



2024:DHC:3324



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

% **Reserved on : 31st January, 2024**
Pronounced on: 29th April, 2024

+ **W.P.(C) 12618/2018 and CM APPL. No.8183/2019**

**M/S MOOLCHAND KHAIRATI RAM HOSPITAL AND
AYURVEDIC RESEARCH INSTITUTE** Petitioner
Through: Mr.Gaurav Bahl, Advocate

versus

SH BANWARI LAL Respondent
**Through: Mr.Fidel Sebastian and Mr.Rishi
Nandy, Advocates**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

JUDGMENT

CHANDRA DHARI SINGH, J

1. The instant writ petition has been filed on behalf of the petitioner for seeking following reliefs:

“(i) issue a writ of certiorari or any other writ or order or direction calling for the records of ID NO. 2483-16 from the learned presiding officer, Labour court No -V and after perusing the same, quash the award and order dated 19.05.2018.

(ii) pass any such order or further orders that this Hon'ble Court may deem just and fair in the facts of the case, in the interest of justice.”



FACTUAL MATRIX

2. The relevant facts necessary for the adjudication of the instant petition are reproduced herein below:

- a. The petitioner is a trust-run hospital and the respondent was employed as *Safai Karamchari* with the petitioner since 20th December, 1988.
- b. A dispute arose between the management and the employees regarding the implementation of 5th Pay Commission benefits.
- c. The petitioner issued a chargesheet on 15th September, 1998 to the respondent, alleging that the respondent harassed the employees of the petitioner. Pursuant to which a domestic enquiry was initiated against the respondent. The same was intimated to the respondent vide registered post and the enquiry proceedings were published in a newspaper.
- d. The enquiry officer upon completion of the enquiry proceedings, submitted its report on 16th July, 1999.
- e. On the basis of the chargesheet and enquiry proceedings, the respondent was dismissed from the service on 15th September 1999.
- f. The petitioner filed an approval application bearing no.97/99 seeking approval on the dismissal of the service of the workman under Section 33 of the Industrial Disputes Act,



1947(hereinafter “ID Act”).

- g. While adjudicating upon the aforesaid application, the learned Industrial Tribunal vide order dated 6th January 2005, gave the approval sought by the petitioner to dismiss the respondent from services and accordingly, allowed the aforesaid application.
- h. Aggrieved by the dismissal of his services, the respondent filed a claim petition before the learned Labour Court seeking reinstatement along with backwages.
- i. Pursuant to which, the learned Labour Court vide order dated 8th April 2008 adjudicated upon the issue whether the claim of the respondent is maintainable in lieu of the approval granted by Industrial Tribunal dated 6th January 2005.
- j. The learned Labour Court held that the charges of misconduct against the respondent were proved as per the OP no. 97/99, therefore since the learned Tribunal approved dismissal of the workman and the aforesaid observation of the learned Tribunal is *res-judicata* before the Learned Labour Court. Hence, it was held that the claim of the respondent is not maintainable and barred by the principles of *res judicata*.
- k. The respondent workmen challenged the aforesaid order before the Coordinate Bench of this Court by filing a writ petition bearing W.P (C) 12755/09.
- l. The Coordinate Bench vide order dated 27th April 2011 set-



aside the order of the learned Labour Court dated 8th April 2008 and held that unlike a reference under Section 10 of ID Act, the scope of enquiry under Section 33(2)(b) of the ID Act is very limited. Accordingly, the Court held that the proceedings under Section 33(2)(b) of the ID Act cannot operate as *res-judicata* in a subsequent proceeding before an appropriate forum.

- m. The learned Labour Court vide its award dated 19th May, 2018 held that the respondent was terminated without following the due procedure under section of 25F of the ID Act and is entitled to reinstatement along with full backwages and other consequential benefits.
- n. Aggrieved by the impugned award, the petitioner has filed the instant petition.

PLEADINGS BEFORE THIS COURT

3. The petitioner filed the instant petition stating as follows:

“GROUNDS

28. That the Impugned Award is arbitrary, perverse, illegal and contrary to the settled principles of industrial adjudication.

