



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

% **Date of order: 25th July, 2023**

+ **W.P.(C) 281/2023, CM APPL. 1124/2023 & 12939/2023**

JURGAJ SINGH Petitioner

Through: **Mr. Chirayu Jain, Advocate.**

versus

BSES YAMUNA POWER LIMITED Respondent

Through: **Mr. Sandeep Sethi, Sr. Advocate with
Mr. Anupam Varma, Mr. Nikhil
Sharma, Mr. Aditya Gupta and Mr.
Manu Tiwari, Advocates.**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“A. Direct the Respondent to provide all information/documents that have been sought vide letters dated 28.11.2022 and 09.12.2022 in a time bound manner;

B. Direct the Respondent to let the Petitioner file a suitably amended appeal memorandum upon receipt of information/documents that have been sought;

C. Pass any other order or grant any other relief as it may deem fit”.

2. The learned Counsel appearing for the petitioner submitted that the petitioner joined the respondent organization in 2001 on compassionate



grounds and was working there till his termination. The petitioner was last posted as Senior Supervisor FLC (Central) in the respondent organization.

3. It is submitted that the respondent organization is one of the successor entities of the erstwhile Delhi Vidyut Board (“DVB” hereinafter). The DVB was restructured in the year 2000 under the Reforms Act, 2000 and is performing the public function of distributing the electricity in view of the joint venture between the Government of NCT Delhi and M/s Tata Power.

4. It is submitted that the employees of the respondent organization were aggrieved due to change in the service conditions and removal of the service benefits such as PLI, PMS, stoppage of old leave scheme etc. Aggrieved by the same, the petitioner along with his colleagues had gathered outside/near the main gate of the corporate office of the respondent organization which led to obstruction of movement in front of the office of the respondent.

5. It is submitted that subsequent to the protest, the petitioner was suspended from the services *vide* order dated 4th January 2021 bearing No. HR(BYPL)/2021-21/264. Thereafter, the petitioner challenged the suspension order before this court where the court directed the petitioner to appeal the said suspension before the appropriate authority as provided under ‘Discipline and Conduct policy’ of respondent organization.

6. It is submitted that the petitioner filed an appeal before the respondent authority challenging the suspension, which was rejected by the respondent. While rejecting the appeal, the respondent duly noted that:

“It is not denied that another employee Shri Ravinder Tomar who was also placed under suspension on the same ground as



that of the appellant, approached the management with an apology letter for his act of omission and commission. Shri Tomar gave an undertaking of maintaining good conduct and decent behavior and not to do anything which may be prejudicial to the interest of the company. The competent authority after taking into account all facts agreed to revoke the suspension of Shri Tomar. On the other hand, the appellant [Petitioner] did not approach the management for treating him in a similar manner and remained defiant and instead approached the Delhi High Court for getting his suspension quashed. The management is not hesitant to consider the case of the appellant, if he approaches the management for resolving the matter. The plea of the appellant, therefore does not stand to reason that he was discriminated against.”

7. It is submitted that pursuant to the inquiry report submitted by the officer, the respondent removed the petitioner from the services *vide* order dated 18th November 2022. The relevant portion of the order is reproduced hereinbelow:

“The extreme disregard to law, the directions issued by the management, the wellbeing of employees during COVID- 19 period and the gross misconduct of indiscipline by Mr. Jugraj Singh warrants imposition of the major penalty of removal from service which shall not be a disqualification for future employment. An employee, who indulges in acts of misconduct which are duly proved, cannot be permitted to continue his private employment with the management. The gross misconduct of the Charged Official having been proved/established and keeping in view the gravity of the misconduct and the Charged Official’s action is prejudicial to the Company’s interest, the undersigned after examination and study of the record pertaining to the present proceedings has decided to impose upon Mr. Jugraj Singh, E.No. 41001402,



Senior Supervisor in FLC (Central) BYPL, the penalty of 'removal from service which shall not be a disqualification for future employment' with immediate effect and it is ordered accordingly. ”

8. It is submitted that the petitioner requested the respondent management for certain documents/information which are essential for the petitioner to avail his right of appeal in the present case. It is also submitted that the respondent has not supplied the information/documents sought by the petitioner. It is submitted that the respondent may be directed to supply the information/documents as requested by the petitioner.

