



2024:DHC:3782



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

% **Date of order: 15th April, 2024**

+ **W.P.(C) 5978/2003**

D.T.C.

..... Petitioner

Through: Ms.Aliza Alam, Mr.Mohnish
Sehrawat, Mrs.Taniya Ahlawat,
Mr.Nitesh Kumar Singh and
Ms.Laavanya Kaushik, Advocates for
Mrs. Avnish Ahlawat, SC

versus

YASH PAL

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

*“a) quash the award dated 1.10.2002 passed by Shri P.S. Teji, Presiding Officer, Industrial Tribunal-II, Karkardooma Court.
b) Pass such other and further order (s) which this Hon’ble Court deem fit and appropriate in the facts of the case and in the interest of justice.”*

2. The relevant facts necessary for the adjudication of the instant petition are as follows:

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- a) The petitioner i.e., Delhi Transport Corporation (“petitioner entity” hereinafter) is an autonomous legal entity, created by the statute of Delhi Road Transport Corporation Act, 1950. The respondent herein (“respondent workman” hereinafter) was employed by the petitioner entity at the post of ‘conductor’ in the year 1969.
- b) It is stated that the respondent workman on 24th April, 1987, while performing his duty at the gate of Ambedkar Nagar Depot, gathered his fellow staff members around the depot control room and instigated them against the officers of the petitioner entity. Thereafter, upon hearing the staff members gathered around the control room, the then ATI of Ambedkar Nagar Depot namely Mr. Raghuraj Singh, requested the crowd to calm down and resume their duties, however, the respondent workman allegedly used abusive language against the ATI and manhandled him.
- c) Subsequently, on 8th June, 1987, a chargesheet was issued against the respondent workman for his misconduct and violating Clauses 2(i) and 19(a), 19(f), 19(g), and 19(m) of the Standing Order governing the employees of the petitioner entity. Pursuant to the receipt of the above chargesheet, the respondent workman on 9th June, 1987, sent a reply refuting the alleged charges.
- d) Thereafter, the petitioner entity conducted a departmental enquiry against the respondent workman and on 12th January, 1988, the Enquiry Officer concluded its findings holding that the misconduct alleged against the respondent workman has been substantially



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proved. Furthermore, the petitioner entity on 13th January, 1988, sent a show-cause notice to the respondent workman to which a reply was sent by the respondent workman on 25th January, 1988.

- e) In the year 1992, pursuant to the above findings and the reply sent against the aforementioned show-cause notice, the petitioner entity on 28th July, 1992, terminated the services of the respondent workman. Thereafter, the petitioner entity in order to seek approval of the abovesaid removal, filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (“the Act” hereinafter) before the learned Industrial Tribunal-II, Tis Hazari, Delhi (“Tribunal” hereinafter).
- f) The learned Tribunal on 5th November, 1993, framed a preliminary issue i.e., “*Whether the applicant held a legal and valid enquiry against the respondent according to principles of natural justice?*” and thereafter, on 11th January, 2000, decided the said issue against the petitioner entity and in favour of the respondent workman holding that the departmental enquiry conducted by the Enquiry Officer is violative of principles of natural justice and the same has not been passed as per the facts, evidence and circumstances of the case.
- g) After deciding the above said preliminary issue, the learned Tribunal on 11th January, 2000, framed three issues for final adjudication which are as follows:



- “1) Whether the respondent committed the misconduct as mentioned in the petitioner under section 33(2)(b) of I.D. Act?
2) Whether the petitioner remitted one month’s wage to the respondent as per provision of the I.D. Act?
3) Relief.”*

- h) Thereafter, the learned Tribunal on 1st October, 2002, passed the impugned Order holding that the petitioner entity had failed to prove the misconduct alleged against the respondent workman and taking note of the findings of the predecessor Court that the enquiry was defective for violation of principles of natural justice thus, decided the case against the petitioner entity and in favour of the respondent workman.
- i) Aggrieved by the aforementioned impugned Order, the petitioner entity on 15th September, 2003, has preferred the instant writ petition under Article 227 of the Constitution of India seeking setting aside of the same.
3. Learned Counsel appearing on behalf of the petitioner entity submitted that the learned Tribunal erred in passing the impugned Order as the same has been passed mechanically, without taking into consideration the entire evidence, facts and circumstances of the present case, therefore, it is liable to be set aside.
4. It is submitted that the learned Tribunal while adjudicating the issues framed by it on 5th November, 1993, failed to consider the evidence placed on its record, thus, wrongfully passing the order dated 11th January, 2000.



