



2024:DHC:2460



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

% **Date of order : 20th March, 2024**

+ **W.P.(C) 4195/2024**

PUSHKAR KAPOOR

..... Petitioner

Through: Mr.____, Advocate (Appearance not given)

versus

M/S TATA POWER DELHI DISTRIBUTION LTD Respondent

Through: Mr.Sujit Kumar Singh, Advocate
alongwith Mr.Amit Singh, AGM
Legal

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 petitioner seeking the following reliefs:-

"A. Issue a writ of certiorari or any other writ or order or direction by set aside the order dated 22.11.2023 as well as order dated 20.01.2023 in LIR NO. 730/2019 passed by Sh. Chander Mohan Ld. Presiding Officer Labour Court, Rouse Court Complex, Delhi and to provide opportunity to lead evidence of petitioner wherein the LD. Presiding officer of Labour Court has denied has dismissed the application of petitioner.

B. Pass any other order (s) or direction (s) which this Hon'ble

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BHAMOO VERMA
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court may deem fit in facts and circumstances of this case."

2. The petitioner claims to be working with the respondent entity as a junior officer since the year 2008. On 4th July, 2017, the petitioner was allegedly terminated illegally from his services after a domestic inquiry was conducted against him on the account of him being charged for non-performance and avoidance of his job responsibilities as well as absence from work without authorization.

3. Subsequently, the petitioner raised an industrial dispute which was referred to the Industrial Tribunal vide case bearing LIR No. 730/2019 by the competent authority, wherein, the respondent filed its written statement and, accordingly, issues were framed. The petitioner then moved an application for framing an additional issue which was allowed by the learned Industrial Tribunal and it framed the issue 'whether the domestic enquiry conducted by management is unfair and improper..?' as a preliminary issue vide order dated 14th September, 2021.

4. Thereafter, the petitioner tendered his evidence by way of affidavit subsequently, cross examination was done by the respondent entity after which the evidence of the petitioner was closed vide order dated 20th January, 2023. The matter was then fixed for evidence of respondent and the management led its evidence by way of affidavit.

5. It has been stated by the petitioner that allegedly during the cross examination, the respondent witness admitted to certain facts. Consequently, the petitioner moved an application for recall of the order dated 20th January,



2023 and sought permission to summon the witnesses again. The said application was dismissed by the learned Industrial Tribunal vide order dated 22nd November, 2023.

6. Being aggrieved by the same, the petitioner has approached this Court seeking setting aside of the impugned order dated 20th January, 2023 and 22nd November, 2023.

7. Learned counsel appearing on behalf of the petitioner submitted that the impugned orders of dismissing the application of the petitioner, thereby, denying the relief to lead evidence is arbitrary, perverse, illegal and thus, liable to be set aside.

8. It is submitted that by passing the impugned orders the learned Tribunal has infringed the petitioner's fundamental and legal rights, and has further violated the principles of natural justice.

9. It is submitted that the learned Tribunal has failed to appreciate that the respondent has not produced relevant records despite specific directions and therefore, it is necessary for the petitioner to further examine the witnesses.

10. It is submitted that on one hand the petitioner has taken only two sanctioned leaves whereas on the other hand, petitioner's co-worker namely Mr.Saurabh Goyal had taken 39 unauthorized leaves.

11. It is also submitted that both the petitioner and his co-worker were terminated from their services but the said co-worker has already been reinstated. It is further submitted that the learned Tribunal has erred by not appreciating the abovestated fact and therefore, failed to apply judicial mind



by denying the petitioner to lead evidence.

12. In view of the foregoing submissions, it is submitted that the instant petition may be allowed and the relief as prayed be granted.

13. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the instant petition.

14. It is submitted that there is no illegality in the impugned orders and the same has been passed after taking into consideration the entire facts and circumstances available on the record of the learned Tribunal.

15. It is submitted that the petitioner had sufficient opportunities to lead evidence, therefore, he cannot be allowed to agitate the same issue again before this Court.

16. It is submitted that the petitioner has not been able to prove that there is a violation of his fundamental rights to invoke the writ jurisdiction of this Court. Hence, in view of the foregoing submissions, the instant petition may be dismissed.

17. Heard the learned counsel appearing on behalf of the parties and perused the material available on record.

18. It is the case of the petitioner that he had filed an application seeking recall of the order dated 20th January, 2023 wherein the petitioner's opportunity to lead evidence was closed. Pursuant to which, the petitioner sought for recall of the above said order so that he may examine the respondent's witness, however, the said application was dismissed by the learned Court below. It is submitted that the dismissal of the aforesaid application is arbitrary and against the settled legal principles, and thus, the



impugned orders may be set aside.

19. In rival submissions, the respondent management, has refuted the petitioner's contentions submitting to the effect that there is no illegality in the impugned orders and that the learned Court below has taken into account the arguments of both the parties and relevant material whilst passing the same.

20. In view of the submissions made by the parties, the issue before this Court is to adjudicate whether the learned Tribunal erred by not granting the petitioner with an opportunity to examine the respondent witness by recalling the order dated 20th January, 2023.

21. Now this Court will peruse the impugned orders. The relevant extracts of the impugned orders are herein below:

Impugned order dated 20th January, 2023:

"..Sh. Sujit Kumar Singh, Ld. AR for the management. WW cross-examined and discharged.

