



2024:DHC:3566



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

% **Date of order: 9th April, 2024**

+ **W.P.(C) 3704/2007**

D.T.C. Petitioner

Through: **Ms. Bhakti Pasrija and Mr. Sonu
Mandal, Advocates**

versus

AMI CHAND Respondent

Through: **Mr. Kittu Bajaj, Advocate**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

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

"It is therefore most humbly and respectfully prayed that this Hon'ble Court may graciously be pleased to issue an appropriate writ, order or direction quashing and setting aside the award/order dated 3.8.06 as passed by the Ld. Court in I. D. No. 423/06/97.

It. is further prayed that this Hon'ble Court be pleased to issue an appropriate writ, order or direction, directing that the order of removal-dated 24.2.89 as passed by the petitioner Corporation against the respondent is valid..."

2. The petitioner ('petitioner Corporation' hereinafter) is a corporate body entrusted with management of the public transport in Delhi. The



respondent ('respondent workman' hereinafter) has been working as a conductor in the petitioner Corporation since 1983.

3. In the year, 1988, a chargesheet dated 20th September, 1988 was issued against the respondent on the allegations of non-issuance of tickets to the passengers. Pursuant to issuance of the aforesaid chargesheet, the case was forwarded to the disciplinary authority and an inquiry was initiated against the respondent leading to his termination from the services *vide* order dated 24th February, 1989.

4. Thereafter, the petitioner Corporation filed an application under Section 33(2)(b) of the Industrial Dispute Act, 1947 ('the Act' hereinafter) and removal of the respondent workman was upheld *vide* order dated 6th March, 2003

5. Aggrieved by the same, the respondent worker preferred an application for adjudication of the dispute which was referred to the learned Industrial Tribunal *vide* order No. F.24(903)/97-Lab.

6. After completion of the proceedings, the learned Industrial Tribunal ('Court below' hereinafter) decided the dispute in favor of the respondent workmen and directed his reinstatement with 50% backwages *vide* award dated 3rd August, 2006 ('impugned award' hereinafter).

7. Aggrieved by the same, the petitioner Corporation preferred the instant petition.

8. The learned counsel appearing on behalf of the petitioner Corporation submitted that the learned Court below erred in appreciating that the petitioner Corporation had conducted the enquiry as per the principles of



natural justice and therefore, the same cannot be held contrary to the settled position of law.

9. It is submitted that the approval sought by the petitioner under Section 33(2)(B) was duly given by the Tribunal, therefore, establishing that the enquiry did not suffer from any illegality.

10. It is submitted that the learned Court below erred in holding that the issues were formed during the enquiry proceedings were without application of mind as the charges framed against the workman were duly accepted by him on multiple occasions.

11. It is submitted that the learned Court below failed to appreciate the fact that the workman had signed on the chargesheet and therefore, once the workman had admitted the charges, nothing is further required to be proved by the petitioner Corporation.

12. It is submitted that the respondent workman was holding a position of trust, therefore, breach of the same would invite punishment of removal from services and the said removal cannot be held illegal.

13. It is submitted that mere non-appearance of the passengers as the witnesses in the proceedings cannot be detrimental to the case of the petitioner as the same is not mandatory, therefore, holding the same against the petitioner Corporation is bad in law.

14. In view 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.

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



workman vehemently opposed the present petition submitting to the effect that the learned Court below rightly appreciated the evidence and therefore set aside the removal order.

16. It is submitted that the learned Court below rightly vitiated the findings of the inquiry officer holding the same to be perverse and without application of mind.

17. It is submitted that the respondent never admitted to his guilt as putting the signature on challan would not give credence to such claims.

18. It is submitted that the petitioner Corporation was given due opportunity to prove the charges, however, they failed to do so, therefore, they cannot be permitted to do the same at this stage.

19. It is submitted that the only witness produced by the petitioner Corporation was the inquiry officer and the testimony given by him cannot be relied upon as he was not a witness to the incident.

20. It is also submitted that mere confirmation of the said termination does not makes the same rightful as the proceedings under Section 33(2)(b) is on a different footing than the proceedings under Section 10 of the ID Act.

21. Therefore, in view of the foregoing submissions, the learned counsel for the respondent workman submitted that the present petition being devoid of any merit may be dismissed.

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

23. It is the case of the petitioner Corporation that the inquiry conducted against the petitioner was done in free and fair manner and the inquiry officer had duly appreciated the incriminating evidence against the petitioner



and therefore, recommended his dismissal from services. Furthermore, it has been contended that the learned Tribunal had also confirmed the said dismissal after duly agreeing with the findings made by the inquiry officer, therefore, rendering the removal final.

