



2026:DHC:3827-DB



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

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Date of Decision : 05.05.2026+ **LPA 451/2013****YOGINDER SHARMA**

.....Appellant

Through: Mr. H. K. Chaturvedi, Mrs. Anjali
Chaturvedi and Mr. Sagar Chaturvedi,
Advs.

versus

THE MANAGEMENT OF M/S ARAVALI LEASING LTD.

.....Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****V. KAMESWAR RAO, J. (ORAL)**

1. This *intra* Court appeal lays a challenge to the order dated 02.04.2013 passed by the learned Single Judge whereby the writ petition was dismissed. The challenge in this appeal is primarily to an award made by the Labour Court-01, Karkardooma Courts, Delhi in ID No.489/1992, whereby the Labour Court answered against the appellant with respect to his termination.
2. The facts as noted are that the appellant was terminated on 27.09.1988, on the purported ground of misconduct. The case of the appellant before the Labour Court was that the termination is in violation of the principles of natural justice.



3. The learned Single Judge noted that the respondent/management established the charge against the appellant before the Labour Court and the witnesses produced by the respondent/management were cross-examined on behalf of the appellant. The learned Single Judge also noted that the Labour Court after analyzing the evidence concluded that the alleged misconduct was that the appellant has not obeyed the directions given by the respondent/management to collect the payment from customers of the respondent, which was part of his duty. On the basis of the evidence, the Labour Court concluded that the charge against the appellant is proved, which resulted in an award whereby the Labour Court had answered in favour of the respondent/management.

4. In the writ petition various submissions were advanced including the violation of principles of natural justice, the penalty being disproportionate and that, even if the management had proved the charge before the Labour Court, the appellant shall be entitled to the back wages from the date of termination till the date of award.

5. The learned Single Judge answered all the submissions made on behalf of the appellant in the impugned order, in the following manner:-

“19. Having heard learned counsel for the parties, considered the impugned award, the record, and the respective submissions, I am of the view that there is no merit in this petition and the same is liable to be dismissed. I have set out hereinabove the submissions made by both counsel with regard to the evidence brought on record by the parties, on the basis of which the finding of guilt has been returned against the petitioner by the Industrial Tribunal. The purpose of extracting the relevant part of the evidence of the management and the respective submissions of the parties is to demonstrate that the present is not a case of “no evidence”. It is also not a case



where the finding of guilt can be said to be contrary to the evidence brought on record. Though the management's witnesses may not have substantiated the allegations beyond those which are contained in the termination order, so far as the allegations contained in the termination order are concerned, they stand substantiated and proved on the basis of the evidence of the parties. I may set out herein below the discussion in the impugned Award – analyzing the evidence led by the parties, on the basis of which the learned Industrial Adjudicator has arrived at the find of guilt against the Petitioner. The same reads as follows:

“8. The main witness of the management Shri H.P.Lakhotia deposed in support of the charges in his affidavit Ex.MW2/A that on 27.09.88, the claimant committed indiscipline by not complying with his order/instructions as refused to collect the deposits from Bahadurgarh which was a part of his duty being done in routine within and outside Delhi i.e. collection of deposits and other payments on behalf/account of the company. The witness also proved the bills of the expenses incurred by the claimant as Annexures A & B and the payment vouchers made to the claimant vide Annexures C & D for collection of deposits within and outside Delhi.

9. This witness further deposed that claimant used abusive language in indecent behaviour in the office. Earlier also, the claimant had committed act of in subordination and indiscipline and he was let off after warning. The witness also deposed that during conciliation proceedings, the claimant was offered to join the company but he failed to do so. In support of the deposition of Shri Lakhotia, another witness of the management Shri D.K.Bhalla also deposed that claimant used to use abusive language and caused insubordination in the office who was working as General Dealing Clerk and used to collect deposits on behalf of the management within and outside Delhi. He also corroborated that on 27.09.88, when he was asked



by Shri Lakhotia to collect deposits from Bahadurgarh, the claimant refused and as such caused insubordination leading to termination of his service. Similarly, MW4 Shri Yogeshwar Datt Vats deposed in corroboration of testimony of other witnesses. However, there is substance in the submissions by Ld. A.R. for the claimant and MW3 has not supported the case/charges while MW4 added without corroboration that claimant had also abused Shri D.K.Bhalla in his presence.

