



2024:DHC:3824



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

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Date of order: 15th April, 2024

+ **W.P.(C) 13656/2009**

SURESH CHAND

..... Petitioner

Through: **Mr. Sunita Khorwal, Advocate.**

versus

GOVT. OF NCT OF DELHI AND ANR

..... Respondents

Through: **Rajeev Sharma, adv. For R-2**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Articles 226 and 277 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“a) to issue an appropriate writ, order and direction in the nature of writ of certiorari thereby declaring the interim, award dated 19.02.2009 passed by the court of Shri S.K. Kaushik, Presiding Officer, Labour Court No.XII, Karkardooma Courts, Delhi in case I.D. No.306/2008 titled Suresh Chand Vs M/s. Jankidas Kapur Memorial Hospital and the final award dated 24.02.2009 passed by the court of Shri S.K. Kaushik, Presiding Officer, Labour Court No.XII, Karkardooma Courts, Delhi in case I.D. No.306/2008 titled Suresh Chand Vs M/s. Jankidas Kapur as null, void and inoperative and pass orders thereby quashing and setting aside the same.

b) to issue an appropriate writ, order and direction in the nature of mandamus thereby directing the Respondent No.2- management, to hold and treat the Petitioner as on duty till the

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date of his retirement from service by superannuation with payment of all retiral dues of salary, wages, earned leave, gratuity, bonus, leave encashment, insurance and the other allowance as found due to the Petitioner.

c) Pass such other and further order be passed as this Hon'ble court may deem fit and proper."

2. The petitioner ('petitioner workman' hereinafter) was employed as an attendant with the respondent no. 2 ('respondent Hospital' hereinafter) at a monthly salary of Rs.1,800/- per month since the year 1971.
3. In the year 1996, a dispute arose between the respondent Hospital and the workers over payment of wages, leading to protest in the premises of the respondent Hospital.
4. Aggrieved by the said protest, the respondent Hospital preferred a civil suit bearing no.216/1997 before the Civil Court, New Delhi for injunction against 27 workers seeking to restrain them from protesting in the Hospital premises. The said suit was disposed of *vide* order dated 4th April, 1997 with directions to the workmen to hold such protests outside the premises of the respondent Hospital.
5. Thereafter, the petitioner along with the other workmen were served with a charge sheet dated 15th April, 1997, to which the petitioner duly replied contending that he did not participate in the protest carried out by the other workmen.
6. Pursuant to receiving the said reply, the respondent Hospital initiated a disciplinary enquiry against the petitioner leading to dismissal of his services *vide* order dated 26th November, 1997. The petitioner challenged his



dismissal submitting to the effect that he was illegally terminated and the dispute bearing no. 306/2008 was referred to the Industrial Tribunal ('Court below' hereinafter).

7. Pursuant to completion of the proceedings, the learned Court below passed an interim award dated 19th February, 2009 and the final Award dated 24th February, 2009 thereby, dismissing the claim of the petitioner workman.

8. Aggrieved by the same, the petitioner workman has preferred the instant petition.

9. Learned counsel appearing on behalf of the petitioner workman submitted that the learned Court below erred in ignoring the fact that the petitioner was not supplied with the copy of the complaint, statement of witnesses, documents, therefore, leading to weakening of his case ultimately resulting in his removal from the services.

10. It is submitted that the learned Court below failed to appreciate the fact that the enquiry was conducted in violation of the principles of natural justice, therefore, the same ought to have been set aside by the learned Labour Court.

11. It is submitted that the dismissal of the petitioner from the services amounts to an unfair trade practice as enshrined under Section 22 of the Industrial Disputes Act, 1947 ('ID Act' hereinafter).

12. It is submitted that the learned Labour Court failed to appreciate that the allegations levied upon the petitioner in the chargesheet are false as he was neither a part of any demonstration nor went on strike, rather it was the



respondent hospital that forced him to leave the office premises and barred him from resuming his duties even when he was willing to work.

13. It is submitted that the learned Court below erred in not appreciating the factum that the petitioner workman was not given any subsistence allowance by the respondent Hospital and the same is in violation of his statutory rights.

14. Therefore, in view of the foregoing submissions, the learned counsel for the petitioner submitted that the present petition be allowed and the reliefs be granted as prayed.

15. *Per Contra*, the learned counsel appearing on behalf of the respondent Hospital vehemently opposed the present petition submitting to the effect that whilst passing the impugned award, the learned Court below duly appreciated the material on record and therefore, the present petition is devoid of any merit.