24. In rival submissions, the learned counsel for the respondent workman submitted that the impugned award was passed after appreciating the material on record, whereby, the learned Court below was of the opinion that the inquiry was not held in consonance with the procedure established under the law.

25. The extracts of the award passed by the learned Court below on two occasions, i.e. 23rd October, 2004 and 3rd August, 2006, reads as under:

23.10.04

Pr: Workman in person

I have heard the AR for the workman and the AR for the DTC on the issue regarding the fairness of the enquiry proceedings on the basis of which the workman was dismissed/retrenched from service. He has challenged his termination as illegal and based on illegal and based on illegal enquiry.

The charge against the workman was that on 19.8.88 while he was on duty on Bus No. 9912, operating on Delhi Ghaziabad route, his bus was checked by the Checking Staff. They found four passengers alighting from the bus who were without ticket. On inquiry they states that they had boarded the bus from Shahdara Borddr to Sahibabad and had tendered Rs 4/- to the workman but he did not issue tickets. The passengers were allegedly illiterate and therefore, ATI Om Prakash, on their behalf noted their statements and on behalf of one Brij Mohan.



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The workman was given a charge sheet. In his reply dt. 5.10.88 to the charge sheet dt. 20.09.88 he stated that he was falsely charged and that he was pressurised and he was also disturbed due to some domestic problem . It is seen from the enquiry proceedings that all enquiry was conducted on 25.11.88 on a separate sheet enquiry proceedings. All that is mentioned is that the chargesheet was readover to him and he was asked whether he agreed with the same or not. It is states that he accepted the charges and that he did not want any enquiry. He also assured that he will not repeat this in future, It is seen that it is a typed sheet on which workman has only signed at dotted place. On this the enquiry was closed.

There is nothing in writing separately in the hand of the workman. There was no defence assistance present on that day. It appears that the enquiry is clearly on the basis of admission alone which is doubtful particularly in view of his earlier reply to charge sheet that he was pressurised and put under fear. The law on the admission of the department enquiry is clear. Hon'ble Supreme Court in the case of Jagdish Prasad Saxena vs The State of Madhya Bharat (now Madhya Pradesh) AIR 1961 SC 1070 held as under

“as the statements made bu the appellant did not amount to clear or unambiguous admission of his guilt, failure to hold a formal ebquiry constituted a serious infirmity in the order of dismissal passed against him, as the appellant had no ooppurtunity at allof showing cause against the charge framed against him and so the requirement of Art. 311(2) was not satisfied.

Even if the appellant had made some statements which amounted to admission, it was open to doubt whether he could be removed from service on the strength of the said alleged



admission without holding a formal enquiry as required by the rules

It is of the utmost importance that in taking disciplinary action against a public servant a proper departmental enquiry must be held against him after supplying him with a charge sheet and he must be allowed a reasonable opportunity to meet the allegations contained in the charge sheet.

The departmental enquiry is not an empty formality; it is a serious proceeding intended to give the officer concerned a chance to meet the charge and to prove his innocence. In the absence of any such enquiry it would not be fair to strain facts against the appellant and to hold that in view of the admissions made by him the enquiry would have served no useful purpose. That is a matter of speculation which is wholly out of place in dealing with cases of orders passed against public servants terminating their services."

I, therefore hold that the findings on the enquiry issue are totally perverse and without application of mind and is vitiated. The management is given opportunity to prove the misconduct in court."

3rd August, 2006

1. Secretary (Labour) Govt. of the National Capital Territory of Delhi vide his order No. F.24(903)/97-Lab, has referred the Industrial Disputes between M/s. Delhi Transport Corporation and its workman Sh. Ami Chand for adjudication as per the following terms of reference:

" Whether the removal of Sh. Ami Chand from service is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?"



2. Briefly, stated, the facts as disclosed in the statement of claim are that the workman was appointed with the management as a conductor in the year 1982. He was charge sheeted on 20.09.1988 on the allegations that on 29.08.1988 while he was on duty on bus No. 9912 operating on Delhi-Ghaziabad route at about 10.15 p.m The members of the checking staff boarded the bus at Ghaziabad and found four passengers alighting from the bus without ticket and on enquiry from the passengers, it was disclosed that they had paid the fare but he did not issue tickets. On demand he refused to provide unpunched tickets. A domestic enquiry was conducted against him. He has challenged the enquiry on the ground that it was in violation of the principle of natural justice and the findings were also perverse. Vide order dated 24.02.1989 he was removed from service with immediate effect. He has Claimed that he has been unemployed since his termination. He has claimed reinstatement in service with along with full backwages and other attendant benefits.

