



2024:DHC:1301



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

% **Date of order : 12th February, 2024**

+ **W.P.(C) 1626/2007**

NARESH KUMAR MEHTA Petitioner

Through: **Mr.K.P.Mavi, Advocate**

versus

P.O.,LABOUR COURT,THE MGMT OF Respondent

Through: **Mr.Kamal Kant Tyagi, Advocate**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Articles 226/227 of the Constitution of India has been filed on behalf of petitioner seeking the following reliefs:-

- "a. quash and set aside the award dated 11th January, 2007 to the extent that the Petitioner was held guilty of misconduct with Enquiry Officer and was awarded the punishment of discharge from service with effect from 28th February, 2002*
b. direct the reinstatement of the Petitioner with full back wages in service..."

2. The petitioner in the present case was working in the respondent Hotel at the post of Control Room Telephone attendant since the year 1983 and was promoted to the position of Incharge of the control room in the year 1989.



3. In the year 1999, the petitioner was issued a chargeheet dated 16th August, 1999 on the account of allegations of misconduct. The said charges *inter alia* included allegations such as misbehavior with the superior officer.
4. Thereafter, a domestic inquiry was initiated against the petitioner, where the respondent Hotel appointed an independent Advocate as an enquiry officer. During the course of inquiry, it is alleged that the petitioner did not cooperate with the inquiry officer and also threatened her by calling her names and attempting to physically manhandle her.
5. Due to the alleged non-cooperation by the petitioner, the enquiry officer expressed her inability to complete the said inquiry, leading to dismissal of the petitioner from the services on ground of gross misconduct and the same was conveyed to him *vide* letter dated 20th February, 2002.
6. Subsequent to dismissal from the services, the petitioner raised the industrial dispute and same was referred to the Labour Court by the appropriate Government.
7. After conclusion of the proceedings, the learned Labour Court passed an award dated 11th January, 2007, whereby, the dismissal of the petitioner from the services was rendered legal, however, the respondent Hotel was also directed to pay the due salary till the date of dismissal of the services.
8. Aggrieved by the same, the petitioner approached this Court against the award passed by the learned Labour Court in the dispute bearing no. 593/06.
9. The learned counsel appearing on behalf of the petitioner submitted that the learned Court below erred in appreciating that they had jurisdiction



to adjudicate the issue as the dispute did not amount to an industrial dispute.

10. It is submitted that the allegations leveled against the petitioner were an afterthought and done with the intention to dismiss him from the services even before the inquiry was completed and submitted to the competent authority.

11. It is submitted that the learned Labour Court went beyond the charges originally framed by the management and therefore the impugned award is bad in law.

12. It is submitted that the rules known as Staff hand book by which the service conditions of the petitioner was allegedly governed are not certified standing orders under the Industrial Employment (standing order) Act, 1946 ('the Act' hereinafter) and therefore, the same cannot be made binding on the petitioner.

13. It is submitted that the learned Court below erred in not appreciating the fact that the petitioner was only charged for insubordination and not any misconduct with the enquiry officer during the inquiry proceedings.

14. It is submitted that the learned Court reduced the punishment of dismissal from service to a punishment of discharge without notice from the service w.e.f 20th February, 2002, despite holding that there was no insubordination.

15. It is further submitted that despite exoneration from the charges of insubordination, the petitioner was not reinstated by the learned Court below, thereby, committing gross illegality.

16. In view of the foregoing submissions, the learned counsel appearing



on behalf of the petitioner submitted that the present petition be allowed, and reliefs be granted, as prayed.

17. *Per Contra*, the learned counsel appearing on behalf of the respondent Hotel vehemently opposed the present petition submitting to the effect that the instant petition is untenable in law and liable to be dismissed.

18. It is submitted that pursuant to issuance of chargesheet against him, the petitioner was required to cooperate with the enquiry officer appointed by the respondent Hotel, however, he did not cooperate, and manhandled her during the course of inquiry.

19. It is submitted that the unruly behavior of the petitioner was rightly taken into consideration by the learned Labour Court and therefore, the learned Court below deemed it appropriate to discharge him from the services.

20. It is submitted that the conclusion of the learned Labour Court in not holding the petitioner guilty of disobeying the instructions of his superiors was one of the charges of misconduct and the same cannot be sole basis to demand reinstatement in the present petition.