16. It is submitted that the learned Labour Court has rightfully held the enquiry proceedings to be fair and proper and that multiple opportunities to appeal before the officer in enquiry was voluntarily foregone by the petitioner workman.

17. It is submitted that it is well within the domain of the respondent Hospital to issue a chargesheet and to hold a domestic enquiry against any employee who resorts to activities which are subversive to discipline.

18. Therefore, in light of the foregoing submissions, the learned counsel for the respondent Hospital submitted that the present petition, being devoid of any merit may be dismissed.



19. Heard the learned counsel for the parties and perused the records.
20. It is the case of the petitioner workman that the impugned award suffers from illegality as the learned Court below failed to appreciate that the enquiry was conducted without following the principles of natural justice, therefore, denying the opportunity to the petitioner to defend the charges leveled against him.
21. In rival submissions, the learned counsel for the respondent Hospital refuted the above said contentions contending that the learned Court below had duly appreciated the settled position of law and therefore, concluded that the enquiry report does not suffer from any illegality.
22. Thus, the question for adjudication before this Court is whether the impugned award suffers from any illegality or not.
23. Before delving into the same, this Court deems it appropriate to reiterate that this Court is not sitting as an Appellate Court against the award passed by the Industrial Tribunals as the said Tribunals are constituted under the special legislations to adjudicate upon particular issues governed under specific statutes. Therefore, by virtue of the limited powers conferred under Article 226 of the Constitution of India, this Court can only look into the jurisdictional errors, if any, committed by the learned Court below.
24. Now coming to the instant case, the contents of the impugned awards i.e. the interim award dated 19th February, 2009 and final award dated 24th February, 2009, are reproduced herein:

Interim Award dated 19th February, 2009:



“...10. Settled law is that burden lies upon the workman that the enquiry was not proper and it was conducted in violation of the principle of natural justice and in this regard reference can be made to the judgment reported as UCO Bank vs. Presiding Officer 1999 LLP 1039 (Delhi). Now point for consideration as to whether workman has proved that the enquiry was not proper and it was conducted in violation of principles of natural justice.

11. Workman has alleged that the enquiry was conducted in violation of principles of natural justice. For appreciating this contention it is to be seen whether this contention gets support from the report of the enquiry officer and the proceedings conducted by the enquiry officer. Before considering report of the enquiry officer, point that comes up for determination is whether the report of the enquiry officer can be taken as correct. In this regard it is useful to refer to, the judgment reported as Union of India V T.R. Varma; AIR 1957 SC 882 wherein Their Lordships held that when there is a dispute as to what happened before the court or tribunal, the statement of presiding officer in regard this regard is to be generally taken as correct.

12. A perusal of the enquiry report Ex.WW1/2 shows that enquiry officer sent letter dated 20.6.1997 to the- workman, and the management for appearance on 28.6.1997 at the venue of the enquiry but no enquiry proceedings could take place on that day as enquiry officer had already informed both the parties about postponement of enquiry. The enquiry officer thereafter intimated both the parties about the next date of the enquiry as 16.7.1997. As per the enquiry report, on 16.7.1997 workman did not appear till 12.30 pm and the enquiry officer fixed 26.7.1997 at 11.30 am as the next date of enquiry. Workman appeared before the enquiry officer on 26.7.1997 but declined to sign the enquiry proceedings and pleaded for fixing the enquiry for 2.8.1997 on the ground that he had to go on pilgrimage tour. Enquiry officer acceded to this request and enquiry was adjourned for 2.8.1997 for 11.30 am. Further perusal of the enquiry officer's report shows that workman declined to sign his presence on 2.8.1997



due to which enquiry proceedings could not be conducted. Thereafter the enquiry was adjourned for 21.8.1997. On 21.8.1997 workman did not appear despite receiving the letter dated 2.8.1997. The enquiry officer ordered for communicating the workman about the next enquiry date as 11.9.1997 at 11.30 am through publication. The management published this communication in the newspaper dated 6.9.1997. As per the report of the enquiry officer workman did not appear before him on 11.9.1997 and enquiry was then conducted ex parte.

