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

+ LPA 394/2020 & CM APPLs. 33491/2020 & 33492/2020

HARI RAM TIWARI

..... Appellant

Through: Mr. C.S. Nagesh, Advocate

versus

NEW DELHI MUNICIPAL COUNCIL

..... Respondent

Through: Ms. Kaadambari Singh, ASC for
NDMC with Ms. Ayushi Ranade,
Advocate

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Date of Decision: 25th July, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present appeal has been filed against judgment dated 09th October, 2020 passed by the learned Single Judge in *W.P. (C) 12808/2019*, whereby the learned Single Judge has held that the inquiry against appellant was conducted in a fair and transparent manner, in accordance with the Principles of Natural Justice. Thus, the punishment of compulsory retirement pursuant to the inquiry, imposed upon appellant vide order dated 16th December, 2008 was upheld.

2. Facts in brief are that appellant was appointed as Allopathic Pharmacist with respondent - New Delhi Municipal Council (NDMC) on 08th April, 1976. He was seen by the police patrol participating in an election campaign for his wife, Mrs. Raj Laxmi, a candidate of Ward no. 97, Kirti Nagar from the political party "All India Forward Block". Since the said



election rally was being held without any permission, the police tried to stop appellant and other persons present there. As they did not heed to the advice of the police, a Daily Diary Entry (DD Entry), was made on 03rd April, 2007 by Mr. Satish Singh, Sub-Inspector (SI), P.S. Moti Nagar, who was part of the police patrol party, to this effect. Pursuant to the DD Entry, photographs of appellant were taken by the police making a speech at his wife's campaign.

3. An intimation letter was sent by SI Satish Singh on 06th April, 2007 to the Secretary of respondent requesting that disciplinary action be taken against appellant. By way of the said letter, respondent was informed that appellant was addressing a public meeting by wearing a party logo on his clothes and was actively participating in the electioneering process.

4. Subsequently, charge sheet dated 24th July, 2007 was issued to appellant. The article of charges framed against appellant is reproduced as follows:-

“STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST SHRI HARI RAM TIWARI, PHARMACIST, NDMC ALLOPATHIC DISPENSARY, ROHINI, DELHI

While working as Pharmacist, NDMC, Allopathic Dispensary Rohini, Delhi Shri Hari Ram Tiwari during-2007 has failed to maintain absolute devotion to duty as much as that:

He actively participated in Electioneering Process of Smt. Raj Laxmi, a candidate of ward-97, Kirti Nagar from Political Party namely “All India Forward Block” on 3.4.2007.

The above act on the part of Sh. Hari Ram Tiwari, Pharmacist: besides unbecoming of a council servant, amounts to gross misconduct in the performance of his duties and thus, violated the provision of Rule 3 of the CCS (Conduct) Rules, 1964.”

5. Inquiry proceedings were conducted against appellant and by Inquiry Report dated 05th September, 2008, the Inquiry Officer held that the charges



against appellant stood proved beyond any doubt. Subsequently, order dated 16th December, 2008 was issued on behalf of Chairman of respondent for compulsory retirement of appellant. Thereafter, by office order dated 23rd December, 2008, respondent issued an office order thereby terminating the service of appellant by way of compulsory retirement.

6. An industrial dispute was raised on behalf of appellant praying that he may be reinstated in service as the domestic inquiry conducted by respondent was unfair, unlawful and against the Principles of Natural Justice. Learned Labour Court by its order dated 27th April, 2019 held that the inquiry conducted against appellant could not be said to be fair, proper and in accordance with Principles of Natural Justice.

7. Subsequently, an application was moved on behalf of respondent herein seeking an opportunity to lead evidence before the learned Labour Court to prove charges against appellant. However, by its order/Award dated 12th September, 2019, the learned Labour Court held that respondent could not be granted opportunity to lead evidence to prove the charges against appellant after the preliminary issue of domestic inquiry had already been held against respondent. Thus, the punishment of termination of service of appellant by compulsory retirement was set aside. Since appellant had already attained the age of superannuation, the learned Labour Court directed that appellant be granted all service benefits consisting of pay and other allowances, along with compensation of Rs. 5,00,000/-.