10. Regarding past conduct of the claimant, Shri Lakhotia admitted during his cross-examination that incident dated 27.09.88 was the first and last incident with him when the workman refused to carry on his instructions. Further he was not able to remember whether prior to termination of services, the claimant had committed any act of insubordination or indiscipline.

11. In fact, the defence of the claimant as put to this witness was that he had gone to collect the dues on the day of incident as per the instructions and never refused. The claimant in fact has taken contradictory stand as it was not so suggested to MW1 Shri D.K.Bhalla that claimant went to collect the dues and never refused to obey the instructions. It is also not a case of the claimant in his affidavit wherein the claimant's case was that his services were terminated on 27.09.88 on account of demand of enhancement in the salary and false charge of indiscipline leveled vide termination letter dated 27.9.88. The claimant admitted that he was maintaining dispatch register and was also going to bank to deposit cheques etc, however, he denied during cross-examination that he was ever sent to make collection of the dues.

12. On the face of contradictions and the submissions made by the claimant that it was not part of his duty to collect payment from the customers for the company/management, the management is able to prove the charges against the claimant as per evidence



adduced by the management on charge. The claimant also admitted that he had refused to accept the cheque dated 27.9.88 which was given to him along with letter of even date i.e. Ex.WW1/M24 which contains the charges against him.”

20. The purpose of setting out the respective submissions is also to demonstrate that the endeavour of the petitioner is to require this Court to reappreciate the evidence, as if this Court is sitting in appeal over the impugned award. However, ld. Counsel has not been able to point out any perversity, or fundamental error of approach in the impugned Award. It is well-settled that this Court-while exercising power of judicial review under Article 226 of the Constitution of India, in respect of an order passed by a Tribunal, does not sit in appeal and it is not for this Court to re-appreciate the evidence on merits. Consequently, the finding of guilt returned by the Labour Court does not call for interference by this Court in exercise of writ jurisdiction.

21. Learned counsels have made substantial arguments on the second plea of the petitioner, i.e., with regard to the date from which the termination order should take effect. The submission of the petitioner is that because the respondent management did not hold any domestic inquiry whatsoever before issuing the letter of termination dated 27.09.1988 and the inquiry was conducted for the first time before the Labour Court and, on that basis, the termination order has attained legality, the date of termination should be taken as date of the award and the petitioner should have been held as entitled to pay & allowances up to the date of the award, i.e., 06.11.2003. The petitioner has sought to place reliance on Gujarat Steel Tubes Ltd. (supra) in support of this submission.

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28. Reliance placed by Mr. Chaturvedi on Prem Chand (supra) is of no avail since this decision proceeds on the basis of Gujarat Steel Tubes Ltd. (supra), which has been held to be per incuriam, as aforesaid, and the decision in the later decision in R. Thiruvirkolam (supra) was not brought to the notice of the Division Bench when it rendered its decision in Prem Chand



(supra). The argument of Mr. Chaturvedi that Gujarat Steel Tubes Ltd. (supra) being a decision of three Hon'ble Judges, whereas the decision in R. Thiruvirkolam (supra) being a decision of two Hon'ble Judges, the decision in Gujarat Steel Tubes Ltd. (supra) should be followed by this Court, has no merit. This is for the reason that the Supreme Court while deciding R. Thiruvirkolam (supra) has examined all the relevant decisions on the subject including Gujarat Steel Tubes Ltd. (supra) in the light of the Constitution Bench judgment in Kalyani (supra) and has concluded that Gujarat Steel Tubes Ltd. (supra) is per incuriam. That being the position it is not for this Court to disregard the later decision in R. Thiruvirkolam (supra). Consequently, the decision in Devender Roy (supra) has no application in the facts of the present case.