13. *The report of the enquiry officer and the proceedings conducted by the enquiry officer show that enquiry could-not proceed because workman refused to mark his presence on- the enquiry proceedings and thereafter he absented from the enquiry proceedings. When workman himself did not attend the enquiry then he cannot complain of violation of principles of natural justice.*

14. *Now coming to the consideration of the other grounds taken by the workman. Workman has alleged in his statement of claim that he was not given copy of the statements recorded in the preliminary enquiry and, copy of the statements recorded in the Enquiry proceedings. Question of providing copy of the statement recorded during preliminary enquiry would have arisen when management had in fact conducted a preliminary enquiry. During cross examination workman deposed that to his knowledge no preliminary enquiry was conducted. When no preliminary enquiry was conducted by the management then there could be no question of supply of copy of any statement recorded during preliminary enquiry. His allegation of non supply of copy of the statement recorded during enquiry does not merit consideration because he himself refused to sign his presence before the enquiry officer due to which enquiry proceedings could not take place on such dates of hearing on which he appeared before the enquiry officer and thereafter he absented from the enquiry due to which enquiry was conducted ex-parte*



15. Other ground taken by the workman is that the enquiry officer was not changed. In my considered view this plea does not help the workman in showing that principles of natural justice were not followed because he has failed to allege that the enquiry officer was having any hostile animus against him. Further workman has not led any evidence and did not elicit any material in the cross-examination of the enquiry officer MW-1 Mukesh Kumar Sharma which could show that the enquiry officer was having any hostile animus against the workman. His contention that the enquiry officer was an advocate also does not help him because workman has not attributed any specific individual bias against enquiry officer. Further in a case reported as Saran Motors (Pvt.) Ltd. vs. Vishwanath : 1964 II LLJ 139 Their Lordships rejected the objection on account of bias of the enquiry officer who had earlier been engaged by the management as it's lawyer in industrial matters.

16. Another ground taken by the workman in his statement of claim is that management did not change the venue of the enquiry from the office of Atlas Cycle Industries to the hospital. The reason, for change of the enquiry venue given by the workman in the statement of claim Is that when he was called to attend the enquiry proceedings, officer of Atlas Cycle Industries abused him and- he was meted out with Insulting behavior and. he was threatened with dire consequences. This allegation of the workman stands falsified from his deposition during cross-examination that he was threatened by police and certain anti social elements accompanying the management and this Incident took place at Syndicate Bank, Shadi Pur Depot, Delhi. He stated that there was no other incident of extending any threat to him which clearly means that he was not threatened at the enquiry venue as alleged by him.

17. Workman has also alleged that he was not paid any subsistence allowance for April 1997. In fact this claim of the workman is not supported by his letter dated 03.5.97 Ex WW1/21 because he did not state in this letter that he was not paid the



subsistence allowance by the management but what he stated in this letter was that he was not paid his salary. There could be no question of paying any salary of April 1997 to the workman if he was under suspension during this period. Further in the letter dated 01 .10.97 Ex.WW1/11 workman stated that he was getting subsistence allowance @50% and he did not state that he was not paid subsistence allowance for April 1997. Thus his allegation that he was not paid subsistence does' not appear to be correct." Even if it be taken that workman was not paid subsistence allowance for April 1997 then it does not amount to denial of fair opportunity and cannot be a ground for holding that enquiry stood vitiated unless workman shows that a prejudice was caused to him due to non payment of subsistence allowance, in this regard reference can be made to the judgment reported as Indra Bhanu Gaur Vs. Committee, Management of M.M. Degree College and Others: (2004) 1 SCC 281. in the present case workman has not alleged that a prejudice was caused to him due to non payment of subsistence allowance and if at all a prejudice was caused to him, then how that prejudice was caused has not been stated.

18. *Another ground taken by the. workman is that he was not allowed to have any legal assistance of an advocate and was not allowed to take even a neighbour or colleague. In my considered view workman appears to have taken this ground just for the sake of taking a ground for assailing the enquiry because not allowing any legal assistance of an Advocate or any other person could have arisen only when he had taken an Advocate or any other person as his defence assistant before the enquiry officer. From the deposition of the workman during cross examination It Is clear that he had not taken any colleague or an Advocate along with him for defending him as he deposed that he had not taken any colleague for legal assistance and also had not taken any advocate along with him. Moreover, workman did not cooperate during- the enquiry as he refused to sign his presence before the enquiry officer and thereafter, he absented from the enquiry, as*



observed in the foregoing paragraph and so there was no occasion with the enquiry officer to refuse the workman the assistance of a defence assistant.

