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

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Reserved on: 06.02.2023
Pronounced on: 21.04.2023

+ **W.P.(C) 1910/2010**

YAD RAM CONDUCTOR

..... Petitioner

Through: Mr. Anil Mittal, Mr. Shaurya
Mittal and Mr. Kumar
Shubham, Advocates.

versus

DTC

..... Respondent

Through: Mr. U.N. Tiwary, Advocate.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. In the present Writ Petition, the Petitioner/Workman is challenging the Award dated 15.10.2003 (*'impugned award'*) passed by the Presiding Officer, Industrial Tribunal-I, Karkardooma Courts, Delhi in I.D. No. 144/2001, titled as '*The Management of M/s Delhi Transport Corporation and its Workman Shri Yad Ram Yadav.*'

RELEVANT FACTS FOR ADJUDICATION OF THE PRESENT WRIT PETITION

2. The Petitioner/Workman joined as a conductor with Respondent/Management on 18.08.1978.

3. It is the case of the Respondent/Management that the Petitioner/Workman used to remain absent from his duty unauthorizedly without prior permission between the period 01.01.1992 and 31.12.1992 and has not given any application for leave between the same period.
4. Consequently, on the basis of Report dated 06.04.1993 submitted by Junior Pay Bill Clerk, the Respondent/Management issued a Charge Sheet dated 15.07.1993 to the Petitioner/Workman for remaining absent without permission for 140 days between the period 01.01.1992 and 31.12.1992. It is stated in the charge sheet that the Petitioner/Workman was on leave without application for 59 days and took unauthorized leave without medical certificate for 81 days. It is further stated in the charge sheet that such leaves show complete negligence and carelessness towards duty and amounts to misconduct under Para No. 4 (II) and 19 (H) & (M) of the Standing Order governing the conduct of the DTC employees. However, thereafter, an amended charge sheet dated 26.08.1993 was issued to the Petitioner/Workman, whereby the charge against him was amended to “absent from duty” instead of “leave without pay”.
5. It is the case of the Respondent/Management that the Petitioner/Workman replied to the Chargesheet vide an undated Letter wherein he did not dispute the leaves taken by him as mentioned in the Chargesheet and thus, admitted the charges levelled against him. However, it is the case of the

Petitioner/Workman that he filed reply to the chargesheet dated 15.07.1993 and no reply was filed to the amended chargesheet.

6. Thereafter, an enquiry was conducted by the Deputy Manager (Traffic). It is the case of the Respondent/Management that during the enquiry, the Petitioner/Workman admitted the charges levelled against him and therefore, the Enquiry Officer did not record statement of any witnesses. Pursuant to enquiry, an enquiry report was submitted to the Disciplinary Authority, Depot Manager, who in turn issued show cause notice dated 19.11.1993 to the Petitioner/Workman to show cause as to why he should not be removed from service.
7. It is the case of the Respondent/Management that since no reply was filed by the Petitioner/Workman to the show cause notice, the Disciplinary Authority removed the Petitioner/Workman from the service vide Letter dated 23.09.1994 on the basis of enquiry report and past record of Petitioner/Workman. It is further the claim of the Respondent/Management that the Petitioner/Workman on dismissal was also paid one month wages vide money order dated 23.09.1994.
8. At that time, a dispute between the Respondent/Management and its Workmen relating to the implementation of the IVth Pay Commission report was pending before the learned Labour Court, so the Respondent/Management filed an Approval Application under Section 33 (2) (b) of the Industrial Disputes Act, 1947 (*'I.D. Act'*) bearing O.P. No. 297/1994, seeking approval of removal of the Workman from service. Pursuant to hearing to the parties, the learned Labour Court, rejected the

approval application filed by the Respondent/Management vide the Award dated 13.02.2003. The Respondent/Management challenged the said Award dated 13.02.2003 before this Court in W.P(C) No. 6494/2003 titled as *DTC Vs Yadram*. Vide separate Judgment, this Court allowed the said Writ Petition filed by the Respondent/Management.

9. While the Approval Application under Section 33 (2) (b) of the I.D. Act was pending before the learned Labour Court, the Petitioner/Workman raised an industrial dispute qua his termination under section 10 of the I.D Act. Pursuant to which, Secretary (Labour) of the NCT of Delhi referred the following reference before the learned Labour Court vide its Notification dated 23.10.2001:-

“Whether the orders of the management dated 23.9.1994 imposing punishment on Shri Yad Ram Yadav S/o Shri Tirka Ram Yadav is illegal and /or unjustified and if so, to what sum money as momentary relief along with consequential benefits in terms of existing laws/Govt. Notifications and what other relief is he entitled and what directions are necessary in this respect?”