29. That the Ld labour court has erroneously held that since the management failed to prove the proceedings of the enquiry or the enquiry report, 'the only conclusion which can be drawn is that either there was no domestic enquiry or if such domestic enquiry was conducted the same was not according to principle of natural justice. The Id labour court has failed to appreciate



that the issue of enquiry has already been decided by the Id presiding officer of the industrial tribunal in OP NO. 97 of 99 vide order dated 07.04.2004, holding that the enquiry conducted by the management is not fair and proper and thus the Id presiding officer was not required to return any finding on the issue of enquiry.

30. That the Id presiding officer has failed to appreciate that when the domestic enquiry conducted by the Managment was held vitiated by the Ld Presiding officer of the Industrial Tribunal in OP NO. 97 of 99, the issue was framed on the same day to the effect, 'whether the respondent (workman) has committed misconduct as alleged against him and thereafter the management adduced its evidence on the aforesaid issue of misconduct against the workman and the Ld. presiding officer in the above said OP no 97 of 99 held that the management has successfully proved the misconduct committed by the respondent workman and therefore when the misconduct had already stood proved against the workman, the management was not required to prove the said issue of the misconduct against the workman again.'"

4. The respondent filed the reply to the instant petition stating as follows:

"2. It is humbly submitted that the Mool Chand Kharaitiram Hospital was the only major private hospital in Delhi and it was making payment of wages to the workmen at the rates which were above that of the Government Hospitals. Subsequently, the management entered into a tripartite agreement with the union and agreed that they would make payment of wages to the workmen on the basis of the



recommendations of the Central Pay Commissions. Accordingly the management implemented the recommendations of the 3rd and 4th pay commissions but, however, when it came to the implementation of the 5th Pay Commission the management wanted to renege upon the solemn agreement entered into between parties which resulted in the union Industrials Dispute claiming payment of wages as per recommendations of the 5th Pay Commission. 3. During the pendency of the Industrials Dispute the management victimized the entire union leadership of the union including the deponent and also terminated more than 400 permanent workmen out of a total strength of 850 workmen. The management declared on all out and no-holds barred was on the union. In the management's enthusiasm to finish the union the leading medical professionals, technicians and workmen were terminated and the hospital lost its prime place among the private hospitals in Delhi. Today the hospital is having less than 50 permanent workmen against whom also management had declared a war and victimizations are the rule of the day. It is, however, humbly submitted that other than very few exceptions the terminations of the services of the workmen have been held to be illegal by the labour courts and the services of the workmen reinstated en-masse by this Hon'ble Court."

5. The petitioner filed its rejoinder to the counter- affidavit of the respondent stating as follows:

"That the contents of the corresponding para of the counter affidavit are false wrong and denied, it is false hence denied that during the pendency of the industries dispute the management victimized the entire union leadership of the union



including the deponent and also terminated, more than 400 permanent workmen out of total strength of 850 workmen. It Is further false hence denied that the management declared on all out and noholds barred was on the union. It is further wrong and denied that In the alleged management's enthusiasm to finish the union the leading medical professionals, technicians and workmen were terminated and the hospital lost it's prime of place among the private hospitals in Delhi. As far as the number of permanent workmen are concerned the same is not a matter to be decided or facts in issue in the present writ petition and all these stories have been created by the respondent just to give legs to his false stands. It is further submitted that the respondent has not given any details of any order of the hon'ble court as mentioned in the corresponding para so no comment over the same can be made.”

6. The petitioner filed the written submission on 14th February 2024

7. The respondent filed the written submission on 20th February 2024

SUBMISSIONS

(On behalf of the petitioner)

8. Learned counsel appearing on behalf of the petitioner submitted that the impugned award has been passed without taking into consideration the evidence and pleadings on record.

9. It is submitted that the learned Labour Court erred in holding that the petitioner's failure to prove the enquiry proceedings meant either no enquiry was conducted or in case the enquiry was conducted, the same lacked fairness.



10. It is contended that the domestic enquiry conducted by the petitioner was vitiated by the learned Presiding Officer, Industrial Tribunal, in OP No. 97 of 99 whereby, it correctly held that the petitioner management had successfully proved the misconduct committed by the respondent workman as, the misconduct of the respondent workman is proved, the petitioner management was not required to prove the said issue of the misconduct against the workman again.

11. It is further submitted that the impugned award is arbitrary, perverse, illegal and contrary to the settled principles regarding the adjudication of industrial dispute.