3. In the written statement the management-has claimed that the workman has no cause of action to file the present case as he committed cheating during the course of his employment. He took full fare from the passengers but did not issue proper tickets to them. The checking officials checked the bus and found four passengers without tickets despite payment of full fare. The workman admitted his fault before the passengers and the checking officials and also signed on the challan and statement of the passengers. On the basis of that record the charge sheet was issued. His reply was not found satisfactory and the case was entrusted to enquiry officer for a detailed enquiry. The enquiry was conducted as per principles of natural justice and after the findings of the enquiry officer its authority issued show cause notice for removal. The action taken by the disciplinary authority of removal was legal and proper. It has also been claimed that no demand notice has been served on the management before the industrial dispute was raised. It has been



alleged that the workman is gainfully employed and is not entitled for any backwages or reinstatement in service.

4. *The workman has filed the replication in which he reiterated the stand taken in statement of claim and controverted the averments made by the management.*

5. *Following issues are settled for trial on 24.03.1999*

(1) *Whether the management has not conducted a fair and proper enquiry in accordance with the principles of natural justice?*

(2) *As per terms of reference.*

6. *On the pleadings parties were called upon to lead their respective evidence. In support of his case the workman examined himself as WWI and proved his affidavit as WWI/A and proved the documents as WWI/1 to WWI/5.*

The management chose not to lead any evidence. After the orders on enquiry issue were passed, on behalf of the management, Sh. Rati Bha.. Chaudhary was examined who proved his affidavit as IWIWJ/A and the copy of the charge sheet, challan, passenger's statement, checking report are MWI/1 to MWI/4. The enquiry entrustment order is MWI/5. The enquiry proceedings are MWI/6 and the findings are MWI/7. Unpunched tickets are collectively MWI/8. The workman examined himself in rebuttal and proved his affidavit as WWI/A.

7. *I have heard ARW Sh. G.S. Charya on behalf of the workman and ARM Sh. Hardwari Lal on behalf of the management and gone through the entire record.*

8. *My findings on the issues are as hereunder:*



9. Issue No. 1: Whether the management has not conducted a fair and proper enquiry in accordance with the principles of natural justice?

Issue No. 1 was decided by the Ld. Predecessor of the Court Sh. C.K. Chaturvedi vide his order dated 23.10.2005 holding that findings of the enquiry officer are totally perverse and without application of mind and is vitiated. Issue No. 1 was accordingly decided in favour of the workman and against the management.

10. Issue No.2 As per terms of reference

1. After the findings of the enquiry officer were held to be perverse, management was given an opportunity to lead its evidence to prove misconduct. The only witness examined by the management is Sh. Rati Bhan Chaudhary who was the disciplinary authority and had issued the removal order against the workman. He has not uttered even a single word about the misconduct committed by the workman. He has solely relied upon the enquiry proceedings and the findings which have already been held to be perverse and vitiated. He stated in his affidavit that the enquiry officer Sh. A.S. Bains has already expired and in this case he only passed the order of removal dated 24.02.1989 which is Ex.MWL/6. He stated that he was not posted at the Depot at the time of incident. It has been vehemently urged by AR for the workman Sh. G.S. Charya that the corporation has miserably failed to prove the misconduct against the workman; that to prove the misconduct at least examination of one of the checking officials was essential. The management has not cared to either call any passenger or checking staff, to prove the misconduct. In view of the testimony on record, I am satisfied that the management has not been able to prove the misconduct of the workman. In his cross examination, workman has admitted that he has been earning Rs. 2000/- per month which is not sufficient to support his family. AR for the workman has relied upon "M.V. Bijlani Vs Union of



India & Ors. JT2006 (4) SC 469 wherein “ the appellant working as Junior Engineer was removed from service for misconduct , however, since the misconduct could not be proved against him. The appellant was directed to be reinstated in service as he had not attained the age of superannuation with 50% backwages.

In view of the fact that the domestic enquiry has already been set aside and the management has not been able to prove the misconduct of the workman, I hold that the removal of the workman Ami Chand from service is illegal and unjustified. He is directed to be reinstated in service with 50% backwages as he has not worked for a long time with the corporation. Issue No. 2 is accordingly decided in favour of the workman and against the management.