29. There is yet another aspect that needs to be taken note of. The employer has two options while dealing with delinquent workman. The employer may serve a charge-sheet on the delinquent workman, hold a departmental inquiry and then take disciplinary action against the workman. Alternatively, it may take disciplinary action against the workman on the basis of the misconduct which it may attribute to the workman. In the first case, if an industrial dispute is raised and the punishment is questioned, the Industrial Adjudicator would firstly determine the issue with regard to the validity of the domestic inquiry. If the domestic inquiry is found to be in compliance with the principles of natural justice, and the applicable rules, the Industrial Adjudicator would examine whether the findings returned in the domestic inquiry are perverse, or not. The scope of the examination undertaken by the Industrial Adjudicator in relation to the domestic inquiry once it is held to be in compliance of the principles of natural justice and validly held, is limited. The Industrial Adjudicator does not sit as a Court of appeal. Therefore, unless the findings returned in the domestic inquiry are perverse, the Industrial Adjudicator does not interfere with the same. Even if the Industrial Adjudicator would have come to a different conclusion on the appreciation of the evidence on record, it is no ground for the Industrial Adjudicator to interfere with the findings reached in the



domestic enquiry, if the view taken by the Inquiry Officer is a plausible view.

30. In the situation where the domestic inquiry is not held at all, and the delinquent workman is punished by the management without such an inquiry, but is later or simultaneously made aware of the charges against him, the management consciously takes the decision that in case the workman raises an industrial dispute, it would have to establish the charge before the Industrial Adjudicator by leading evidence. Therefore, the management by straightaway taking disciplinary action against the delinquent workman conveys its willingness to establish the charge before the Industrial Adjudicator. The scope of the inquiry before the Industrial Adjudicator in this eventuality is much wider, since the Industrial Adjudicator decides for itself whether, or not, the charge is established by the management.

31. The second situation, i.e., where no prior inquiry is held before the delinquent workman is punished, would be a situation which places the delinquent workman in a more advantageous position inasmuch, as, the inquiry is conducted before an independent judicial officer and not in-house by the employer-where the scope of interference by the Industrial Adjudicator is somewhat limited. In my view, there is no reason why a management-which is willing to prove the charge before an Industrial Court, rather than resort to an in-house inquiry, should be burdened with payment of wages up to the date of the award even when the charge against the delinquent workman stands proved before the Industrial Court.

32. Lastly, the submission of Mr. Chaturvedi that the punishment of dismissal from service was not justified, even if the charges are assumed to be proved, may be examined. The order of dismissal makes allegations of indiscipline and negligence on the part of the petitioner. Indiscipline has been attributed on account of non-compliance of the instructions by the petitioner of his senior Mr. H.P. Lakhota, who had asked the petitioner to collect deposit from Bahadurgarh on account of the company. This charge stands duly proved. This charge, by itself, is serious enough to warrant dismissal from service.



Refusal by workman to obey the orders given to him which fall within the scope of his duties clearly tantamounts to insubordination. Such insubordination strikes at the very root of the employer and employee relationship, as the employee is duty bound to obey lawful and justified instructions of the employer. If the employee does not obey orders of the management which are legitimately given, and is still allowed to continue in employment, the same would completely destroy and vitiate the atmosphere in the industry. It would breed indiscipline, insubordination and make it impossible for the industry to thrive. Others would be encouraged to adopt such conduct without fear of termination. It would adversely affect the interest of the larger body of workmen who believe in disciplined conduct, as the industry would suffer due to the misconduct of a handful of indisciplined workmen. Such indiscipline should certainly invite the punishment of dismissal from service. The said punishment cannot be said to be unjustified or disproportionate.”

