



2024:DHC:3111



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

% **Date of order: 28th March, 2024**

+ **W.P.(C) 852/2019 & CM APPL. 25879/2019**

**THE MANAGEMENT OF MOOLCHAND KHAIRATI RAM
HOSPITAL AND AYURVEDIC RESEARCH INSTITUTE**

..... Petitioner

Through: Mr. Gaurav Bahl, Advocate

versus

SARDARAM BHATI

..... Respondent

Through: Mr. Jawahar Raja, Ms. Meghna De,
Ms. L. Gangmei and Mr. Parth Goyal,
Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

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

"a) issue a writ of certiorari or any other writ or order or direction calling for the records of OP No. 2466/20166 Old No. 49/06 from the learned presiding officer, industrial tribunal -I and after perusing the same, quash the order dated 03.02.2011 holding the domestic enquiry against the workman vitiated, and order 06.09.2017 vide which the opportunity of the management to lead evidence was closed and the final order



dated 06.12.2017 dismissing the approval petition of the management

b) pass any such order or further orders that this Hon'ble Court may deem just and fair in the facts of the case, in the interest of justice."

2. The relevant facts necessary for the adjudication of the instant petition are reproduced herein below:

a. The respondent was appointed as a ward boy w.e.f. 29th June 1985. It is stated that the respondent was engaged in instances of misconduct due to which a chargesheet dated 7th April 2004 was issued against him levelling allegations to which he submitted his defence by way of a reply. Consequently, a domestic inquiry was initiated wherein he was held guilty.

b. On 11th April 2006, a show-cause notice accompanied by the inquiry report was duly served upon the respondent calling upon him to explain his stance. Pursuant to the same, concurring with the conclusions drawn by the inquiry officer, the management proceeded to terminate the services of the respondent vide a dismissal order dated 6th September 2006.

c. The petitioner management filed an approval application bearing No. 2466/2006 (Old No. 49/06) on 6th September 2006, pursuant to which notices were duly served upon the respondent workman. In response, the respondent workman submitted his written statement, followed by the petitioner filing a rejoinder.

d. The petitioner management and the Authorized Representative of the



respondent workman led their evidence.

e. Pursuant to which, vide order dated 3rd February 2011, the learned Industrial Adjudicator decided the issue of inquiry in favour of the respondent and fixed the matter for leading evidence by the management on the remaining issues.

f. Aggrieved by the order dated 3rd February 2011, the petitioner management preferred a review application on 26th May 2011. Vide order dated 22nd May 2012, the learned Industrial Adjudicator allowed the review application filed by the petitioner management seeking to recall the interim award dated 3rd February 2011, on the grounds that the same is non-existent and *void ab initio*. Consequently, the matter was re-listed for fresh arguments on the preliminary issue pertaining to the validity of the domestic inquiry.

g. Subsequently, in September 2012, the respondent workman preferred a writ petition bearing No.5725/2012 before this Court, challenging the order dated 22nd May 2012 passed by the learned Industrial Adjudicator.

h. The aforesaid writ petition was disposed of by this Court vide order dated 30th November 2015, wherein, the order dated 22nd May 2012 was set aside to the extent of treating the order dated 3rd February 2011 as *non-est* and directed the learned Industrial Tribunal to decide the issue afresh. It was further held that the order dated 3rd February 2011 shall be considered as an interim order instead of an interim award, as termed by the learned Industrial Tribunal.

i. Pursuant to the order passed by this Court, the learned Industrial



Adjudicator listed the matter for leading of evidence by the petitioner management. Vide order dated 6th September 2017, the learned Industrial Adjudicator closed the petitioner's right to lead evidence and fixed the matter for final arguments.

j. Thereafter, *vide* order dated 6th December 2017, the learned Industrial Adjudicator dismissed the approval application filed by the petitioner management, holding that in the absence of any evidence led by the petitioner on issue nos. 2 and 3 pertaining to the commission of misconduct by the respondent workman warranting his dismissal from service, the petitioner has failed to make out a case for approval of its action of dismissal of the respondent workman.

k. Aggrieved by the order dated 6th December 2017, the petitioner invoked Rule 11 of the Industrial Disputes Act, 1947, and filed an application seeking to adduce additional evidence. The said application was dismissed by the learned Industrial Adjudicator for non-prosecution vide order dated 6th March 2018.

l. Aggrieved by the aforementioned orders dated 3rd February 2011 holding the domestic enquiry against the workman vitiated and order dated 6th September 2017 vide which the right of the management to lead evidence was closed and the final order dated 6th December 2017 dismissing the approval petition of the management, the petitioner management has preferred the instant writ petition seeking quashing of the aforementioned orders.