12. It is submitted that the respondent committed a serious misconduct by indulging in *gherao*, *dharana* and stoppage of work. Mrs. Sumita Pillai, Mr. M K Kaushik and Mr. S.K. Sagar were examined by the petitioner and their testimonies were consistent to the effect that the workman along with other employees had provoked and instigated the employees not to work and that the female staff was harassed, humiliated and threatened with dire consequences.

13. In view of the aforesaid submissions, the learned counsel for the petitioner submitted that the instant petition may be allowed and the reliefs as sought may be granted.

(On behalf of the respondent)

14. *Per Contra*, learned counsel appearing on behalf of respondent vehemently opposed the instant petition submitting to the effect there is no



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legal infirmity or perversity in the impugned award which merits interference of this Court.

15. It is submitted that the findings of the Learned labour Court in an application under Section 33(2)(b) of the ID Act only have a *prima facie* value.

16. It is submitted that the respondent's dismissal was based on unfounded accusations whereby the respondent was removed on allegations assaulting senior officers, however, the petitioner failed to provide any evidence supporting these allegations against the respondent.

17. It is contended that the enquiry proceedings conducted by the petitioner were in violation of principles of natural justice as the respondent was not given an any opportunity to present his scase and the enquiry proceedings were done *ex- parte*.

18. In view of the aforesaid submissions, learned counsel appearing on behalf of the respondents submitted that the instant writ petition being devoid of any merit is liable to be dismissed.

ANALYSIS AND FINDINGS

19. The matter was heard at length with arguments advanced by the petitioner in person as well as the learned counsel appearing on behalf of the respondents. This Court has also perused the entire material on record and has duly considered the factual scenario of the matter, judicial pronouncements relied upon by the parties, and pleadings presented by the learned counsel for the parties.



20. It is the case of the petitioners that the learned Labour Court has wrongly held that the petitioner management did not conduct enquiry proceedings or in case it was conducted, the same was in violation of principles of natural justice. It is further contended that the learned Labour Court overlooked both the observations made by the learned Industrial Tribunal in OP no. 97 of 99 wherein it was held that the respondent had misconducted and that the instant industrial dispute is not maintainable.

21. In rival submissions, the respondent submitted that the impugned award does not suffer from any illegality. It is argued that the findings of the Labour Court in an application under Section 33(2)(b) of the ID Act only holds a *prima facie* value.

22. In light of contentions raised, the short question which falls for adjudication before this court is whether the impugned award merits interference of this court under Article 226 or not.

23. For the purpose of adjudication of the instant petition, the impugned award is reproduced herein below:

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PART-E
WORKMAN'S EVIDENCE

13. In support of his claim' workman examined himself as WWI and deposed along the lines of statement of claim and also proved on record the following document

a) Ex- WWI/1 - Letter dated 15.09.94 issued by management to the workman.

b) Ex-WWI/2 -Photocopy of letter dated 20.10.1998' written by the workman to management. (Ex WWI/2 de-exhibited and marked as Mark A)



- c) Ex-WW1/3 -Copy of demand notice.
- d) ExWW1/ M1-Copy of order passed in OPNo. 97/99.
- e) EXWW1.M2- Copy of order of Hon'ble High Court order.

14. During the course of cross examination, not even a single question has been put that notice w.r.t charge sheet was ever sought to be served or served upon the claimant and in fact neither the charge-sheet or the subsequent enquiry proceedings were put to the WW1 and he was only cross-examined w.r.t his knowledge regarding the earlier Industrial Dispute Petition No. 97/1999.

PART-F **MANAGEMENT EVIDENCE**

15. The management examined Sh Satish Kumar- its official as MW1 who also deposed on the lines of the defence taken in the reply to the claim but did not prove on record any document in support of the averment made in the WS or evidence.

16. During the course of cross-examination he admitted that he was not privy to any of the alleged incident of assault committed by the claimant as mentioned in the WS or in the chief examination.

PART-G **FINDINGS/CONCLUSION**

17. After considering the claim, reply, document and the evidence led on record, the issue wise decision of the court is as under

18. Issue No.1 Whether management conducted domestic enquiry according to principles of natural justice, legally and fairly? OPM.