8. Against the aforesaid order dated 27th April, 2019 and Award dated 12th September, 2019 passed by the learned Labour Court, respondent filed a writ petition, *W.P. (C) 12808/2019*, titled as ***“New Delhi Municipal Council Vs Hari Ram Tiwari”*** before this Court. The learned Single Judge vide the



impugned judgment dated 09th October, 2020 set aside the order/Award of the Learned Labour Court dated 27th April, 2019 and 12th September, 2019. The learned Single Judge held that inquiry had been held in a fair and transparent manner and in accordance with the Principles of Natural Justice. Thus, the punishment of compulsory retirement imposed upon appellant vide order dated 16th December, 2008 was upheld. Further, by another order of the same date i.e. 09th October, 2020, learned Single Judge directed respondent to release all the amounts due to appellant herein, in accordance with the applicable Rules.

9. Aggrieved by the aforesaid judgment dated 09th October, 2020 passed by the learned Single Judge, present appeal has been filed.

10. On behalf of appellant, it is contended that the learned Single Judge has wrongly held that all documents were supplied to appellant. It is contended that in the Inquiry Report, the Inquiry Officer had categorically noted that the request of appellant herein to supply documents as requested by his application before the Inquiry Officer was not acceded to. It is contended that appellant was not provided with the DD Entry dated 03rd April, 2007 made by Mr. Satish Singh, Sub-Inspector (SI), P.S. Moti Nagar, at the time of conduct of the inquiry proceedings against him.

11. It is further contended that the inquiry against appellant was merely an eye-wash and was conducted contrary to law. He was not provided with proper opportunity to cross-examine the witnesses of respondent herein or to produce evidence in his defence. The Inquiry Report was also based on no evidence.

12. It is further contended that the learned Single Judge erred in relying on the proceedings and order in *CRL. M.C. No. 2871/2010*, titled "**Philip**



Bara and Ors. Vs State and Others". The findings in the criminal proceedings could not be relied upon in order to give a finding against appellant herein, when the said documents were never part of record of proceedings before the Inquiry Officer or the learned Labour Court. It is contended that the judgment dated 17th January, 2011 in the criminal proceedings was completely different proceedings from the present matter. Thus, it is prayed that the impugned judgment passed by the learned Single Judge be set aside.

13. On the other hand, Ms. Kaadambari Singh, learned Additional Standing counsel for NDMC submits that full opportunity was allowed to appellant before the Inquiry Officer. She submits that appellant had filed FIR against the various officials of respondent - NDMC making various allegations against them. Thus, a petition was filed by the said officials for quashing of the FIR against them. In the said proceedings, i.e. *Crl M.C.No. 2871/2010*, learned Single Judge of this Court while quashing the FIR against the officials of respondent, had given a clear finding that appellant herein had admitted his presence at the election meeting of his wife. The said finding was upheld by Hon'ble Supreme Court in *SLP (Crl.) No. 4625/2011*, titled as ***Hari Ram Tiwari Vs. Philip Bara and Ors.***, by dismissing the petition filed on behalf of appellant herein vide its order dated 12th August, 2011. Hence, learned counsel appearing for respondent prayed for dismissal of the appeal.

14. Having heard learned counsel for the parties and after perusal of the documents on record, it is manifest that appellant herein was granted full opportunity to defend his case in the disciplinary proceedings conducted by respondent. The appellant took various objections against the inquiry



proceedings and on some hearing before the Inquiry Officer, he chose not to participate in the proceedings, in view of which various notices were issued to appellant to appear before the Inquiry Officer. Pursuant to the said notices, appellant appeared before the Inquiry Officer and participated in the inquiry proceedings at his whim, by deliberately not appearing before the Inquiry Officer at times.