19. Other ground taken by the workman for assailing the enquiry is that management specifically did not enumerate a list of misconducts and so his dismissal on the basis of the enquiry on the allegation that he committed misconduct is illegal. In my considered view this contention of the workman does not help him because the charge against him as per the report of the enquiry officer was that on 11.4.97 at about 4PM, workman in collusion with other co-workers namely Surender Kumar, Vijender Singh, Vijay Kumar, Babu Lai and Ravinder Kishore had arranged a big demonstration in protest against the hospital management and hurled abuses against ladies staff and the officers besides other workers and not only threatened them but also abused in a filthy language. Workman has stated in the statement of claim that he was served by the chargesheet which clearly means that he knew what charges have been levelled against him. It was for the workman to prove as to which article of charge of this chargesheet did not constitute a misconduct in common parlance and was required to be specifically enumerated as a misconduct by his employer.”

Final Award dated 24th February, 2009:

“...**12.** Since enquiry issue has been decided in favour of the management and against the workman and so now the only point for consideration is whether punishment of dismissal from service by the management needs to be interfered by this court.

13. With the insertion of Section 11 - A in the Industrial Dispute Act, a Labour Court can interfere in the punishment awarded, by the management but it will do so only when it is found that the punishment is disproportionate to the misconduct. It is a settled law that the management has power to direct its own internal administration and discipline but the power is not unlimited and



when the dispute arises, Labour Courts have been given powers to see whether termination of service of a workman is justified. In cases of dismissal on misconduct a Labour Court does not, however, act as Court of Appeal and cannot substitute its own Judgment for that of the management.

14. *In a case reported as Chairman & Managing Director: United Commercial Bank and others Vs. P.C. Kakkar: 2003 LLR 436 (SC) Their Lordships after referring to several authorities, held in para 11 and 12 of the judgment as under:*

"11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was a defiance of logic or moral standards. In view of what has been stated in the Wednesbury's case (supra) the court would not go into the correctness of choice made by the administrator open to him and the court should not substitute its decision to that of the administration. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

"12. To put differently unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court / tribunal, there is no scope for interference. Further to certain litigations it. may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority, to the appellate authority to reconsider the penalty imposed."

15. *In a case reported as Anantnathi Maharaj Jain Temple and its Sadharan Funds, Mumbai Vs. Rajan G. Pandey and another: 2001 LLR 645, Their Lordships in para 4 of the Judgment observed as under:*

"It Is very well settled that when the misconducts are proved in a fair and proper domestic enquiry, it is for the employer to



consider the question of punishment and it is not for the court to interfere with such punishment unless it is shockingly disproportionate and unless no reasonable man would act in that manner "

16. *In the present case charges against the workman were that he along with co-workers Surinder Kumar, Bijender Singh, Vijay Kumar, Babu Lal and Ravinder Kishore organized a procession, raised slogans and hurled abuses in filthy language to hospital employees, staff, officers and ladies staff and threatened them and did not permit them to leave the hospital premises after they had finished their duties and the employees could leave their duty place only after the intervention of police and all these acts constituted misconduct as per clause 2, 4, 5, 10 , 11, 13, 15 of General Service Rules and Conduct.*

17. *As held while deciding enquiry issue vide separate detailed order, management conducted the enquiry into the misconduct charges as per the chargesheet dated 15.7.97. This enquiry was conducted Ex parte when workman absented from the enquiry proceedings. Case of the management is that on the basis of the report the enquiry officer, workman was dismissed from service.*

18. *Point for consideration is whether under the facts and circumstances of the case, this court can interfere into the punishment of dismissal awarded by the management. Here it is useful to refer to the judgment of the Apex Court reported as Apparel Export Promotion Council Vs. A.K. Chopra; AIR 1999 SC 625 wherein Their Lordships observed that courts are not to normally interfere with either the factual findings regarding guilt or punishment imposed by departmental authorities.. Another Judgment that can be referred in this behalf is the Judgment reported as Chairman & MD V.S.P. & Ors. Vs. Goparaju Sri Prabhakara Hari Babu: 2008 IV AD (S.C.) 382 wherein their lordships in para 17 of the Judgment observed that once it is found that all the procedural requirements have been complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. It is was*



further observed that the superior courts only in some cases may invoke the doctrine of proportionality and if the decision of an employer is found to be within the legal parameters, the Jurisdiction would ordinarily not be invoked when the misconduct stands proved. Their Lordships referred to the earlier Judgment reported as Sengeroid Remedies Ltd. Vs. Union of India & Ors.; (1999) 1 SCC 259.”