19. The onus to prove this issue was upon the management.

20. As already observed earlier, what to speak of leading any evidence to prove that the domestic enquiry was conducted by following the provisions of natural justice, even the said



proceedings of the enquiry or the enquiry report itself has not been placed on record by the management.

21.The photocopies of the said enquiry proceedings so placed on record cannot be looked into for any purpose whatsoever as the same have neither been relied upon during the course of evidence by the management by tendering the same in evidence nor proved in accordance with the provisions of Indian Evidence Act.

22.In these circumstances, the only conclusion which can be drawn is that either there was no domestic enquiry or if any such domestic enquiry was conducted, the same was not according to principle of natural justice.

23. Issue No.1 is accordingly decided against the management.

24. Issue No. 2- Whether workman services were terminated illegally/and or unjustifiably by the management on 15.02.99?

25. In view of finding of the Issue No. 1 whereby the court has held that the management has miserably failed to even prove that it ever conducted any enquiry and further finding of the court that in any other case, by not leading any evidence qua the said enquiry, the suspension based on the report of the said enquiry proceedings cannot be sustained.

26. Issue No.2 is decided in favour of the claimant holding that his services were terminated illegally and unjustifiably by the management.

27. Issue No.3- Whether workman is entitled for relief of reinstatement, payment of back wages with continuity of service and all other legal benefits? OPW.

28. In view of the outcome of the issue No.2 as the services of the claimant were terminated without following the due procedure of section of 25F of the ID Act, the court hereby hold that he is entitled to the relief of reinstatement with full back wages and other consequential benefits.

29. Issue No.3 is decided in favour of the claimant.

Ordered accordingly.”



24. The learned Tribunal stated that the workman had produced certain documents to support his claim. It observed that during cross examination, the petitioner management did not question the workman regarding whether the charge-sheet was ever served to him, instead, respondent workman was cross-examined only on the aspect if he had knowledge of the earlier Industrial Dispute petition no.97/99.

25. Now adverting to the evidence produced by the petitioner management. On the said aspect, the learned Tribunal stated that the petitioner examined its official namely Sh. Satish Kumar who deposed as per the defence taken by the petitioner, however, the testimony of the said witness was not supported by any document.

26. Moreover, during the course of cross- examination, the witness admitted that the he was not privy to the alleged incident of assault by the respondent workman.

27. Pursuant to which, the learned Tribunal framed three issues which are reproduced as follows:

- a. Whether the management conducted domestic enquiry according to principles of natural justice, legally and fairly?
- b. Whether the workman was terminated illegally/and or unjustifiably by the management on 15th February 1999?
- c. Whether workman is entitled for relief of reinstatement, payment of back wages with continuity of service and all other legal benefits?



28. *Qua* issue no. 1, the learned Tribunal held that the photocopy of the entire enquiry proceedings placed on record cannot be looked into as they have not been relied upon during the stage of evidence by the petitioner management and the same is not in accordance with the provisions of Indian Evidence Act. Hence, the issue no. 1 was decided against the petitioner.

29. *Qua* issue no. 2 the learned Tribunal while referring to its observations on issue no. 1 held that the petitioner management failed to prove that the enquiry was ever conducted therefore, suspension of the respondent workman based on the aforesaid enquiry report is wrongful and unsustainable. Accordingly, decided the issue no. 2 against the petitioner.

30. *Qua* issue no. 3, the learned Tribunal held that the respondent workman was terminated without following the due procedure under Section 25F of the ID Act. Hence, the respondent is entitled to reinstatement along with full backwages and other consequential benefits.

31. Now adverting to the adjudication of the instant petition on merits.

32. It is germane to reiterate that the learned Tribunal has highlighted that during cross examination of the respondent, the petitioner management questioned the respondent workman regarding if he had knowledge of the earlier dispute petition bearing no. 97/99 and the testimony of the petitioner's witness was not supported by any document and during the course of cross-examination, the petitioner's witness admitted that he was not privy to the alleged incident of assault by the respondent workman.

33. In view of the aforesaid discussion, this Court is of the view that petitioner is placing reliance on the earlier industrial petition wherein the



respondent workman's dismissal from the services was approved by the learned Industrial Tribunal. It is further pertinent to note that the petitioner has not produced any material on record to establish that the enquiry proceedings was conducted in a fair manner.