15. Learned Single Judge has categorically recorded that PW-1, Head Constable-Sh. Mumtaaz Ali, Police Station Moti Nagar, New Delhi had deposed before the Inquiry Officer on 05th May, 2008 that while patrolling on foot on 03rd April, 2007, he had found appellant herein on stage along with other persons, in the election rally of his wife who was a candidate in elections from a political party named “All India Forward Block”. Appellant was addressing the public meeting at the relevant time and was giving speech. Since no permission had been taken for the said election rally, the said witness tried to stop the meeting, however, appellant and others did not pay any heed. Thus, the said witness took photographs of the public meeting. Four positive prints of the photograph, marked as PW-1/1 to PW-1/4 were produced before the Inquiry Officer. The said witness also identified appellant herein, who was present at the time of deposition of PW-1, sitting next to the said witness.

16. On the next date of hearing before the Inquiry Officer on 22nd May, 2008, appellant did not join the proceedings. PW-2, SI Satish Singh, P.S. Moti Nagar, New Delhi recorded his statement on the said date. He deposed that he found appellant wearing the party logo and addressing the election meeting on 03rd April, 2007 while he was on patrolling duty. Thus, a DD Entry was made by PW-2, which was thereafter forwarded to the NDMC for



disciplinary action against appellant herein. Statements of both PW-1 and PW-2 were duly sent to appellant by registered post. Appellant appeared before the Inquiry Officer on 02nd June, 2008 and was given an opportunity to cross-examine the two police officials. However, appellant refused to cross-examine them.

17. Similarly, the Inquiry Officer recorded the statement of PW-3 on 02nd June, 2008 in the presence of appellant. Despite opportunity, appellant did not cross-examine the said witness also. On the next date of hearing before the Inquiry Officer i.e. on 17th June, 2008, appellant did not appear despite notice and statement of PW-4 was recorded, which was sent to appellant. Thus, it is clear that appellant did not cooperate in the inquiry proceedings and deliberately chose not to appear on many dates though he had complete knowledge of the same.

18. The Inquiry Officer gave a categorical finding that appellant was present in the election meeting of his wife on the basis of the evidence of PW-1 and PW-2, the police officials from P.S. Moti Nagar. Both the witnesses not only identified appellant herein but also took photographs of the meeting, which are on record before this Court. Accordingly, the Inquiry Officer had held that appellant had participated in the election meeting. The finding of the Inquiry Officer, as recorded by the learned Single Judge in this regard is reproduced as below:-

“44. On the first issue, the IO noted that the workman did not summon any witnesses to support his case. He was proceeded ex-parte on 22nd February, 2008, however, he continued to participate in the proceedings. The IO specifically notes as under:

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In spite of service of notice Sh. Hari Ram Tiwari did not attend the inquiry proceedings even on 22-02- 2008; therefore, inquiry was proceeded ex-parte with directions



that from now onwards proceedings shall be held in the absence of the CO. The PO was directed to produce the evidence by which he proposed to prove the articles of charge framed against the CO and the matter was adjourned for recording statement of the witnesses of the department on 19-03-2008 at 3-30 PM. A copy of order dated 22-02-2008 was sent to Sh. Hari Ram Tiwari, the CO by registered post through CRB of NDMC vide No. 50/IO/Addl.LO/08 dated 26-02-2008. Summary of date wise developments which took place after 22-02-2008 has been given above and same is not being repeated here to avoid repetition.

The statement of PW-1, PW-2 and PW-3 was recorded in the presence of the CO and he was given sufficient opportunity to cross-examine the said witnesses but he declined to cross-examine the witnesses on the misconceived and untenable plea that he would cross-examine them only after copies of the documents mentioned by him in his letter dated 02-06-2008 are supplied to him. It was made clear to him that the proceedings are going on exparte and he has the liberty to join the proceedings at any stage but if he does so the ground already covered would not be repeated. It was further made clear to him that the stage for supply of documents or furnishing list of defence witnesses was long back over and the proceedings were fixed for that day for recording of statement of witnesses of the department. He was given ample time and opportunity to obtain the document(s) through the I.O. but he did not avail of the opportunities so given to him. He was also informed that in his application dated 02-06-2008 he had not given details of the controlling officer in whose custody the required documents are nor he has mentioned the relevance of the documents demanded by him. For the above said reasons his request to supply the documents mentioned in his above said letter was not acceded to.