11. Reference is answered accordingly. Six copies of the award be sent to the Secretary Labour for publication within 30 days.

File be consigned to record room.

26. This Court has perused the award passed by the learned Court below on 23rd October, 2004 and 3rd August, 2006. On perusal of the same, it is made out that the learned Court below had mainly formulated two issues for determination of the claim filed by the respondent workman.

27. On the aspect of whether the management did not conduct free and fair enquiry, the learned Court below adjudicated the said issue on 23rd October, 2004 and held that the said inquiry was concluded against the respondent workman solely on the basis of his admission to the guilt.

28. Before arriving at the said conclusion, the learned Court below had appreciated the material on record, whereby, it was held that the respondent



workman was pressurized to admit to the guilt as alleged in the charge sheet.

29. In the impugned award, the learned Tribunal has also mentioned that the respondent workman had signed on the typed copy during the course of proceedings and there was nothing in writing separately, therefore, hinting towards coercion on part of the petitioner Corporation.

30. The material on record also suggests that the respondent workman was not permitted to be represented through a defence assistant therefore, denying him a rightful opportunity to fight his case.

31. Now, coming to the other aspect, i.e. if the respondent workman could be reinstated on the basis of setting aside of the enquiry report. The learned Court below held that the petitioner Corporation was given due opportunity to lead its evidence to prove misconduct, however, the only witness examined by the Corporation was the inquiry officer who had issued removal order against the workman.

32. The subsequent paragraphs of the impugned award on the said issue also make it clear that the said witness had only passed the removal order and was not an actual witness to the incident alleged by the officials of the petitioner Corporation and could not have testified about the alleged non-issuance of the tickets by the respondent workman.

33. In light of the same, the learned Court below held that the said misconduct cannot be upheld as the same lacks evidence.

34. Therefore, the Court below had set aside the removal order and directed reinstatement of the respondent workman on the basis of said findings.



35. At this stage, it is imperative to understand the scope of a writ Court's jurisdiction in interfering with the labour or workman disputes which have been already adjudicated by a competent forum. The Hon'ble Supreme Court in a catena of cases has reiterated time and again that the Labour Court/Industrial Tribunal is a final Court of facts in the disputes between the labour or workman and employer or an industry.

36. In the judgment of ***Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union***, (2000) 4 SCC 245, the Hon'ble Supreme Court on the aspect of finding of the facts without evidence, observed that if on the facts proved, the findings recorded by the Tribunal are justified and could not be considered to be based upon "no evidence", there is no justification for the High Court in exercising writ jurisdiction to interfere with the same. Similar findings have also been asserted in ***Iswarlal Mohanlal Thakkar v. Paschim Gujarat Vij Co. Ltd.***, (2014) 6 SCC 434.

37. With reference to the cases discussed above, it can be concluded that, *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 Industrial Tribunal has adjudicated after having gone in the details of both fact and law while carefully adducing 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 has occurred. *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 forming its own view



about the substantial merits of the case. The reasoning must be cogent and convincing.

38. In view of the observations stated above, it can be concluded that the jurisdiction of a High Court to decide such petitions is limited to a supervisory capacity and not as an appellate Court.

39. Now, coming to the aspect of proceedings under Section 33(2)(b) and under Section 10 of the ID Act. It is well settled principle that both the proceedings are separate in nature where the scope and objection of Section 33(2)(b) cannot be expanded to an extent that very scheme of adjudication of an industrial dispute under Section 10 becomes superfluous.

40. Therefore, this Court is of the considered view that both the proceedings have stark difference, whereby, mere approval of the removal order under Section 33(2)(b) of the Act would not amount to the issue attaining finality as the same can be adjudicated by the Labour Court under Section 10.

41. 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, impermissible for this Court in exercising the writ jurisdiction, by liberally re-appreciating the evidence and drawing conclusions on pure questions of fact, as this Court is not in an appellate jurisdiction over the awards passed by the learned Industrial Tribunal.

42. From a bare perusal of the award, it is crystal clear that the findings arrived at by the learned Industrial Tribunal are based on the evidence placed before it by the petitioner Corporation and the workman, and no such



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evidence has been placed before this Court to arrive at a different view, as it did in the impugned award.

43. In light of the same, this Court does not find any force in the arguments of the petitioner and deems it appropriate to the upheld the impugned award dated 3rd August. 2006, passed by the learned Labour Court, Karkardooma Courts, Delhi in ID No. 423/06/1998.

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

45. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 9, 2024
gs/av/db

Click here to check corrigendum, if any