21. It is also submitted that the non-cooperation and hurling abuse towards a female inquiry officer also constitute as a serious act of misconduct and the same can be duly connected with the employment of an employee, therefore, discharging the petitioner on the said grounds is completely justifiable.

22. It is further submitted that the petitioner did not object to deletion of the earlier issue framed by the learned labour Court and therefore cannot



raise the same at this juncture.

23. In view of the foregoing submissions, the learned counsel appearing on behalf of the respondent Hotel submitted that the present petition, being devoid of any merits, is liable to be dismissed.

24. Heard the learned counsel for the parties and perused the record.

25. It is the case of the petitioner that the impugned award suffers from illegality as the learned Court below discharged the services of the petitioner on the basis of alleged misconduct during the inquiry proceedings against him, and therefore, adjudicating the issue without jurisdiction conferred to it.

26. In the rival submissions, the learned counsel for the respondent Hotel has contended that the said issue was one of the aspects adjudicated by the learned Labour Court and even though the petitioner was discharged from the services, the same was done in consonance with the law as provided under the rules governing the services of the petitioners as well as the other statutory norms.

27. Therefore, the only limited question before this Court is whether the discharge of the petitioner from the services is legally sound or not.

28. As per the material on record, the services of the petitioner were discharged on the basis of misconduct during the course of inquiry against him, where the petitioner allegedly threatened the female enquiry officer and manhandled her.

29. The power of discharge from the services has been provided to the appropriate authority under the Act where Order 14 explains and elaborates the disciplinary action for misconduct. The said Order reads as under:



“..14. Disciplinary action for misconduct.--(1) A workman may be fined up to two per cent of his wages in a month for the following acts and omissions, namely:

(2) A workman may be suspended for a period not exceeding four days at a time, or dismissed without notice or any compensation in lieu of notice, if he is found to be guilty of misconduct.

(3) The following acts and omissions shall be treated as misconduct.

(a) wilful in subordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior,

(b) theft, fraud or dishonesty in connection with the employer's business or property,

(c) willful damage to or loss of employer's goods or property,

(d) taking or giving bribes or any illegal gratification,

(e) habitual absence without leave or absence without leave for more than 10 days,

(f) habitual late attendance,

(g) habitual breach of any law applicable to the establishment,

(h) riotous or disorderly behaviors during working hours at the establishment or any act subversive of discipline,

(i) habitual negligence or neglect of work,

(j) frequent repetition of any act or omission for which a fine may be imposed to a maximum of 2 percent of the wages in a month.

(k) striking work or inciting others to strike work in contravention of the provision of any law, or rule having the force of law..”

30. Upon perusal of the said standing order, it is made out that Clause 2 of the same provides for discharge from the services without notice if the



workman/employee is proven guilty of misconduct. \

31. The Clause 3 of the above said order gives an exhaustive list of offenses which can be considered as misconduct, where sub-clause 'h' provides for disorderly behavior during the working hours or an act subversive of discipline.

32. In ***Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh, (2004) 8 SCC 200***, the Hon'ble Supreme Court discussed the scope of discharge from the services when the allegations not framed in the chargesheet were contemplated and led to discharge of the workman by the Labour Court. The relevant part of the said judgment is reproduced herein:

“22. Be that as it may, since this Court in the case of Laxmi Devi Sugar Mills Ltd. [(1956) 2 LLJ 439 : AIR 1957 SC 7 : 1956 SCR 746] has stated that the management cannot be permitted to justify the punishment on grounds of charges other than those mentioned in the charge-sheet, we would leave this issue at that.

23. But what is stated by us hereinabove would not in any manner vitiate the ultimate justification of the dismissal order as held by the Labour Court. It is to be noticed that the charge-memo issued to the workmen has in specific terms stated that the workmen concerned on 12-10-1980/13-10-1980 entered the manager's bungalow, armed with deadly weapons, caused damage to the property of the Estate and illegally confined the manager and others between 8.30 p.m. on 12th October till 3 a.m. on 13-10-1980. This allegation as found in the charge-memo has also been found to be proved by the Labour Court. Therefore, the question for our consideration is: whether this finding as alleged in the charge-sheet by itself is sufficient to justify the order of dismissal without the support of the allegation of extortion. On this aspect of the case the decision



of this Court in Laxmi Devi Sugar Mills Ltd. [(1956) 2 LLJ 439 : AIR 1957 SC 7 : 1956 SCR 746] will not assist the respondents' case. In that case, the only charge against the workman was that he instigated the other workmen to demand the removal of the General Manager which charge was not proved in the enquiry, then the management tried to justify the removal by adducing evidence on other allegations in regard to which there was no charge. In that factual situation this Court held that such justification-based uncharged allegations were impermissible.