10. The Petitioner/Workman filed statement of claim denying the charges levelled against him. It is the case of the Petitioner/Workman that his services were terminated illegally. The enquiry conducted by the Respondent/Management was not in accordance with the principles of natural justice. It is his case that he was not given copies of the preliminary investigation report, List of witness & List of documents along with the charge sheet. The Petitioner/Workman further averred that he availed leave without pay due to the unfortunate death of his

wife, father and uncle. He stated in his statement of Claim that he never made any admission before the enquiry officer and the punishment imposed on him was disproportionate to the alleged misconduct. The Respondent/Management filed their written statement justifying the domestic enquiry conducted by them. Respondent/Management stated in their written statement that the Petitioner/Workman admitted his guilt during the enquiry proceedings. The Respondent/Management further stated that the explanation provided by the Petitioner/Workman for his unauthorized absence was not justified. The Respondent/Management highlighted the past conduct of the Petitioner/Workman to show that he was a habitual absentee.

11. Learned Labour Court on the basis of the pleadings of both the parties framed the following issues:

- “1. Whether no proper and valid enquiry was conducted?
If so, its effect?*
- 2. As per the terms of reference.”*

12. The Petitioner/Workman stepped into the witness box as WW-1 to prove his case. The Respondent/Management examined Mr.Navneet Chaudhary, Manager (Traffic) as MW-1.

13. Pursuant to the hearing of both the parties, the Learned Labour Court passed the Impugned Award dated 15.10.2003, wherein it decided both the above-mentioned issues against the Petitioner/Workman while holding that the Petitioner/Workman was guilty of misconduct.

14. Being aggrieved by the Impugned Award, the Petitioner/Workman has filed the present Writ Petition praying, *inter alia*, for declaration that Impugned Award dated

15.10.2003 is a nullity in the eyes of law and a direction to Respondent/Management to assign duty to him and to pay him arrears of salary and other consequential benefits from 23.09.1994 till assignment of duty.

SUBMISSIONS ADVANCED ON BEHALF OF PETITIONER/ WORKMAN

15. Mr. Anil Mittal learned counsel for the Petitioner/Workman argued that vide Award dated 13.02.2003, the learned Labour Court rejected the approval application filed by the Respondent/Management. Hence once the approval application has been rejected, the learned Labour Court ought not to have proceeded with Section 10 proceedings in I.D. No. 144/2001. Therefore, the Impugned Award is without any jurisdiction and is a nullity in the eyes of law. Hence, the impugned award is liable to be set aside.
16. Mr. Mittal, learned counsel for Petitioner/Workman placed reliance upon the decision of Hon'ble Supreme Court in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs Shri Ram Gopal Sharma & Ors.***, reported as ***AIR 2002 SC 643*** in order to substantiate his contention that the order of removal from service will have no effect once the approval application under Section 33(2)(b) of I.D. Act of the Respondent/Management is dismissed.
17. It is further argued by Mr. Mittal, learned counsel for Petitioner/Workman that the Workman had given detailed reasons for his absence from duty before the enquiry officer but his statement was considered as an admission of charges against

him by the enquiry officer. It is stated that there was no such admission by the Petitioner/Workman but still his statement was considered as admission due to the bias of the enquiry officer against him. Therefore, the Petitioner/Workman was subject to victimization by the acts of the Respondent/Management. Mr.Mittal, learned counsel for Workman has placed reliance upon decision of Supreme Court in *Chikkam Koteswara Rao Vs Chikkam Subbarao & Ors.*, reported as *AIR 1971 SC 1542*, while submitting that there should be no ambiguity in the admission and it must be clear and conclusive.

18. With these submissions, the learned counsel for the Petitioner/Workman prays for the setting aside of the impugned Award.

SUBMISSIONS ADVANCED ON BEHALF OF RESPONDENT/MANAGEMENT

19. Mr. U.N. Tiwary, learned counsel for Respondent/Management has argued that the present Writ Petition, challenging the Impugned Award has been filed by the Petitioner/Workman almost after a period of six and a half years, so the same should be dismissed on this ground alone.
20. Mr. Tiwary submits that the Workman has stated the reason of his leaves in his leave applications as illness, but before the enquiry officer he stated that he was absent on account of bereavement of his father, wife and uncle. However, he was not able to produce death certificate of anyone before the enquiry officer or before the learned Labour Court, except for his father. Mr. Tiwary submits that this shows that the contention of

Petitioner/Workman was an afterthought and he misled the enquiry officer and the learned Labour Court by stating different reasons for his absence.