5. It is submitted that the learned Tribunal *vide* the impugned Order has passed a non-speaking order which essentially relies upon the findings arrived at, by its Predecessor Court *vide* order dated 11th January, 2000. It is further submitted that the order dated 11th January, 2000, passed by the learned Predecessor Court deciding the preliminary issue is perverse as the same has been wrongfully adjudicated, without duly appreciating the evidence and cross examination of the witnesses.

6. It is submitted that the past record of the respondent workman is unsatisfactory as there are fourteen adverse entries in his service book thus, demonstrating the unsatisfactory conduct of the respondent workman.

7. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner entity prays that the instant petition may be allowed and the relief as prayed, may be granted.

8. *Per Contra*, learned counsel appearing on behalf of the respondent workman vehemently opposed the instant petition submitting to the effect that the same is misconceived, and the same being devoid of any merit is liable to be dismissed.

9. It is submitted that the learned Tribunal has passed the impugned Order after duly considering the entire facts, circumstances as well as the evidence placed on record thus, the findings that the departmental enquiry conducted by the petitioner entity was illegal and invalid, holds ground since the same could not be proved otherwise by the petitioner entity.

10. It is submitted that the departmental enquiry initiated by the petitioner entity against the respondent workman is frivolous as it failed to produce the



witnesses before the learned Tribunal who were alleged to have been present at the time of the alleged incident.

11. It is submitted that the departmental enquiry conducted against the respondent workman is defective due to the violation of the principles of natural justice and the provisions contained in the circulars issued by the petitioner entity as it is an admitted position by the Enquiry Officer that the list of documents and witnesses relied upon by him were not supplied to the respondent workman.

12. It is submitted that the learned Tribunal rightly held the departmental enquiry have been vitiated as the Enquiry Officer acted in a dual capacity, i.e., as a persecutor as well as the prosecutor which is impermissible in law.

13. It is further submitted that the petitioner entity failed to prove the case alleged against the respondent workman since there were no eye-witnesses present at the time of the alleged incident and it was the ATI himself who narrated the said incident to the witnesses, as recorded by the enquiry officer in his findings.

14. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondent workman prayed that the present petition, being devoid of any merit, may be dismissed.

15. Heard the learned counsel appearing on behalf of the parties and perused the material on record including the pleadings and the impugned Order.

16. It is the case of the petitioner entity that the learned Tribunal while adjudicating the preliminary issue erred in deciding the same in favor of the



respondent workman as it failed to consider the evidence placed on its record. It is also contended that the impugned Order has been wrongfully passed by the learned Tribunal as it is a non-speaking order and essentially relying upon the findings arrived at by its Predecessor while deciding the preliminary issue. It is further contended that the learned Tribunal failed to take into consideration the past record of the respondent workman which is unsatisfactory as there exists fourteen adverse entries in his service book.

17. In rival contentions, it has been submitted on behalf of the respondent workman that the learned Tribunal passed the impugned Order after duly considering the entire facts, circumstances as well as evidence placed on record. It is contended that the departmental enquiry initiated against the respondent workman is frivolous as the petitioner entity could not even produce one reliable witness to substantiate the alleged act. It is further asserted that the enquiry is defective as it suffers from violation of the principles of natural justice as the petitioner entity failed to supply to the respondent workman a copy of the list of documents and list of witnesses in advance.

18. The petitioner entity has approached this Court seeking to set aside the findings of the learned Tribunal passed *vide* the impugned Order dated 1st October, 2002, therefore, before delving into the averments advanced by the learned counsel appearing on behalf of the parties, in order to adjudicate upon the present matter, this Court deems it imperative to analyse the findings of the impugned Order and ascertain the reasoning afforded by it. The relevant paragraphs of the impugned Order are reproduced herein below



for reference:

“.....7. **ISSUE No.1**

To prove its case the applicant has produced AW-2 O.P.Birdi who filed his affidavit Ex.AW2/A dt. 5.9.2000 and relied upon the documents Ex.AW2/1 to Ex.AW2/7. In his affidavit he deposed that he was working as depot manager at the relevant time. On receipt of report of Sh.Raghu Raj Singh that at about 11.30 hrs. workman alongwith other members started shouting near the Control room, he issued the charge sheet and after receiving the report from the enquiry officer he issued the show cause notice and then removal order was passed. He was cross examined. During his cross examination he admitted that he was not present at the place of incident. The other witness produced was AW-3 Raghuraj Singh who filed his affidavit Ex.AW3/A and further relied upon the document Ex.AW2/1.

He was also cross examined.