24. In the case in hand, the facts are different — the charge contained the allegation of riotous behaviour, causing damage to the property and wrongful confinement — these charges were held to be proved. The additional fact of extortion though factually proved was outside the charge, hence, we will have to consider whether charges proved, other than that of extortion, are sufficient to confirm the approval of dismissal of the workmen. From the facts noticed hereinabove, it is seen that on the night between 12-10-1980 and 13-10-1980, the workmen concerned entered the Estate armed with deadly weapons, caused damage to the property of the Estate and wrongfully confined the manager and others between 8.30 p.m. on the 12th to 3.00 a.m. on the 13th of next day. These facts, which are mentioned in the charge-memo, and held proved establish misconducts alleged against the workmen concerned in the charge-memo. In this background even proceeding on the basis that the allegation of extortion has not been legally established and ought not to be considered as a misconduct, in our opinion, the other misconducts of causing damage to the property, gherao and wrongfully confining the manager and others for a long period are by themselves sufficient to come to the conclusion that the workmen concerned have indulged in misconduct punishable under the Standing Orders applicable to them. The allegation of extortion, though being a part of the continuing act of misconducts, is severable from the other



allegations. On the basis of the finding of the Labour Court the allegations against the workmen concerned can be accepted without reference to its finding on the allegation of extortion.

25. The next contention addressed on behalf of the respondents is that the Labour Court ought not to have brushed aside the finding of the criminal court which according to the learned Single Judge “honourably” acquitted the accused workmen of the offence before it. We have been taken through the said judgment of the criminal court and we must record that there was such “honourable” acquittal by the criminal court. The acquittal by the criminal court was based on the fact that the prosecution did not produce sufficient material to establish its charge which is clear from the following observations found in the judgment of the criminal court:

“Absolutely in the evidence on record of the prosecution witnesses I have found nothing against the accused persons. The prosecution totally fails to prove the charges under Sections 147, 353, 329 IPC.”

26. Learned counsel for the respondents in regard to the above contention relied on a judgment of this Court in the case of Capt. M. Paul Anthony [(1999) 3 SCC 679 : 1999 SCC (L&S) 810 : AIR 1999 SC 1416] . In our opinion, even that case would not support the respondents herein because in the said case the evidence led in the criminal case as well as in the domestic enquiry was one and the same and the criminal case having acquitted the workmen on the very same evidence, this Court came to the conclusion that the finding to the contrary on the very same evidence by the domestic enquiry would be unjust, unfair and rather oppressive. It is to be noted that in that case the finding by the Tribunal was arrived at in an ex parte departmental proceeding. In the case in hand, we have noticed that before the Labour Court the evidence led by the management was different from that led by the prosecution in the criminal case and the materials before the criminal court and the Labour Court were entirely different. Therefore, it was



open to the Labour Court to have come to an independent conclusion dehors the finding of the criminal court. But at this stage it should be noted that it is not as if the Labour Court in the instant case was totally oblivious of the proceedings before the criminal court. The Labour Court has in fact perused the order of the Judicial Magistrate and the exhibits produced therein and come to an independent conclusion that the order of the criminal court has no bearing on the proceedings before it; which finding of the Labour Court, in our opinion, is justified. It may be some use to us to refer at this stage to a judgment of this Court in the case of State of Rajasthan [(1996) 6 SCC 417 : 1996 SCC (L&S) 1455] wherein it is held thus: (SCC p. 424, para 17)

“17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Penal Code, 1860, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different.”

27. From the above, it is seen that the approach and the objectives of the criminal proceedings and the disciplinary proceedings are altogether distinct and different. The observations therein indicate that the Labour Court is not bound by the findings of the criminal court.

28. Even the reliance placed on the case of Burn & Co. [AIR 1959 SC 529 : (1959) 1 LLJ 450] , in our opinion, does not assist the workmen in this appeal. That was a case where this Court came to the conclusion that there was no dependable



evidence against the individual workman who had incited the workers to participate in the strike. In such circumstances, the Court came to the conclusion that in the absence of any evidence individually implicating the workmen concerned an omnibus allegation against all the workmen cannot be used to punish only some workmen. Such is not the situation in the facts of this case wherein we have noticed that the Tribunal has come to the conclusion that the workmen concerned had participated in the gherao armed with deadly weapons and caused damage to the property of the Estate and wrongfully confined the manager and others for nearly eight hours. Therefore, it found all those workmen who took part in the said incident guilty of the misconduct.