3. Learned counsel for the petitioner submitted that the impugned award is arbitrary, perverse, unlawful, and illegal, and is in contravention to the established principles of industrial law.

4. It is submitted that the learned Industrial Tribunal wrongly reached to the conclusion that the respondent workman was not afforded an adequate opportunity to present his defense evidence, despite the respondent worker's own admission that he was given ample opportunities to call his defence assistant and defence witnesses.

5. It is submitted that the petitioner management's witness has unequivocally established the validity of the inquiry proceedings and the inquiry report, hence, there is no deviation from the principles of natural justice.

6. It is submitted that the learned Industrial Tribunal incorrectly determined that the respondent worker did not receive the benefit of a defence assistant simply because he was not permitted to designate a particular individual as the defence assistant. However, the workman admitted in his cross-examination conducted on 24th September, 2007 that the enquiry officer had provided him with numerous opportunities to designate other co-workers as defence assistants. Therefore, there was no violation insofar as the procedure was concerned.

7. It is submitted that the order dated 6th September, 2017 vide which the learned Tribunal closed the petitioner management's evidence is illegal and contrary to the principles of natural justice and the notion that no one should be condemned unheard, as the learned Industrial Tribunal failed to recognize



that the petitioner management should have been afforded the opportunity to present their case.

8. It is submitted that the petitioner management was unable to present evidence due to the fact that the matter at hand was old and the individuals who had previously testified to the incident were no longer employed by the petitioner management and the learned Industrial Tribunal was duly informed of this difficulty.

9. It is further submitted that the impugned orders violate the petitioner's fundamental rights and is unlawful, arbitrary, as well as bad in law in its entirety.

10. In view of the aforesaid submissions, the learned counsel for the petitioner prayed that the instant petition may be allowed and the reliefs as sought by the petitioner may be granted.

11. *Per Contra*, learned counsel for the respondent vehemently opposed the contentions of the petitioner submitting to the effect that there is no illegality or infirmity in the impugned orders.

12. It is further submitted that several opportunities were granted to the petitioner for adducing evidence however, the petitioner did not present evidence on record. Consequently, the learned Industrial Tribunal had to close the petitioner's evidence.

13. It is contended that the impugned order dated 3rd February 2011 has correctly stated that the respondent was not given full opportunity to defend himself during the process of enquiry, therefore, the enquiry conducted by the petitioner is not valid as well as proper enquiry.



14. In view of the aforesaid submissions, the learned counsel for the respondent submitted that the instant petition is devoid of any merits and the same may be dismissed by this Court.

15. Heard the learned counsel for the parties as well as perused the material on record including the impugned orders.

16. It is the case of the petitioner that its right to lead evidence was wrongly closed by the learned Industrial Tribunal and it was not provided opportunities to adduce evidence on record. Hence, the learned Industrial Tribunal violated the principles of natural justice as well as various legal rights of the petitioner.

17. In rival submissions, the respondent refuted the submissions of the petitioner by submitting that the impugned orders do not suffer from any illegality and the orders have been passed in accordance with the settled principle of law. It is further submitted that the learned Industrial Tribunal had provided various opportunities to the petitioner to adduce evidence in support of its averments.

18. Therefore, the question which falls for adjudication before this Court is whether the impugned orders merit interference of this Court by issuance of a writ.

19. Now this Court will peruse the impugned order dated 3rd February 2011. The relevant extract of the same is reproduced herein below:

“Findings on Issue No. 1

Issue no.1 is 1. “Whether the applicant/management held a proper and valid enquiry?”



11. The main allegation against the respondent/workman is that he told a Staff Nurse “tu meri khopdi math kha”. The grievance of the workman is that during enquiry proceedings, he was not allowed to bring Sh. Vijender Singh, General Secretary of MCKRH Karamchar Union as his defence assistant, on the ground that he was not an employee of the applicant/management. This fact is duly admitted in the cross-examination of MW-1.

12.I see no justification in declining this demand of the workman. No rule has been produced by the management under which the outsider is debarred to appear as defence assistance in a domestic enquiry held against any employee. It is worth noting that said Sh. Vijender Singh is a General Secretary of the Union of workmen. In my considered opinion, management should have allowed him to appear as defence assistant from the side of respondent/workman. It has been deposed by the workman that during the course of inquiry, witnesses used to say one thing and inquiry officer after consultations with the management representative, used to record something else despite his strong protest. This controversy could have been avoided if the workman was allowed to be represented by Sh. Vijender Singh, as demanded by him. It is also the grievance of the workman that he was not supplied complete set of service rules and rules regarding conducting the enquiry. This is another fault pointed out in the enquiry.

