the evidence adduced by the Management regarding the misconduct committed by the Respondent/Workman, ought not to have interfered with the decision of the Management.

27. In view of the discussion herein above, the present Writ Petition is allowed and the impugned Award dated 10.10.2002 is hereby set aside. The Respondent/Workman is guilty of abandoning the service of the Management and hence Management is right in terminating her services. The termination order of the Management is hereby upheld.
28. In view thereof, the present Writ Petition is disposed of. No order as to costs.

GAURANG KANTH, J.

AUGUST 17, 2022