34. It is a settled position of law that an application under Section 33 (2)(b) of the Act has a very limited scope of enquiry and it shall restrict to adjudicate only upon whether the termination of the respondent on which approval is being sought, is not with an intent to punish or to prejudice the workman in the pending dispute. The Industrial Tribunal under Section 33(2)(b) is not required to go into the merits of the misconduct and is at best a *prima facie* view on the dispute.

35. Under Section 33(2)(b) the Industrial Tribunal has no jurisdiction to adjudicate upon the merits of the dispute and if any findings are given by the Industrial Tribunal in such proceedings, then it would be without jurisdiction and cannot operate as *res judicata* in a subsequent proceedings before any appropriate forum.

36. The aforesaid position of law is enunciated in the judgment of ***Delhi Transport Corporation v. Sardar Singh Ex. Conductor, 2001 SCC OnLine Del 1350*** as follows:

“17. The fundamental distinction between Section 10 and Section 33 came up for consideration before a Division Bench of this Court in DTC v. Ram Kumar, 1982 (2) LLJ 199. Relying on the pronouncement of the Hon'ble Supreme Court in Atherton West and Company Ltd. v. The Suti Mill Mazdoor Union, 1953 II LLJ 321, and Lakshmi Devi Sugar Mills Ltd. v. Ram Sarup, 1957-1 LLJ 17, it was held that proceeding



under the two are distinct, and if approval is accorded under Section 33 it would not operate as res judicata in Reference under Section 10. The Division Bench further took support of the opinion of the Apex Court expressed in G Mckenzie and Co. Ltd. v. Its Workmen, 1959 1 LLJ 285, to the effect that “the purpose of Section 33 of the Act is merely to give or withhold permission and not to adjudicate upon an industrial dispute, any finding under S. 33 would not operate as res judicata and bar the raising of an industrial dispute.” The Division Bench further observed that the Apex Court “has already laid down that what is done under Section 33(2)(b) is not adjudication. That Section 11-A has not enhanced the power of the Tribunal while dealing with an application under Section 33 was also emphasised in 1973-1 LLJ 278.”

37. In view of the aforesaid judgment, this Court is of the view that it is a settled position of law that there is a distinction between Section 33 and Section 10 of I. D Act. Since the proceedings under Section 33 of I.D Act only pertains to giving or withholding permission and does not involve adjudication upon the industrial dispute, therefore, any finding under Section 33 of the Act would not be considered as *res judicata* and it would not act as a bar in raising of an industrial dispute.

38. Therefore, the contention of the petitioner that findings of the learned Tribunal under Section 33 of the ID Act in OP. 97/1999 will operate as *res judicata* while adjudicating a claim of the workman under Section 10 of the ID Act does not hold water. Since, the adjudication of the aforesaid OP under Section 33 of ID Act is merely a *prima facie* view on the dispute and is restricted to adjudicating upon the fact whether the dismissal of the



employee from the industry shall be permitted or not. Unlike Section 10 of the ID Act wherein the learned Labour Court deeply delves into the merits of the case and renders a decision upon considering the pleadings and evidence placed on its record.

39. This Court is of the view that the learned Labour Court has rightly not relied upon the observations made by the learned Tribunal under Section 33 of the ID Act.

40. It is further held the learned Labour Court has rightly held that in absence of any documentary evidence on record, the enquiry proceedings have been conducted in violation of principles of natural justice as the proceedings were conducted *ex- parte* without affording a chance to the respondent to present his case.

41. The learned Tribunal has correctly observed that on the basis of such a biased enquiry report, the respondent has been wrongly terminated hence, the respondent is entitled to reinstatement along with full backwages and other consequential benefits.

CONCLUSION

42. In view of the aforesaid discussion, this Court is of the view that the impugned award does not suffer from any illegality and does not warrant any intervention of this Court by way of issuance of any writ as the petitioners have not been able to make out a case in their favor.

43. Accordingly, this Court upholds the impugned award dated 19th May, 2018 in ID no. 2483/2016 passed by the learned Presiding Officer, Labour Court-V.



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44. The instant petition is dismissed along with pending applications, if any.
45. The judgment be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 29, 2024
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Signature Not Verified

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By: GAURAV SHARMA
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