



2024:DHC:1870



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

% **Date of order : 19th February, 2024**

+ **W.P.(C) 8615/2003 & CM APPL.5818/2003**

D.T.C. Petitioner

**Through: Ms.Manisha Tyagi and Mr.Harsh
Chaudhary, Advocates**

versus

ANANT RAM Respondent

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

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) pass a writ of certiorari or any other appropriate writ/direction or order to quash the order dated and order dated 26.20.2003 in O.P.No.21/92 passed by Ld. Presiding Officer, Industrial Tribunal, Delhi and approval of the action taken may be granted.

(b) Pass such other directions or order as may be deemed fit and proper in the facts and circumstances of the case in favour of the petitioner."



2. The respondent workman was working in the petitioner Corporation as a conductor. In the year, 1989, the respondent workman was allegedly caught by the checking staff for the act of non-issuance of the tickets to two lady passengers and therefore, he was issued a chargesheet dated 9th August, 1989 for the alleged misconduct.
3. Pursuant to completion of the enquiry proceedings, the disciplinary authority issued a show cause notice dated 30th November, 1990 and subsequently terminated the respondent workman *vide* order dated 17th May, 1991.
4. In pursuance of the same, the petitioner filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 seeking approval of the respondent workman's termination.
5. The learned Tribunal *vide* order dated 6th September, 2002 passed in No. 21 of 91 rejected the above said application and adjudicated in favour of the respondent workman.
6. Aggrieved by the same, the petitioner has preferred the instant petition.
7. The learned counsel appearing on behalf of the petitioner submitted that the impugned award is bad in law and is liable to be set aside as the same has been passed without taking into consideration the entire facts and circumstances.
8. It is submitted that the respondent workman was found guilty of the *mala fide* act of non-issuance of the tickets to two of the passengers and the same infers the intention to deceit petitioner Corporation, thereby, affecting



its finances.

9. It is submitted that the learned Tribunal failed to appreciate that the alleged act of the respondent workman amounts to misconduct as per para 19(b)(h) & (m) of the standing orders governing the Conductors of the Corporation.

10. It is submitted that the learned Tribunal erred in holding that the petitioner was not able to produce any evidence in support of his case despite the fact that a legally valid enquiry was conducted by the petitioner Corporation.

11. It is submitted that the petitioner Corporation had duly proved the charges against the respondent workman by placing the relevant evidence on record and therefore, there is no need to produce any evidence in support of the case.

12. It is also submitted that the learned Tribunal failed to appreciate that the respondent workman was involved in similar instances earlier as well and the same proves that the alleged act was not a one-time act, rather a habitual exercise carried out by the respondent workman.

13. It is further submitted that the enquiry officer had conducted proper and fair enquiry as per the established procedure and the learned Tribunal erred in not appreciating the same.

14. In light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner Corporation submitted that the present petition be allowed, and reliefs be granted as prayed.

15. *Per Contra*, the learned counsel appearing on behalf of the respondent



workman vehemently opposed the present petition, submitting to the effect that the enquiry conducted by the petitioner Corporation was sham and bogus as the officials conducted the same with a pre-determined mind and held the workman guilty without any substantive proof against him.

16. It is submitted that the evidence on record nowhere suggest that the fare was paid to the respondent workman, therefore, the learned Tribunal rightfully declined the enquiry issue and therefore rejected the application filed by the petitioner.

17. It is submitted that the learned Tribunal had granted sufficient opportunities to the petitioner Corporation to adduce the evidence to supplement its claim, however, the failure on their part led to the finding that there is no misconduct on part of the respondent workman.

18. It is submitted that no corroborative evidence was taken in form of the statement of the passengers and in absence of the same, the charges against the respondent workman cannot be proved.

19. It is further submitted that the testimony of the two management witnesses are contradictory to each other, thereby, establishing that the case against the respondent workman is concocted by the petitioner Corporation.

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

21. Heard the learned counsel for the parties and perused the records.

22. It is the case of the petitioner Corporation that the respondent workman was found guilty of deliberate act of non-issuance of tickets to the



passengers and the said act amounts to serious misconduct, therefore, setting aside his termination is bad in law.

23. In the rival submissions, the learned counsel for the respondent workman has contended that the petitioner Corporation had failed to produce evidence related to the alleged act and therefore, the learned Tribunal rightly rejected the application filed under Section 33(2) (b) of the Industrial Disputes Act, 1947 ('ID Act' hereinafter).

24. Therefore, the limited question before this Court is whether the impugned award is legally tenable or not. The relevant extracts of the impugned award read as under:

"1. The applicant has filed this application U/s 33 (2) (b) of I.D.Act for approval of its action to remove the respondent Shri Anant Ram from service. The brief facts of the case are that a charge sheet was issued to the respondent and charges levelled against the respondent are that he did not issue tickets on the demand of passengers and remained sitting on the conductor seat. He even instigated the passengers. The irregularities of respondent amount to misconduct within the meaning of para 2 (II) and 19 (b) (f) (h) & (m) of the standing orders governing the conduct of DTC employees. The disciplinary authority removed the respondent from service vide order dated 17.5.91 and remitted full one month's wage to him by way of money order.