13.In view of above discussion, I am of the view that workman was not given full opportunity to defend himself. Hence, it is held that the domestic enquiry conducted by the applicant/management against the respondent/ workman is not a valid and proper enquiry. Accordingly, issue no. 1 is decided in favour of respondent/ workman and against the applicant/management.

14.Hon'ble Apex Court in The Management Hotel Imperial, New Delhi and others vs. Hotel Workers' Union, reported in AIR 1959 SC 1342, has held that:-



“It is also open to the Tribunal to make an award about some of the matters referred to it whilst some others still remain to be decided. This will be an interim determination of any question relating thereto. In either case it will have to be published as required by section 17.”

15. In view of above judgment of Hon'ble Apex court, copy of this interim award be sent to GNCT of Delhi for publication.”

20. Upon perusal of the above extracts of the impugned order, it is observed that it pertains to the approval petition filed by the respondent/workman from his services. The management alleges that the respondent/workman was engaged in a misconduct, leading to his dismissal after a domestic inquiry. The respondent/workman, however, contends that the dismissal was retaliatory and that the inquiry was conducted unfairly, depriving him of a proper opportunity to defend themselves. The issues framed for consideration include the validity of the inquiry conducted by the petitioner which is whether the alleged misconduct happened, and if there was a compliance of the relevant legal provisions.

21. After hearing arguments and examining evidence, including testimonies of the witnesses and written submissions filed on behalf of the parties, the learned Industrial Adjudicator held that the domestic inquiry conducted by the management was not proper since the respondent/workman's request to have a union representative as his defence assistant was unreasonably denied, and there were discrepancies in the



inquiry process, thereby the inquiry process was conducted in an unfair manner.

22. It was further held that the respondent/workman was not provided with complete service rules and regulations pertaining to the inquiry. Therefore, it is concluded that the domestic inquiry was not valid and proper. In accordance with the precedent set by the Hon'ble Supreme Court in judgment of *The Management Hotel Imperial, New Delhi and others vs. Hotel Workers Union* 1960 SCR (1) 279, wherein, it was held that the Industrial Tribunal has the jurisdiction and discretion to make an award with regard to the some of the issues referred to it whilst others issues remain pending adjudication and the same is an interim adjudication of any question relating thereto. Hence, the issue was decided in favour of the workman.

23. This Court is of the view that the learned Industrial Adjudicator has correctly held that since the respondent/workman's request to have a union representative as his defence assistant was unreasonably denied, thus, there were discrepancies in the inquiry process, and therefore, the domestic inquiry conducted by the petitioner management was not proper.

24. The impugned order dated 3rd February 2011 does not suffer from any illegality or any error apparent on the face of it. Accordingly, the impugned order dated 3rd February 2011 is upheld.

25. Now adverting to the impugned order dated 6th September 2017. Relevant extracts of the same has been reproduced herein below:

"It is seen from the record that case is fixed for management evidence by way of a final opportunity for today. However, no



affidavit by way of evidence of any MW has been filed in management evidence, on record, nor any MW is present in management evidence today. It is further seen from the record that case is fixed for management evidence for last several dates of hearing fixed in this regard, on record, on which dates no affidavit by way of evidence of any MW has been filed in management evidence nor any MW has been present in management evidence, on record. In view of the same, management evidence is closed.

Now to come up for final arguments on 06.12.17, on which date, written submissions along with citations, if any, relied upon by the parties be filed, on record.”

26. Upon perusal of the above said impugned order, it is observed that the aforesaid order pertains to the presentation of petitioner management's evidence. However, it is evident from the record that neither affidavit by way of evidence from any management witness (MW) was filed, nor any MW was present on the date of the order. The learned Industrial Adjudicator categorically observed that since no affidavit by way of evidence had been filed by the petitioner management despite the case being fixed for management's evidence for several dates and given this recurring absence of petitioner management evidence, the right of petitioner management to lead evidence was closed. Accordingly, the case was then scheduled for final arguments on 6th December 2017 and with directions to the parties to file their written submissions.



27. In view of the above, the impugned order dated 6th September 2017 does not suffer from any illegality or any error apparent on the face of it. Accordingly, the impugned order dated 6th September 2017 is upheld.