8. *On the other hand respondent Yash Pal Singh appeared as RW-1 and filed his affidavit Ex.RW1/B dt. 10.8.2001 in which he denied the allegations.*

9. *It has been argued by AR of respondent that my predecessor has decided the preliminary issue on 11.1.2000 in which it was observed that statement of ATI Raghu Raj Singh alone was not sufficient to believe the allegations against the respondent, specially because the relations between the two were not normal. Many persons witnessed the incident and none of them appeared before, the enquiry officer to support the case of A.TI Raghu Raj Singh and Raghu Raj Singh further narrated the story to Mr. Bhoja Ram. So, the enquiry report was held to be perverse relying upon the statement of Sh.Raghu Raj Singh alone. Admittedly, there is no improvement while having the additional issue framed for proving the misconduct alleged against the respondent.*

10. *I have gone through the observation made by my predecessor and the other material available on the record. The*



observations made by my predecessor Sh.B.B.Chaudhary while deciding the enquiry issue on 11.1.2000 are apparently appear to be correct. There is nothing contradictory on the record, moreover the management has not improved its position while leading the evidence on merit. Sh.O.P. Birdi is not incidental witness. Consequently, it is held that the management has failed to prove the misconduct of respondent.

11. Issue No.2

To prove the issue applicant relied upon the statement of Sh.O.P.Birdi who deposed that at the time of removal of respondent one month salary as per salary certificate Ex.AW2/5 was sent through money order vide postal receipts Ex.AW2/6 and Ex.AW2/7. There is no cross examination of Sh.Bird with regard to this part of statement. Even the same has not been controverted by the respondent in his affidavit. Consequently issue is decided in favour of applicant.

12. Issue No.3

Keeping in view the findings on Issue No.1 the approval application filed by the applicant U/s 33(2)(b) of I.D. Act is hereby dismissed. File be consigned to record room.....”

19. Upon perusal of the aforementioned order, it can be summarily stated that the learned Tribunal on 5th November, 1993, framed a preliminary issue and *vide* order dated 11th January, 2000, decided the said issue against the petitioner entity and in favor of the respondent workman, thereby, vitiating the enquiry conducted by the Enquiry Officer for non-compliance of the principles of natural justice on several aspects such as failure of the petitioner entity to supply to the respondent workman the list of witnesses to be examined by him, the enquiry officer acting as a persecutor as well as a prosecutor and the fact that the Enquiry Officer placed reliance upon the past record of the respondent however, failed to furnish a copy of the same.



20. The learned Tribunal further observed that as per the allegations, several people other than the then ATI witnessed the alleged incident but none appeared before the Enquiry Officer to support the alleged act thus, the Enquiry Officer only relied upon the statement of ATI to believe the allegations against the respondent workman.

21. The learned Tribunal on 11th January, 2000, upon completion of the pleadings framed the following three issues:

- “1) Whether the respondent committed the misconduct as mentioned in the petition under section 33(2)(b) of I.D. Act?*
- 2) Whether the petitioner remitted one month’s wages to the respondent as per provisions of the I.D. Act?*
- 3) Relief.”*

22. The learned Tribunal while deciding the issue no.1, observed that the petitioner entity produced Mr. O.P. Birdi (the then Depot Manager) as AW-2 and Raghuraj Singh (complainant) as AW-3 and placed reliance upon Exhibits AW2/1 to Ex.AW2/7. On the contrary, the respondent workman produced himself as RW-1.

23. With regard to the above issue, the learned Tribunal, while placing reliance upon the findings arrived at by its Predecessor Court, in deciding the preliminary issue, opined that there is nothing contradictory on record to substantiate the claim of the petitioner entity and that the testimony of Mr. O.P. Birdi cannot be relied upon as he was not a witness to the incident in question and thus, the alleged misconduct was not substantially proved by the petitioner entity.

24. The learned Tribunal placing reliance upon the statement of Mr. O.P.



Birdi and Ex.AW2/5, Ex.AW2/6 and Ex.AW2/7 observed that there is no contradiction on the said issue as the same has not been contended and no cross examination in such regard was held by the respondent workman thus, the issue no.2 was decided in favor of the petitioner entity.

25. Lastly, the learned Tribunal, bearing in mind the findings in issue no.1, opined that the enquiry suffers from legal infirmities for being violative of principles of natural justice and thus, the application under Section 33(2)(b) of the I.D Act was dismissed.

26. In this backdrop, this Court deems it imperative to briefly state the legal position behind the principles of natural justice. The term ‘principles of natural justice’ has been derived from the expression ‘*jus natural*’ of the Roman Law. Although the principles of natural justice do not have the force of the law as they may or may not form part of any statute, but they are necessarily to be followed in order to do substantial justice.

27. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individuals against the arbitrary procedure that may be adopted by a judicial, *quasi-judicial* and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

28. The foundation of the principles of natural justice is premised upon preventing miscarriage of justice and the same shall positively apply to administrative inquires. The Court adjudicating upon a matter shall minutely observe whether contravention of principles of natural justice affected the



findings of the case.