9. *Per contra*, learned counsel appearing on behalf of respondent vehemently opposed the submissions made by learned counsel for the petitioner and submitted that the instant petition is nothing but gross misuse of process of law. It is submitted that the information/documents required by the petitioner have already been supplied to him. Hence, the instant petition being devoid of any merit is liable to be dismissed.

10. Heard the learned counsel appearing for the parties and perused the record.

11. The petitioner had earlier approached this court by filing a Writ Petition (C) No. 942 of 2021, challenging the suspension order dated 4th January 2021. The said petition was disposed of as withdrawn. In the said order this Court had observed as follows:

“This petition has been filed by the petitioner primarily challenging the suspension order dated January 4, 2021. Although the challenge to the order is on various grounds, on



perusal of Clause 22 of the Rules at Annexure P-7, it is noted that the petitioner has a remedy of appeal against the order of suspension.

Mr. Adit S. Pujari, learned counsel appearing for the petitioner states, he shall withdraw the petition at this stage to enable the petitioner invoke Clause 22 and file an appeal before the concerned authority challenging the Suspension.

At this stage, Mr. Pujari also states, the appeal can only be filed if the designation of the authority is known to the petitioner. If that be so, Mr. Sandeep Prabhakar, learned counsel for the respondent shall inform Mr. Pujari during the course of the day the authority to whom the appeal shall be filed. On such intimation, the petitioner shall file the appeal within 10 days. It is expected that the said authority shall consider the appeal and dispose of the same within a period of two weeks thereafter. It goes without saying that if the petitioner is still aggrieved by any order to be passed by the authority, liberty is with the petitioner to seek such remedy as available in law. The petition along with connected application are disposed of as withdrawn.”

12. Thereafter, the petitioner had approached the respondent by filing an appeal against the suspension order, which was duly rejected by the respondent *vide* an order dated 22nd February, 2021.

13. The petitioner has filed the instant petition seeking issuance of mandamus, directing the respondent to supply the necessary documents/information which are required by the petitioner to avail his right to appeal against the order passed by the respondent.

14. In view of the aforesaid facts and circumstances, the issue before this Court for consideration is whether this Court may issue the writ of mandamus or any direction to the respondent for supplying the documents



as prayed by the petitioner in the instant case. Therefore, it is important to look at the scope of issuance of the writ of mandamus.

15. In ***Ram Avtar Sharma v. State of Haryana***, (1985) 3 SCC 189, the Hon'ble Supreme Court discussed the scope of mandamus and held as follows:

“9. The reasons assigned by the Government for refusing to make a reference are to be culled out from the letter Annexure ‘A’ dated September 1, 1984 sent by the Joint Secretary, Haryana Government, Labour Department to the petitioners. It is stated in the letter that: “the Government does not consider your case to be fit for reference for adjudication, to the Tribunal as it has been learnt that your services were terminated only after charges against you were proved in a domestic enquiry”. The assumption underlying the reasons assigned by the Government are that the enquiry was consistent with the rules and the Standing Orders, that it was fair and just and that there was unbiased determination and the punishment was commensurate with the gravity of the misconduct. The last aspect has assumed considerable importance after the introduction of Section 11-A in the Industrial Disputes Act by Industrial Disputes (Amendment) Act, 1971 with effect from December 15, 1971. It confers power on the Tribunal not only to examine the order of discharge or dismissal on merits as also to determine whether the punishment was commensurate with the gravity of the misconduct charged. In other words, Section 11-A confers power on the Tribunal/Labour Court to examine the case of the workman whose service has been terminated either by discharge or dismissal qualitatively in the matter of nature of enquiry and quantitatively in the matter of adequacy or otherwise of punishment. The workmen questioned the legality and validity of the enquiry which aspect the Tribunal in a quasi-judicial determination was required to examine. A bare statement that a domestic enquiry was held in which charges