28. Now this Court will peruse the impugned award dated 6th December 2017, relevant extracts of which are reproduced as under:

“It is seen from the record that consequent to decision vide order dated 03.02.2011 of this tribunal in favour of the workman and against the management, upheld vide judgment dated 30.11.2015 of Hon'ble High Court of Delhi passed in W.P. (C) No.5725/2012 and CM No. 1720/2012 between the parties, on issue no. 1 viz "Whether the applicant/ management held a proper and valid enquiry?" as framed along with other issues vide order dated 12.03.2007, on record, which had been treated as preliminary issue, no evidence has been led on behalf of the management on the remaining issues nos. 2 and 3, as also framed vide order dated 12.03.2007, on record, as follows:-

“2. Whether the respondent/ workman has committed the alleged misconduct?

3. Whether the applicant/ management has complied with the provisions of Section 33 (2) (b) of the Industrial Disputes Act?”

Despite several opportunities granted to the applicant/management in this regard, on record, w.e.f. 22.03.2016 i.e. on various dates of hearing fixed in this regard on 15.11.2016, 23.03.2017 and 06.09.2017 when the management evidence has been closed, on record and the case fixed for hearing of final arguments.

Needless to state that the respondent/workman would have been called upon to lead evidence in rebuttal only in case evidence had been led on behalf of the management on merits i.e. on the



remaining issue nos.2 and 3, as above mentioned, which is not the case presently.

The management has thus not been able to prove the remaining issue nos. 2 and 3, as above mentioned, by leading of any management evidence on the same, on record, despite several opportunities granted to it in this regard, on record, as abovesaid, onus of proving of which was upon the applicant/ management.

In view of the management having not led any evidence to prove remaining issue nos.2 and 3, as abovementioned i.e. commission of alleged misconduct on the part of the respondent workman necessitating the dismissal of the respondent/workman from his services with the management vide the relevant order of the management in this regard, as also compliance of the mandatory provisions of Section 33 (2) (b) of the Industrial Disputes Act, 1947 (as amended up to date) on the part of the applicant/ management qua the dismissal of the workman from his services with the management, approval of which action has been sought vide the instant application u/s 33 (2) (b) of the Industrial Disputes Act, 1947 (as amended upto date) moved on behalf of the applicant/ management, I find that the applicant/ management has not made out a case for approval of its action of dismissal of the respondent/ workman from his services with the management vide order dated 06.09.2006 of the applicant/management in this regard, as prayed, therein.

In view of my above observations, the instant approval application having not been proved on the part of the applicant/ management, as abovesaid, is hereby, accordingly dismissed. File be consigned to the Record Room."

29. Upon perusal of the above said impugned award, it is evident that it pertains to an approval petition filed by the applicant/management seeking approval for the dismissal of the respondent/workman. The learned Tribunal



stated that it had previously ruled in favor of the workman on the issue no. 1 whether the petitioner management conducted a proper and valid inquiry and the said decision was upheld vide judgment of this Court.

30. Despite numerous opportunities, the petitioner management failed to present evidence on the remaining issues, specifically regarding whether the respondent committed the alleged misconduct and whether the management complied with Section 33(2)(b) of the Industrial Disputes Act, 1947. The management did not lead any evidence to support these issues, despite several opportunities granted to it.

31. Since the management did not provide evidence to prove the remaining issues and failed to justify its action in dismissing the respondent/workman from his services, the approval application was dismissed.

32. Upon perusal of the aforesaid order, this Court is of the view that the learned Industrial Adjudicator has rightly dismissed the approval application of the petitioner on the ground that the petitioner was not able to discharge the burden of proof regarding action of the management in dismissing the respondent/ workman.

33. The Tribunal has correctly opined that petitioner management was unable to make out a case for approval of its action for dismissal of the respondent workman from his services with the petitioner management vide order dated 6th September 2006.

34. Accordingly, this Court is of the view that the impugned order dated 6th December 2017 is upheld and merits no intervention of this Court.



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35. In view of the above discussion on facts as well as on law, this Court does not find any cogent reason to grant the reliefs as prayed by the petitioner since there is no force in its propositions put forth before this Court. The petitioner has not been able to make out any case to invite interference of this Court under its extraordinary writ jurisdiction.

36. Accordingly, the impugned orders dated 3rd February 2011, 6th September 2017 and 6th December 2017 are upheld and the instant petition stands dismissed.

37. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 28, 2024

dy/db/ryp

Click here to check corrigendum, if any