6. Mr. H. K. Chaturvedi, learned counsel for the appellant makes identical submissions as were advanced before the learned Single Judge.
7. Insofar as, the submission of Mr. Chaturvedi that the termination was in violation of the principles of natural justice is concerned, the respondent/management having examined the witnesses, and proved the charge against the appellant before the Labour Court, the plea that the termination was in violation of the principles of natural justice is clearly unsustainable.
8. This we say so for the reason that, even assuming that the initial termination was contrary to the principles of natural justice, the management has produced the witnesses and proved the charge against the appellant through the process known to law in conformity with the principles of natural justice before the Labour Court resulting in the termination. As such,



the plea of Mr. Chaturvedi cannot be accepted.

9. On the aspect of proportionality, the learned Single Judge clearly held that, given the nature of charge alleged against the appellant, the penalty of termination would be justified. We agree with the said conclusion drawn by the learned Single Judge for the reason that part of the duty of the appellant was to collect money from the clients of the company and the refusal of the appellant to obey the orders given by the respondent/management, depicts insubordination on the part of the appellant.

10. Another submission of Mr. Chaturvedi is that the initial termination having been found contrary to the principles of natural justice and the respondent/management having proved the charge only before the Labour Court, the appellant shall be entitled to the back wages from the day of the termination till the award.

11. The said submission does not appeal us for the simple reason that the issue is covered by the judgment of the Supreme Court in the case ***R. Thiruvirkolam v. Presiding Officer and Another, (1997) 1 Supreme Court Cases 9***, wherein the Supreme Court has in paragraph nos. 4 and 13, held as under:-

“4. Reference may be made first to the decision in Kalyani [(1964) 2 SCR 104 : AIR 1963 SC 1756 : (1963) 1 LLJ 679] . This point arose directly before the Constitution Bench and such a contention was rejected, making a distinction between a case where no domestic inquiry had been held and another in which the inquiry is defective for any reason and the Labour Court on its own appraisal of evidence adduced before it reaches the conclusion that the dismissal was justified. It was held that in a case where the inquiry was found to be defective by the Labour Court and it then came to the conclusion on its own appraisal of evidence adduced before it that the dismissal



was justified, the order of dismissal made by the employer in a defective inquiry would still relate to the date when that order was made. In that decision it was stated thus: (SCR pp. 113-14)

“... If the inquiry is defective for any reason, the Labour Court would also have to consider for itself on the evidence adduced before it whether the dismissal was justified. However, on coming to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified its approval of the order of dismissal made by the employer in a defective inquiry would still relate back to the date when the order was made. ... In the present case an inquiry has been held which is said to be defective in one respect and dismissal has been ordered. The respondent had however to justify the order of dismissal before the Labour Court in view of the defect in the inquiry. It has succeeded in doing so and therefore the approval of the Labour Court will relate back to the date on which the respondent passed the order of dismissal. The contention of the appellant therefore that dismissal in this case should take effect from the date from which the Labour Court's award came into operation must fail.”

In our opinion, the authoritative pronouncement by the Constitution Bench in Kalyani [(1964) 2 SCR 104 : AIR 1963 SC 1756 : (1963) 1 LLJ 679] puts the matter beyond doubt.

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13. As a result of the aforesaid decision it must be held that the only point involved for decision in the appeal is concluded against the appellant by the Constitution Bench decision of this Court in Kalyani [(1964) 2 SCR 104 : AIR 1963 SC 1756 : (1963) 1 LLJ 679] and the observations to the contrary in Gujarat Steel [(1980) 2 SCC 593 : 1980 SCC (L&S) 197 : (1980) 2 SCR 146] are, therefore, per incuriam and not binding. The order of punishment in the present case operated from 18-11-1981 when it was made by the employer and not from 11-12-1985, the date of Labour Court's award. The appellant is, therefore, not entitled to any relief.”



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12. Suffice to state, the said judgment was also considered by the learned Single Judge to hold that the appellant is not entitled to the back wages. In view of the above, the submission made by Mr. Chaturvedi is unmerited.

13. We are of the view that the learned Single Judge was justified in dismissing the writ petition. Accordingly, this appeal being without any merit is dismissed.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

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