*were held to be proved, if it is considered sufficient for not exercising power of making a reference under Section 10(1), almost all cases of termination of services cannot go before the Tribunal. And it would render Section 2-A of the Act denuded of all its content and meaning. The reasons given by the Government would show that the Government examined the relevant papers of enquiry and the Government was satisfied that it was legally valid and that there was sufficient and adequate evidence to hold the charges proved. It would further appear that the Government was satisfied that the enquiry was not biased against the workman and the punishment was commensurate with the gravity of the misconduct charged. All these relevant and vital aspects have to be examined by the Industrial Tribunal while adjudicating upon the reference made to it. In other words, the reasons given by the Government would tantamount to adjudication which is impermissible. That is the function of the Tribunal and the Government cannot arrogate to itself that function. Therefore if the grounds on which or the reasons for which the Government declined to make a reference under Section 10 are irrelevant, extraneous or not germane to the determination, it is well-settled that the party aggrieved thereby would be entitled to move the Court for a writ of mandamus. (See *Bombay Union of Journalists v. State of Bombay* [AIR 1964 SC 1617 : (1964) 6 SCR 22 : (1964) 1 LLJ 351 : 26 FJR 32] .) It is equally well-settled that where the Government purports to give reasons which tantamount to adjudication and refuses to make a reference, the appropriate Government could be said to have acted on extraneous, irrelevant grounds or grounds not germane to the determination and a writ of mandamus would lie calling upon the Government to reconsider its decision. In this case a clear case for grant of writ of mandamus is made out.”*



17. In the case of **CAG v. K.S. Jagannathan, (1986) 2 SCC 679**, the Hon'ble Supreme Court further discussed scope of mandamus which is reproduced herein:

“20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”

18. The scope of mandamus has been also extensively discussed in some of the recent judgments given by the Hon'ble Supreme Court such as **Union of India and Others v. Bharat Forge Ltd. and Another 2022 SCC OnLine SC 1018**, where the court discussed the scope in following manner:

“18. Therefore, it is clear that a Writ of Mandamus or a direction, in the nature of a Writ of Mandamus, is not to be



withheld, in the exercise of powers of Article 226 on any technicalities. This is subject only to the indispensable requirements being fulfilled. There must be a public duty. While the duty may, indeed, arise from a Statute ordinarily, the duty can be imposed by common charter, common law, custom or even contract. The fact that a duty may have to be unravelled and the mist around it cleared before its shape is unfolded may not relieve the Court of its duty to cull out a public duty in a Statute or otherwise, if in substance, it exists. Equally, Mandamus would lie if the Authority, which had a discretion, fails to exercise it and prefers to act under dictation of another Authority. A Writ of Mandamus or a direction in the nature thereof had been given a very wide scope in the conditions prevailing in this country and it is to be issued wherever there is a public duty and there is a failure to perform and the courts will not be bound by technicalities and its chief concern should be to reach justice to the wronged. We are not dilating on or diluting other requirements, which would ordinarily include the need for making a demand unless a demand is found to be futile in circumstances, which have already been catalogued in the earlier decisions of this Court.”

19. On perusal of the aforesaid authorities and judgments, it is clear that even though the scope of the writ of mandamus is very wide, the Courts need to examine whether there is a failure on part of the authorities to perform their public duty or not. Therefore, it becomes necessary to analyze whether the respondent authority fulfilled its public duty by adhering to the principle of natural justice or not.

20. In the instant case, the inquiry committee has already been constituted by the respondent to look into the matter and an opportunity has been given to the petitioner to defend his case and to further examine the witnesses. The



petitioner had also filed an appeal against the order of the constitution of the initiation of the inquiry against the petitioner and the same was rejected by the respondent by giving detailed order. Hence, in the instant case, it is established that the respondent had duly performed its public duty.

22. In view of the facts and circumstances, it is crystal clear that the petitioner has got the opportunity of hearing to defend his case before the inquiry officer and the Appellate Authority has passed a reasoned and detailed order while dismissing the appeal of the petition.

23. Keeping in view the foregoing discussions, this Court does not find any cogent reason for issuance of any writ of mandamus as prayed in the instant writ petition.

24. Accordingly, the petition being devoid of any merit stands dismissed.

25. Pending applications, if any, also stands dismissed.

26. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 25, 2023

pa/av

Click here to check corrigendum, if any