21. Mr. Tiwary further states that in a proceeding where enquiry is declared to be vitiated, then the learned Labour Court would have to grant an opportunity to the management to prove the misconduct on merits and in a case where the management successfully proves the misconduct, the learned Labour Court can approve the dismissal even if it has found that the enquiry was vitiated. He has placed reliance upon the decision of Supreme Court in *John D' Souza Vs Karnataka State Road Transport Corporation*, reported as (2019) 18 SCC 47, in order to support his submission. He further stated that the learned Labour Court dismissed the approval application on an erroneous ground that absence was already treated as leave without pay by the Management which does not amount to misconduct.
22. Mr. Tiwary further submits that an order disposing off an approval application under Section 33(2)(b) cannot operate as res judicata in a proceeding initiated under Section 10 of I.D. Act. He states that the jurisdiction of the learned Labour Court is different in both the proceedings as under Section 10 of I.D. Act, an Industrial Tribunal has a wider jurisdiction in comparison to a proceeding under Section 33(2)(b) of I.D. Act. Learned counsel for Respondent/Management placed his reliance upon *John D' Souza Vs Karnataka State Road Transport Corporation*, reported as (2019) 18 SCC 47; *Delhi Transport Corporation Vs*

Rajbir Singh & Ors., passed in *W.P. (C) No. 4856/2003*, decided on 05.04.2010; *Delhi Transport Corporation Vs Shyam Lal*, passed in *W.P. (C) No. 3633/2004*, decided on 01.07.2010; and *Birmati Vs Presiding Officer, Industrial Tribunal-II & Ors.*, reported as *2022 SCC Online Del 2891*.

23. With these submissions, the learned counsel for the Respondent/Management prays for the dismissal of the writ petition.

LEGAL ANALYSIS

24. This Court has heard the arguments advanced by both the counsels for the parties and also examined the documents placed on record and the judgments relied upon by the parties.
25. In the present Writ Petition, the Petitioner/Workman is challenging the Award dated 15.10.2003 passed by the learned learned Labour Court. Vide the impugned award, the learned Labour Court was pleased to uphold the disciplinary proceedings conducted by the Respondent/Management against the Petitioner/Workman. While examining the validity of the disciplinary proceedings, the learned Labour Court was exercising the power vested in it under Section 11- A of the I.D Act. It is well settled principle of law that while exercising power under Section 11- A of the I.D Act, the satisfaction of the Labour Court regarding the alleged misconduct is important and the learned Labour Court can re-appreciate the evidence and substitute its own views. However, the jurisdiction of this Court under Article 226 is very limited while examining the Award passed by the learned Labour Court. This Court, while

exercising powers under Article 226 of the Constitution of India, cannot interfere with the factual findings of the learned Labour Court which are based on the appreciation of facts based on evidence adduced before it. This Court can interfere with the findings of the learned Labour Court only on limited circumstances, like violation of principles of natural justice, perversity of findings, lack of evidence etc.

26. This Court is examining the facts of the present case based on the above-mentioned legal principles. In the present case, the Petitioner/Workman admitted the charges levelled against him. Learned Labour Court examined the domestic enquiry conducted by the Respondent/Management and reached the conclusion that the charges levelled against the Petitioner/Workman have been proved. The relevant portion of the impugned Award, reads as follows:

“19. So, in nutshell, it can be said the charge against the workman was for remaining absent and not for availing leave without pay and it was always the definite case of the management that the workman had remained absent and for 59 days, he had not submitted any leave application while for 81 days, leave applications were submitted but were rejected being not supported by any medical certificate. Even the grounds mentioned in the application which were rejected were different to those which were alleged by the workman during the enquiry and are also alleged in the present reference which shows that the grounds were non-existent and further prove the facts that the workman had no cause for remaining absent for 140 days 1992. Neither during the enquiry nor during these proceedings the workman had proved or placed on record any material regarding his stand.

20. So far as enquiry aspect is concerned, the workman initially had denied that he was served with a charge-

sheet. In his cross-examination though the fact remains that serving of charge-sheet has been admitted by him in his statement of claim as well as in his affidavit, filed by way of evidence. During cross examination, he has further denied that he had given any reply to the chargesheet but simultaneously has admitted that he had given reply to the chargesheet EX. WW1/20. Initially he has denied that he had not participated in the enquiry but later on he has admitted that he had participated in the enquiry and had signed the proceedings on the date when he had appeared and he has proceedings on the date he had appeared and he has also admitted that he had received the removal order.

21. So, not only the fact that the management had conducted a valid and proper enquiry is proved but it stands also proved that the workman had admitted is proved but it stands also proved that the workman had committed a misconduct and it cannot be said that the punishment of removal imposed upon the workman was disproportionate to the gravity of the charges and misconduct proved against him and it cannot be said that the order of removal was illegal or unjustified. MW1 in his cross-examination has also stated that the absence of the workman was never treated as leave without pay rather. It was treated as unauthorised absence. His conduct also shows that he lacked interest in the authority's work which is also a misconduct. Reliance is placed on Rama Nand vs. DTC, 2001 VII AD (Delhi)."