25. Upon perusal of the contents of the impugned awards, it is made out that the learned Court below adjudicated the claim of the petitioner workman mainly on two grounds, i.e. violation of the principles of natural justice and claim of non-payment of subsistence allowance.

26. In its findings, the learned Court below observed that the petitioner workman voluntarily skipped the enquiry proceedings and failed to appear or declined to sign the enquiry proceedings despite regular intimation through notices, letters, newspaper, publications by the enquiry officer thereby causing hindrance in the process of the enquiry, therefore, the enquiry proceedings were proceeded *ex parte* against the petitioner workman.

27. While affirming the findings of the enquiry report, the learned Court below held that the enquiry conducted by the enquiry officer was just, fair and in consonance with the principles of natural justice and that the punishment of dismissal from service cannot be considered shockingly disproportionate to the charge, therefore, did not call for interference by the learned Court below.

28. The rule regarding conducting a departmental enquiry without the presence of the delinquent is clear and a purposeful delay in the proceedings



by the said delinquent is held to be a disruption and a ground to proceed *ex parte*.

29. In this regard, the Hon'ble Supreme Court and this Court has reiterated that such disruption in the enquiry not only infringes upon right of the parties involved but causes social and economic instability as well.

30. As per the observation of the learned Court below, it can be concluded that the petitioner workman was duly provided ample opportunity by the enquiry officer and his right was foregone after he chose to do so, therefore, he cannot claim vitiation of the proceedings when he himself chose to give up his right.

31. In the impugned award, the learned Court below duly referred to the statements of claim and the learned Court below afforded adequate opportunities to the parties to substantiate their respective claims. The relevant extracts of the impugned award as reproduced earlier make it crystal clear that the petitioner workman had failed to substantiate his claims of violation of the principles of natural justice, therefore, the learned Court below upheld the enquiry report.

32. As reproduced earlier, the limited extent of the powers conferred to this Court does not allow this Court to examine the evidence, therefore, this Court is satisfied with the reasoning provided by the learned Court below with regard to the manner in which the enquiry against the petitioner workman was conducted.

33. Now coming to the aspect of providing the subsistence allowance. The material on record clearly depicts that the learned Court below analyzed the



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letter dated 3rd May, 1997 (Ex WW1 1/21) wherein a demand was made by the petitioner for payment of his pending salary.

34. In the above said letter, the petitioner never raised a plea for non-payment of subsistence allowance. Furthermore, in another letter dated 1st October, 1997 (Ex WW1/11) the learned Court below observed that the petitioner clearly stated that he was getting 50 percent of his salary as subsistence allowance.

35. In view of the foregoing discussion on fact and law, it is made out that the learned Court below had appreciated the material facts and evidence placed on record and therefore, held that the misconduct on part of the petitioner workman was duly proved.

36. In light of the above, this Court is of the view that the instant matter was heard at length by the learned Labour Court and the petitioner workman was granted sufficient opportunities to make representation in the proceedings before the enquiry officer before conclusion of the enquiry *ex-parte*.

37. The petitioner has failed to make out a case to show that the learned Court below has acted in an arbitrary manner. The petitioner had sufficient opportunity to represent its case and to lead evidence and the same is apparent from the findings recorded in the impugned award. Taking note of the same, the learned Court has rightly held that the services of the workman were not terminated illegally and that the enquiry proceedings have been held in accordance with the law.



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38. This Court is of the considered view that the petitioner has failed to make out a case to show that the learned Labour Court has acted in an arbitrary manner. There is nothing on record to show that the learned Labour Court has exceeded its jurisdiction, has usurped its jurisdiction, or acted illegally; in contravention to any law.

39. Hence, this Court is of the considered view that the grounds raised by the petitioner to seek the reliefs, as prayed, are insufficient and cannot be entertained by this Court.

40. In regard to the discussions of facts of the instant case as well as the law, this Court is not inclined to exercise its extraordinary writ jurisdiction under Article 226 of the Constitution of India as there is no force in the propositions put forth by the petitioner.

41. In view of the foregoing discussions, this Court finds no infirmity in the impugned interim Award dated 19th February, 2009 and final Award dated 24th February, 2009 passed by the learned Presiding Officer, Labour Court, No. XII, Karkardooma Courts, Delhi in I.D. No.306/2008.

42. In light of the same, the present petition, being devoid of any merit, is dismissed, along with pending applications, if any.

43. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 15, 2024

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