29. This Court is further of the view that in the absence of express provisions in any statute dispensing with the observance of principles of natural justice, such principles have to be observed in all judicial, *quasi-judicial* as well as domestic enquiries.

30. This Court is of the view that in a domestic enquiry, certain rules ought to be followed to set out general practice in order to conduct fair enquiry within the four corners of law. The department concerned with conducting an enquiry must have a set of norms and provide adequate opportunity, to the person against whom enquiry is being conducted, to defend his case and the proceedings so conducted have to mandatorily observe the principles of natural justice.

31. In the impugned Order, it is evident that the learned Tribunal duly perused the enquiry report and held the same to not be in consonance with the principles of natural justice due to following reasons. *Firstly*, non-furnishing to the respondent workman, in advance, the list of witnesses to be cross-examined. *Secondly*, the enquiry officer acting as a prosecutor as well as a persecutor and *lastly*, non-furnishing to respondent workman the copy of his past record, therefore, leading to the conclusion that the said enquiry was a mere formality and not in accordance with the settled position of law.

32. At this juncture, this Court deems it apposite to briefly reiterate the scope of a Writ Court's jurisdiction under Article 226 of the Constitution of India in interfering with findings of the Labour Court/Tribunal *qua* the following circumstances. *Firstly*, a High Court shall exercise its writ



jurisdiction sparingly and shall act in a supervisory capacity and not adjudicate upon matters as an appellate court. *Secondly*, in matters wherein the Labour Court has adjudicated after having adjudicated on the merits of both fact and law as well as adduced the evidence placed on record, the High Court shall not exercise its writ jurisdiction to interfere with the award when *prima facie* the Court can conclude that no error of law exists. *Thirdly*, judicial review involves a challenge to the legal validity of the decision. It does not allow the Court of review to examine the evidence with a view to form its own view about the substantial merits of the case. The reasoning must be cogent and convincing. *Fourthly*, a High Court shall intervene with the order/award passed by a lower Court only in cases where there is a gross violation of the rights of the petitioner and the conclusion of the Tribunal/Labour Court is perverse. A mere irregularity which does not substantially affect the cause of the petitioner shall not be a ground for the Court to intervene with the order passed by the concerned Court. *Fifthly*, a High Court shall intervene with the order/award passed by a lower Court if the Court observes that there has been a gross violation of the principles of natural justice. *Lastly*, the punishment imposed can be challenged on the ground of violation of doctrine of proportionality.

33. This Court is of the considered view that, the learned Tribunal has dealt with each of the issues thereby, affording a detailed reasoning after having appraised the evidence placed on record, the cross examination as well as the settled position of law.

34. Thus, in view of the above discussions of law and fact, this Court



observes that the learned Tribunal, after having perused the evidence of witnesses and cross examination, has rightly arrived at the findings that the enquiry conducted by the petitioner entity against the respondent workman is violative of principles of natural justice and the Enquiry Officer failed to appreciate the true facts of the matter.

35. This Court is of the considered view that the petitioner entity could neither produce any evidence to substantiate its claim, nor it could produce any witnesses who could support the alleged chain of events. It is further observed that the Enquiry Officer erred in acting both as a persecutor as well as a prosecutor. The petitioner entity on the other hand failed to comply with the principles of natural justice by not affording the respondent workman to prepare for the cross examination of witnesses as the list of witnesses were not supplied to the respondent workman in advance and the Enquiry Officer although considered the past record of the respondent, yet failed to supply a copy of the same.

36. This Court is further of the view that as the scope of its writ jurisdiction is limited and is to be exercised sparingly, this Court cannot undertake an exercise, which is beyond its jurisdiction by liberally re-appreciating the evidence and drawing conclusions based on pure questions of fact, as this Court is not sitting in an appellate jurisdiction over the impugned Order passed by the learned Tribunal.

37. The writ jurisdiction is supervisory and the Court exercising it is not to act as an appellate Court. This Court is of the considered view that the instant petition is an appeal under the garb of a writ petition and the



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petitioner is seeking re-examination and judicial review of the evidence adduced before the learned Tribunal despite the facts that there are no such special circumstances that require the interference of this Court.

38. This Court discerns no material to establish the propositions put forth by the petitioner entity. In view of the same, it is held that there is no material to characterise the impugned Order as perverse and the learned Tribunal is well justified in passing the same.

39. In view of the foregoing discussions, this Court finds no infirmity in the impugned Order dated 1st October, 2002, passed by the learned Industrial Tribunal-II, Tis Hazari, Delhi in ID No.316/92 and the same is hereby upheld.

40. Based on the aforementioned observations, this writ petition is accordingly dismissed along with pending applications, if any.

41. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 15, 2024
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