27. This Court examined the enquiry report and the evidence adduced by the parties before the learned Labour Court. As rightly observed by the learned Labour Court, the Petitioner/Workman admitted that he was absent during the relevant period due to his personal reasons. Hence there is an admission of guilt by the Petitioner/Workman. The only question to be examined is whether there was sufficient reason for the unauthorized absence of the Petitioner/Workman. The

Petitioner/Workman stated before the enquiry officer that he was absent due to the unfortunate death of his wife, father and uncle. However, in the leave applications submitted by the Petitioner/Workman, he had disclosed different reasons. The learned Labour Court noted these discrepancies and held that *‘the grounds were non-existent and further prove the facts that the workman had no cause for remaining absent for 140 days 1992’*. Learned Labour Court arrived at such a finding based on the documents placed before it. Hence, this Court, while exercising jurisdiction under Article 226 of the Constitution, is not inclined to interfere with such factual findings arrived at by the learned Labour Court based on the evidence adduced before it.

28. This Court also examined the service record of the Petitioner/Workman which was part of the Labour Court record. The service record of the Petitioner/Workman shows that he was a habitual absentee. The Petitioner/Workman was inflicted with penalty of ‘stoppage of increment’ 3 times earlier for taking leave without pay. In addition, he has been reprimanded and even inflicted penalty of Censure for his habit of taking leave without proper intimation to the competent authority. There were several complaints against the Petitioner/Workman which are reflected in his past record. A perusal of the past record shows the negligence, the lack of interest of the Petitioner/Workman and his misconduct.

29. In the present case, it has been argued by Mr. Mittal, learned counsel for Petitioner/Workman that once the approval

application under Section 33(2)(b) of the I.D. Act was dismissed and approval was not granted to the Respondent/Management, the order dated 23.09.1994 removing the Petitioner/Workman from service would be rendered having no effect as if it was never passed. Thus, the proceedings under Section 10 of the I.D. Act had become infructuous and the Impugned Award should not have been passed at the first place.

30. This Court does not agree with the contentions of the learned counsel for the Petitioner/Workman. It is well settled principle of law that the scope of enquiry under Section 33 (2) (b) of the I.D Act and Section 10 of the I.D Act are totally different. In view of the decision of Supreme Court in ***John D' Souza (Supra)*** and decisions of this Court in ***Delhi Transport Corporation Vs Rajbir Singh & Ors.***, passed in ***W.P. (C) No. 4856/2003***, decided on 05.04.2010; ***Delhi Transport Corporation Vs Shyam Lal***, passed in ***W.P. (C) No. 3633/2004***, decided on 01.07.2010; and ***Birmati Vs Presiding Officer, Industrial Tribunal-II & Ors.***, reported as ***2022 SCC Online Del 2891***, it is settled law that the proceedings under Section 33(2)(b) and Section 10 of I.D. Act are distinct proceedings, having distinct purpose. The Hon'ble Supreme Court in ***John D' Souza (Supra)***, categorically held that the enquiry envisaged under Section 33 (2) (b) of the I.D. Act is a limited enquiry and is in the nature of summary proceedings. It is well settled principle of law that the proceedings under Section 33(2) (b) of the I.D Act will not act as *res judicata* for the proceedings under Section 10 of the I.D Act. Further this Court vide separate

Judgment in W.P.(C) No. 6494/2003, allowed the approval application filed by the Petitioner/Management. Therefore, the Impugned Award did not become a nullity as claimed by the Petitioner/Workman.

31. This Court agrees with the findings of the learned Labour Court made in the Impugned Award. Further, the Petitioner/Workman himself has not been able to point out any error apparent on face of record in the Impugned Award. In fact, the Petitioner/Workman has not even taken a single ground pointing any irregularity in the Impugned Award. The sole ground taken by the Petitioner/Workman was that the learned Labour Court should not have passed the Impugned Award in the first place when the approval application of the Respondent/Management was already dismissed. However, this Court does not agree with the averments of the Petitioner/Workman in view of the reasons earlier discussed above.
32. In view of the detailed discussion hereinabove, this Court is not inclined to interfere with the Impugned Award while exercising its limited jurisdiction under Article 226 of the Constitution of India as the Petitioner/Workman failed to show any irregularity or any error apparent on face of record. Hence the present Writ Petition is dismissed. No order as to costs.

GAURANG KANTH, J.

APRIL 21, 2023