29. This leaves us to consider whether the punishment of dismissal awarded to the workmen concerned de hors the allegation of extortion is disproportionate to the misconduct proved against them. From the evidence proved, we find the workmen concerned entered the Estate armed with deadly weapons with a view to gherao the manager and others, in that process they caused damage to the property of the Estate and wrongfully confined the manager and others from 8.30 p.m. on 12th of October to 3 a.m. on the next day. These charges, in our opinion, are grave enough to attract the punishment of dismissal even without the aid of the allegation of extortion. The fact that the management entered into settlement with some of the workmen who were also found guilty of the charge would not, in any manner, reduce the gravity of the misconduct in regard to the workmen concerned in this appeal because these workmen did not agree with the settlement to which others agreed, instead chose to question the punishment...”

33. Upon perusal of the above cited paragraphs, it is clear that the Hon’ble Court held that the Labour Court was justified in holding that the act of the workman is a continuing offense which can be interpreted as



misconduct.

34. In the above cited case, the issue before the Hon'ble Court was whether the subsequent conduct of an employee, i.e. threatening the superiors and demanding extortion would amount to misconduct or not. While replying in affirmative, the Hon'ble Court aside the judgment of the Guwahati High Court, and restored the award passed by the learned Court below as the act of extortion by the workman was construed as an act of misconduct under the standing orders.

35. Therefore, in light of the above, this Court believes that the limited question for determination at this stage is whether the act of misbehavior with the enquiry officer can be construed as an act of disorderly behavior.

36. To answer the said query, it is important for this Court to look into the reasoning provided by the learned Labour Court for holding the unruly behavior of the petitioner during the enquiry proceedings as misconduct.

37. In the impugned award, page no. 15 and 16 talks about behavior of the petitioner with the enquiry officer. In the relevant paragraphs, the petitioner has been alleged to have a bias against her and the same is proven from the fact that he always criticized her whenever the opportunity was granted.

38. Furthermore, the findings of the learned Court below also includes the fact that the petitioner had shouted at the female enquiry officer which forced her to close the enquiry even before completion of the same.

39. Thereafter, the learned Court below referred to two letters dated 24th January, 2002 and 19th February, 2002, whereby, it is made clear that the petitioner did not have a good opinion about the enquiry officer leading to



conclusion that the alleged incident of manhandling and use of unruly language against her during the course of proceeding must have happened.

40. During the course of proceedings before the learned Labour Court, the petitioner had alleged that the said allegations against him were an afterthought and he never misbehaved with the enquiry officer.

41. The learned Labour Court answered the said claim by referring to the written documents of the proceedings, where it was revealed that there was no break in the proceedings and the enquiry officer had written her remarks on the spot, therefore, it cannot be argued that the allegations of misconduct is an afterthought.

42. In light of the said findings, the learned Court below had referred to Order 14(3)(h) of the Act and found him guilty of misconduct.

43. While determining the punishment for the same, the dismissal of the workman on ground of insubordination was overruled, however, he was directed to be discharged from the services on account of misconduct.

44. After perusal of the impugned award and the relevant material on record, this Court is of the view that the learned Court below had rightly interpreted the said provision to term the misbehavior by the workman as misconduct.

45. Furthermore, the enquiry against him was being conducted on the premises of the respondent Hotel, therefore, complying with the condition necessary for discharging, in the said provision.

46. In the instant case, even though the learned counsel for the petitioner has opposed the findings made by the learned Labour Court, the material on



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record, i.e., the minutes of the enquiry proceedings, letters written by the petitioner establish the fact that he had a strong hatred against the said officer and he had a strong reason to misbehave with the officer during the course of enquiry.

47. In view of the same, this Court is of the view that the learned Court below had rightly interpreted the Order 14(3)(h) of the Act and held that the behavior of the petitioner would be covered under the said provision.

48. Therefore, this Court does not find any infirmity with the award dated 11th January, 2007 passed by the learned Labour Court, Karkardooma Courts, Delhi in ID no. 593/06 and the same is hereby upheld.

49. In light of the same, the present petition, being devoid of any merit, is dismissed along with pending applications.

50. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

FEBRUARY 12, 2024

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Click here to check corrigendum, if any

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