Ld. AR for the workman has stated that no other WW is to be examined in WE and has closed WE, vide separate statement of workman recorded today.

In view of the statement of the workman, WE stands closed.

Be put up on 15.02.2023 for ME. Ld. AR for the management is directed to supply advance copy of affidavit of the MW to opposite party before the next date of hearing..."

Impugned order dated 22nd November, 2023:

"..On 07.11.2023, arguments were heard by this court on application of the workman dated 04.06.2022 for summoning certain witnesses including Sh. Dharampal, the enquiry officer. However, it has been discovered that the said application of the



workman stand already allowed by my Ld. Predecessor vide order dated 04.07.2022 and thereafter sufficient opportunity was granted to the workman to lead its evidence. As per the record, no steps to summon this witness were taken by the AR for the workman and as per order sheet dated 20.01.2023 AR for the workman closed WE and after that management has also lead its evidence and now the matter is listed for arguments on preliminary issue. Since, the said application has already been disposed off and thereafter, the case has moved forward and reached the stage of arguments on preliminary issue, therefore, the said application cannot be agitated again...”

22. Upon perusal of the impugned order dated 20th January, 2023, it is inferred that that the petitioner's witness (WW) was cross examined and discharged. It was submitted on behalf of the petitioner that there is no other witness which has to be examined by the claimant (petitioner herein), accordingly, the evidence of the petitioner was closed and the matter was fixed for management's evidence.

23. Furthermore, as per the impugned order dated 22nd November, 2023 the learned Tribunal was adjudicating upon an application filed by the petitioner seeking recall of the order dated 20th January, 2023. While adjudicating upon the same, the learned Tribunal observed that vide the order dated 4th July, 2022, another application filed by the petitioner for summoning certain witness was already allowed and thereafter, sufficient opportunity was granted to the workman, i.e., the petitioner herein to lead his evidence.

24. Moreover, as per the record, no steps were taken on behalf of the



petitioner to summon the witness and as per order dated 20th January, 2023, the workman/petitioner evidence stood close, pursuant to which the respondent management also led its evidence and the matter was listed for arguments on the preliminary issue. The learned Tribunal held that since the petitioner's application has already been disposed of and thereafter, the case has proceeded further to the stage of arguments on preliminary issue, therefore, the said application cannot be agitated again.

25. As per the record, it is observed that an application for summoning witness and relevant records was filed by the petitioner on 4th July, 2022 and the same was allowed vide an order of the even date. Thereafter, the petitioner tendered his evidence and accordingly, his evidence was closed. Pursuant to which, the respondent management tendered its evidence and after cross examination, the respondent witness was discharged on 7th August, 2023.

26. Subsequent to which, the petitioner had filed his application on 28th August, 2023 seeking recall of the order dated 20th January, 2023 and the said order is under challenge herein. The said application seeking recall of the order was dismissed vide order dated 22nd November 2023 and the same is also under challenge herein.

27. In terms of the settled position of law, this Court is of the view that the Court should exercise its power to allow examination of witness once the evidence has been closed sparingly and only in appropriate cases, and not as a general rule. The same would be against the rule of evidence and examination of witness. Furthermore, as per the judgment passed by the



Hon'ble Supreme Court in *M/S Bagai Construction Tr. Prop vs M/S Gupta Building Material Store*, AIR 2013 SC 1849, an opportunity to reopen a closed/concluded evidence cannot be given in order to fill up omissions in the evidence of a witness who has already been examined. Such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of examination.

28. With respect to the facts of the instant petition, this Court is of the view that the evidence now being sought to be examined, was available to the petitioner earlier as also indicated in the impugned order dated 22nd January, 2023. The petitioner's earlier application seeking summoning certain witness was already allowed and thereafter, sufficient opportunity was granted to the workman, i.e., the petitioner herein to lead his evidence. However, the records show that even after getting the opportunity to summon a witness, no steps were taken on behalf of the petitioner in that respect.

29. Furthermore, as also indicated in the impugned order dated 20th January, 2023, the petitioner's AR stated before the learned Tribunal that no other workman witness (petitioner's witness) is to be examined and in view of the said statement on behalf of the petitioner, the petitioner's evidence (workman evidence) was closed/concluded.

30. Therefore, taking into account the limited scope of this Court's power under Article 226 of the Constitution of India, this Court is of the considered view that there is no error apparent on the face of the impugned orders.



There is nothing on record to show that the learned Tribunal has exceeded its jurisdiction, has usurped its jurisdiction, or acted illegally; in contravention to any law.

31. The petitioner has failed to make out a case to show that the learned Tribunal has acted in arbitrary manner. The petitioner had sufficient opportunity to lead evidence and the same is apparent from the impugned orders. Taking note of the same, the learned Tribunal has rightly held that since the petitioner's application already stand disposed of, therefore, the same cannot be agitated again when the matter has reached the state of arguments on preliminary issue as the same would be against the interest of justice.

32. In light of the above discussions of facts and law, this Court does not find any merit to interfere with the impugned orders dated 20th January, 2023 and 22nd November, 2023 passed in LIR No. 730/2019 by the learned POLC-06: RADC/New Delhi, and the same is, hereby, upheld.

33. Accordingly, the instant petition along with the pending applications (if any) stands dismissed.

34. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 20, 2024
dy/ryp/db

Click here to check corrigendum, if any