On 15-07-2008, the CO filed his written submissions. In the end of written submissions filed by him he has requested to the I.O. "to restore recall Enquiry proceedings and give me an opportunity to cross examine on the statement of management witness and produce evidence on merit in defence in the interest of the natural justice, failing which I reserved my right to produce evidence in rebutal before the competent court of law." His request to allow him 'to produce evidence on merit in defence' was not only highly belated but



also in combination with other request which if allowed would have the effect of initiating the enquiry de-novo. Names of the witnesses were also not given. A specific oral request in this regard was also not made, therefore, this request was not allowed.

The CO did not cross-examine any of the witnesses produced by the department; therefore, statement of all the witnesses has gone unrebutted.

The conduct and behaviour of Sh. Hari Ram Tiwari, the CO throughout the proceedings have been most uncooperative. From the beginning Sh. Hari Ram Tiwari, the CO has focused all his energy to portray the PO, IO and the Police Personnel as unfair and biased persons. He has been leveling false and concocted allegation against the PO, the CO, the complainant and the witnesses. He has throughout taken the stand that the PO, the IO, the complainant and the witnesses all are biased and bent upon to implicate him on false charges. However, he does not say as to what they would benefit by involving him in a false case. Date wise proceedings of the case show that he was always given fair opportunity to participate in the proceedings and contest the case on merits. He instead of adopting the legal and fair course took to leveling false and concocted allegation that he was not allowed to participate in the proceedings. A copy of each and every order made during the proceedings was given to him and after the enquiry proceeded ex-parte copy of each and every order made was sent to him through registered post. After being proceeded ex-parte, he joined and participated in most of the proceedings but was clever enough not to sign on the order sheet as was the usual practice to create false case that he was not allowed to participate in the proceedings. The CO whenever participated in the enquiry was asked to put his signatures on the order sheet to show that whatever is recorded therein has been recorded in his presence. The CO participated in the proceedings dated 02-06-2008 and 15-07-2008 is evidenced from the letter dated 02-06-2008 and written submissions dated 15-07-2008 which he personally handed over to the I.O. on those dates.

19. On the basis of the aforesaid, the learned Single Judge came to an unequivocal finding that the inquiry was held in a fair manner. Thus, the



learned Single Judge held as follows:-

“46. This Court has perused the inquiry report as also the findings of the Labour Court and finds that the conclusion of the Labour Court, to the effect that the inquiry was not fair and the workman was not given an opportunity to defend himself, is completely contrary to the record. The report of the IO and the day to day proceedings were before the Labour Court. The IO has been extremely meticulous in the manner in which he has conducted the inquiry. On several dates, the workman was present in the inquiry proceedings. He also absented himself on some hearings. However, the IO ensured that no prejudice was caused to him as all the orders were duly communicated to the workman. On days when a statement of a witness was recorded and the workman had chosen to absent himself, apart from the order which gave the next date in the matter, the statements were also attached and sent by registered post to the workman. The workman was present in the beginning of the inquiry and at the end he has submitted his written submissions as well. From the petition, it is clear that the workman has himself acted as a Presenting Officer for various other workmen in NDMC and was therefore well aware of the procedures followed in an inquiry of this nature. Even before this Court, the workman and his daughter have made submissions without engaging any counsel. The finding of the Labour Court that the IO did not follow the principles of natural justice is thus completely perverse, contrary to the record and untenable.”

20. No infirmity is found in the aforesaid finding of the learned Single Judge. The Labour Court had ignored the evidence on record and had erred in holding that the inquiry was unfair or in violation of Principles of Natural Justice. Dealing with the aspect of fairness in proceedings, Supreme Court in the case of ***Managing Director, ECIL, Hyderabad and Others Vs B. Karunakar and Others***, (1993) 4 SCC 727 has held as follows:-

“21. In Chairman, Board of Mining Examination v. Ramjee [(1977) 2 SCC 256 : 1977 SCC (L&S) 226 : (1977) 2 SCR 904] the Court has observed that natural justice is not an unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be



exasperating. The Courts cannot look at law in the abstract or natural justice as a mere artefact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.”