2. The respondent has filed the reply to the application of the applicant in which he denied the allegations levelled against him.

"Whether the applicant held a legal and valid enquiry against the respondent according to principle of natural justice?"

4. Vide order dated 6.9.2002, the issue of validity of enquiry was decided against the applicant.



5. On the basis of pleading of parties, following issues were framed on

6.9.2002:

1) Whether the respondent committed the misconduct as alleged in the chargesheet?

2) Whether the salary of one month's has been remitted to the respondent as per section 33 (2) (b) of I.D.Act?

3) Relief.

6. To prove the issues applicant produced AW-2 Shri Amar Singh. On the other hand, respondent himself entered into the witness box. I have heard the arguments of parties and my issue wise findings are as under.

7. ISSUE No.1

The applicant produced only one witness AW-2 Shri Amar Singh who deposed only about the remission of one month's notice salary to the respondent. The applicant did not produced any evidence nor brought any material on record to prove the alleged misconduct of the respondent. Consequently, it is held that the applicant has failed to prove the alleged misconduct of the respondent. Consequently, the issue is decided against the applicant.

8. ISSUE No.2

To prove the issue, applicant produced AW-2 Shri Amar Singh who filed his affidavit dated 18.12.2002 in which he deposed that one month salary was made and sent to workman in June of Rs.1956/- along with the removal letter. He proved the salary certificate, money order receipt, removal letter postal receipts as Ex. AW2/1 to Ex. AW2/4. There is no rebuttal to this affect from the side of respondent. Consequently, it is held that full one month's notice salary was remitted to the respondent at the time of his removal from service. Consequently, the issue is decided in favour of applicant.

9. ISSUE No.3



Keeping in view the finding on Issue No.1, approval sought by applicant is rejected and application U/s 33 (2) (b) is hereby dismissed. File be consigned to record room.”

25. Upon perusal of the extracts of the impugned order, it is made out that the learned Tribunal had delineated three issues for adjudication of the application filed by the petitioner Corporation.

26. For issue 1 i.e. determination of whether the respondent's conduct amount to misconduct, the learned Tribunal had categorically stated that the petitioner Corporation did not produce any evidence to prove the alleged misconduct of the respondent workman, therefore, the said act cannot be proved merely on the basis of the statements of the enquiry officer.

27. The issue regarding the remission of salary was duly adjudicated in favor of the petitioner Corporation, however, based on the findings in issue 1, the learned Tribunal deemed it appropriate to dismiss the application filed under Section 33(2)(b) of the ID Act.

28. Thus, it can be concluded from the above that the learned Tribunal has addressed each of the issues and thus, concluded to its effect that the termination of employee/workman is not necessitated.

29. It is a well settled principle that under the powers conferred by Article 226 of the Constitution of India, this Court cannot act as an investigative agency, rather can only appreciate whether the learned Court below had rightly passed the impugned order or not.

30. Under Article 226 of the Constitution of India, High Courts shall intervene with the award passed by a lower Court only in cases where there



is a gross violation of the rights of a party. A mere irregularity which does not substantially affect the cause of a party shall not be a ground for the Court to intervene with the order passed by the Court below.

31. From a bare perusal of the award, it is crystal clear that the findings arrived at by the learned Court below are based on the evidence placed before it by the petitioner and the workman, and no such evidence has been placed before this Court to arrive at a different view, as it did in the impugned award.

32. It is well settled that the adjudicating authorities are well within their powers to reappraise the evidence to satisfy themselves regarding the issue of fair conduction of the enquiry proceedings and subsequent findings by the enquiry committee. In the event, the authority concerned is satisfied with the fact that there is no illegality or irregularity in the findings of the said enquiry, the same may be upheld, whereas, if the authority is of the view that findings of the enquiry are based on violation of certain laws, the same may be set aside. Hence, rejection of the application on the said ground is well within the power of the learned Court below.

33. In regard to the facts of the instant matter, it has been discussed herein above that whilst deciding the issue no. 1, the learned Tribunal emphasised upon the fact that the petitioner Corporation could not produce any material evidence which would implicate the respondent workmen for the misconduct alleged by the Corporation.

34. Therefore, this Court concludes that the instant matter has been heard at length by the learned Court below and the petitioner Corporation had been



granted sufficient opportunities to substantiate their claim against the respondent workman. The principles of natural justice embedded in the Constitution have to be followed by the letter and there can be no diversion from the same. In view of the same, this Court is of the considered view that the respondent workman's termination was not in accordance with the law and the same rightly set aside by the learned Tribunal. Thus, since no error on account of appraising evidence by the learned Tribunal is noted by this Court, the relief as prayed by the petitioner cannot be granted.

35. In view of the above discussion of facts and law, this Court finds no infirmity in the impugned award dated 26th February, 2010, passed by the Industrial Tribunal No. 2, Karkardooma Courts, Delhi, in O.P. No. 21 of 91 and the same is hereby upheld.

36. Accordingly, this instant writ petition stands dismissed. Pending applications, if any, also stand dismissed.

37. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

FEBRUARY 19, 2024

dy/av/ryp

Click here to check corrigendum, if any