
(2012) 10 DEL CK 0295

In the Delhi High Court

Case No : Writ Petition (C) No. 9280 of 2009

Ajay Bhatnagar

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Citation : (2012) 132 DRJ 547 : (2013) 137 FLR 96 : (2012) LLR 1181

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : N.M. Varghese, for the Appellant; Rajiv Bansal with Mr. Aman Panwar, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Ms. Justice Mukta Gupta

1. In the present petition the Petitioner impugnes the award dated 13th March, 2009 whereby the learned Labour Court held that it has not been proved that the services of the Petitioner were terminated by the management illegally and thus he was entitled to no relief. Briefly the facts leading to the filing of the present petition are that the Petitioner was working as a mazdoor with the Respondent No. 2 when the complaints of sexual harassment at workplace were made against him. A committee in terms of the judgment of the Hon'ble Supreme Court in Vishaka and Ors. Vs. State of Rajasthan and Ors. 1997 LLR 991 was constituted. The Committee gave its finding that some instances of harassment of the complainant by the Petitioner appeared to be true and thus the allegations of harassment were partly proved. On the basis of the report of the Committee, the disciplinary authority dismissed the Petitioner from services vide its order dated 29th December, 2000. On a dispute being raised the following terms of reference were sent to the learned Labour Court for adjudication: "whether the dismissal of services of Shri Ajay Bhatnagar son of G.N. Bhatnagar by the management is illegal and/or unjustified and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/

Government notifications and to what other reliefs is he entitled to and what directions are necessary in this respect?". On the basis of pleadings of the parties the following issues were raised:

1. Whether Government of NCT of Delhi has no jurisdiction to refer the dispute for adjudication and consequently this Court has no jurisdiction to adjudicate upon the matter as per PO No. 1 of WS?
2. Whether the management could dispense with the domestic enquiry under the facts and circumstances as proved under Rule 15.36 of IFFCO (management service rule)?
3. Whether the enquiry conducted by the complaints committee is not legal, fair and proper. If so its effect?
4. Whether the dismissal of Shri Ajay Bhatnagar from the services of the management is illegal and/or unjustified?
5. As per terms of reference.

2. In the present case we are concerned with issue Nos. 3 & 4. As regards issue No. 3 vide order dated 3rd June, 2006 the learned Labour Court held that the enquiry conducted by the complaint Committee stood vitiated on account of violation of the principles of natural justice. However, since the management had filed an application for permitting it to prove the allegations against the workman, the said application was allowed vide order dated 11th August, 2006 and the management was permitted to lead evidence. The management examined the complainant as MW2 who deposed on oath that she was working with the management since 1989. In the year 1989-2000 she was posted as typist-cum-clerk Grade- I and at that time the Petitioner was posted as office attendant in the book section in Farm Bhawan. The Petitioner used to harass her sexually and used to speak obscene words. The Petitioner used to stalk her and try to hold her, saying if she did not accompany him, he would forcibly take her away. The Petitioner would often make bodily contact with her and use obscene expressions despite protest by the complainant. On 29th August, 2000, 30th August, 2000 and 4th October, 2000 the Petitioner threatened the complainant and her family with death. The complainant proved on record her complaint to the management, the National Commission for Women and the Police complaints. The complainant was cross-examined at length by the Petitioner. She denied that she had taken a loan of Rs. 25,000/- from the Petitioner but what is material is that the Petitioner admitted having relations with the complainant and stated that the same were consensual in nature. In view of the evidence led before the learned Trial Court, it came to the conclusion that the punishment of dismissal imposed on the workman was not disproportionate to his misconduct of sexual harassment and thus the termination was not illegal or unjustified.

3. The only issue raised by the learned counsel for the Petitioner in the present case is that he could not have been dismissed from service without issuance of a

charge-sheet. No further arguments have been addressed.

4. Learned counsel for the Respondent on the other hand states that the Petitioner was given ample opportunity to defend his case. Having held that the report of the complaints Committee was vitiated for want of principles of natural justice, the learned Trial Court permitted the Respondent to lead evidence. The witnesses of the management i.e. both the Chairperson of the Committee and the complainant MW1 and MW2 respectively were duly cross-examined by the Petitioner. Thus, there is no illegality in the order of the learned Trial Court. Once the Trial Court permits recording of evidence, no charge-sheet is required to be issued to the Petitioner unlike a regular domestic enquiry. The Tribunals are not bound by the strict rules of evidence and they have to perform the functions following the principles of natural justice. Reliance is placed on *Neeta Kaplish Vs. Presiding Officer, Labour Court and Another*, ; *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, , *P.H. Kalyani Vs. Air France Calcutta*, , *State Bank of India Vs. Tarun Kumar Banerjee and Others*, , *Phulbari Tea Estate Vs. Its Workmen*, .

5. I have heard learned counsel for the parties. The only issue raised by the Petitioner is that the Petitioner was not served with a charge-sheet before the learned Trial Court examined the management witnesses and thus the award of the learned Trial Court was vitiated on account of non-supply of charge-sheet to the Petitioner. The contention of learned counsel for the Petitioner is wholly misconceived. The Industrial Tribunal while performing its duty under the provisions of Industrial Dispute Act, 1947 is bound by the provisions thereof and the principles of natural justice.

6. In *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, following principles have been laid down -

32. From those decisions, the following principles broadly emerge:

(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in *The Management of Panitole Tea Estate Vs. The Workmen*, within the judicial decision of a Labour Court or Tribunal.

32-A. The above was the law as laid down by this Court as on December 15, 1971, applicable to all industrial adjudications arising out of orders of dismissal or discharge.

7. In *State Bank of India Vs. Tarun Kumar Banerjee and Others*, it was held:

4. Prior to the insertion of Section 11A where a proper domestic enquiry had

been held before the passing of the order of punishment, the Tribunal had no power to interfere with its findings on the misconduct recorded in the domestic enquiry unless it was vitiated by one or the other infirmities pointed out in *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, . The conduct of the disciplinary proceedings and imposition of the punishment were all considered to be managerial functions with which the Tribunal had no power to interfere unless the findings were perverse or the punishment was so harsh as to lead to an inference of victimisation or unfair labour practice. Now, the position is different. In the course of adjudication proceedings if the Tribunal is satisfied that the order of discharge or dismissal was not justified, it can reappraise the evidence adduced in the domestic enquiry and satisfy itself whether the evidence relied upon by the employer establishes the misconduct alleged against the workman. The criticism advanced against the award of the Tribunal is that evidence of three witnesses recorded at enquiry being sufficient to record the guilt of Respondent 1, that evidence has been ignored and irrelevant considerations such as non-examination of complainant Smt. Parul Rani Chowdhury, non-production of money and non-availability of other evidence not on record is taken note of and, therefore, its award is vitiated. The Division Bench too fell in the same error, it is contended.

8. In view of the law laid down by the Supreme Court, there is no merit in the contention of the learned counsel for the Petitioner that the enquiry conducted by the Tribunal was vitiated on account of the fact that no charge-sheet issued to him. Petition is accordingly dismissed.