21. As regards the contention on behalf of appellant that the DD Entry made by the police against him was not provided to him and inquiry is vitiated on the said basis, the same is found to be without any merit. Appellant had not been able to point out any prejudice that was caused to him by non-supply of the said document. The police officials were duly examined as PW-1 and PW-2 before the Inquiry Officer, wherein they had categorically deposed against appellant that he was found taking part in the election rally of his wife and making a speech therein and that DD Entry to this effect was made against appellant. However, appellant chose not to cross-examine the said police officials despite opportunity and despite being in the knowledge of the deposition made by the said police officials.

22. Holding that a delinquent employee must establish the prejudice caused to him by non-supply of any document to sustain the allegation of violation of Principles of Natural Justice, Supreme Court in the case of ***Syndicate Bank and Others Vs Venkatesh Gururao Kurati, (2006) 3 SCC 150*** has held as follows:-

“18. In our view, non-supply of documents on which the enquiry officer does not rely during the course of enquiry does not create any prejudice to the delinquent. It is only those documents, which are relied upon by the enquiry officer to arrive at his conclusion, the non-supply of which would cause prejudice, being violative of principles of natural justice. Even then, the non-supply of those documents prejudice the case of the delinquent officer must be established by the delinquent officer. It is well-settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straitjacket formula. It depends upon the facts and



circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice.”

23. As regards the contention of appellant that learned Single Judge could not have relied upon the proceedings in *Crl. M.C. No. 2871/2010*, the said contention is again found to be meritless. The fact that appellant was present in the election rally of his wife and making a speech therein, was clearly established during the course of the inquiry proceedings conducted by respondent. Learned Single Judge merely referred to the parallel criminal proceedings held in this Court for quashing the FIR lodged by appellant against the officials of respondent NDMC after his dismissal. This Court in the said criminal proceedings had categorically held that appellant herein had admitted his presence at the election meeting of his wife. Appellant had duly participated in the said criminal proceedings and was in the knowledge of the order passed by this Court in the said proceedings. Challenge by appellant against the order of this Court in the said criminal proceedings was also dismissed by Supreme Court in the case of ***Hari Ram Tiwari Vs. Philip Bara and Ors. (supra)***, vide its order dated 12th August, 2011. Therefore, no infirmity is found in the order of the learned Single Judge on this aspect also.

24. It is well settled that High Court can interfere with an award of the Labour Court/Industrial Tribunal, if there is patent illegality or if the award is contrary to law. Thus, Supreme Court in the case of ***State of Haryana and Others. Vs Devi Dutt and Others, (2006) 13 SCC 32*** has held as follows:-

“8. The High Court ordinarily should not have interfered with the said finding of fact. We, although, do not mean to suggest that the findings of fact cannot be interfered with by the superior courts in exercise of their jurisdiction under Article 226 of the Constitution of India, but the same



should be done upon application of the well-known legal principles such as: (1) when it is perverse; (2) when wrong legal principles have been applied; (3) when wrong questions were posed; (4) when relevant facts have not been taken into consideration; or (5) the findings have been arrived at on the basis of the irrelevant facts or on extraneous consideration.”

25. Thus, it is clear that in case award by the Labour Court or Industrial Tribunal is perverse and is passed by ignoring the evidence on record, High Court can certainly interfere in such an award. In the present case, the award passed by the Labour Court was clearly perverse and the finding by the Labour Court that Principles of Natural Justice had not been followed by the Inquiry Officer, was contrary to the record. Hence, impugned judgment passed by the learned Single Judge in setting aside the award passed by the Labour Court, is well-grounded.

26. The charge against appellant of participation in the election rally having been established during the course of inquiry proceedings, the dismissal of appellant by way of compulsory retirement was justified. Appellant, being a government employee, could not have participated in any political activity or be associated with any political party.

27. In view of the detailed discussion hereinabove, no merit is found in the present appeal. The same along with pending applications is accordingly dismissed.

MINI PUSHKARNA, J

MANMOHAN, J

JULY 25, 2023/ c