

(2016) 02 DEL CK 0050

In the Delhi High Court

Case No : LPA 62 of 2016, C.M. APPL.3383 of 2016

Anil Anand

APPELLANT

Vs

The Management of M/s The Centaur Hotel

RESPONDENT

Date of Decision : 29-02-2016

Acts Referred:

Citation : (2016) 1 CLR 1026 : (2016) 149 FLR 574 : (2016) LabLR 406

Hon'ble Judges : S. Ravindra Bhat;Deepa Sharma, JJ.

Bench : Division Bench

Advocate : Sushil Peter and Vivekanand Ray, Advocates, for the Appellant;
Gunjan Sinha Jain, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J. - The appellant is aggrieved by an order dismissing his writ petition. He had impugned the Award dated 29.08.2014 of the Labour Court.

2. The brief facts are that the appellant, a workman of the Centaur Hotel, IGI Airport (hereafter referred to as "the management") is aggrieved by the termination of his services through a dismissal order of 27.02.2004. This industrial dispute was referred for adjudication to the Labour Court by reference. The appellant was working as Time Keeper since 12.12.1983. At the time of dismissal, his monthly wage was Rs. 9500/-. He was an active member and office bearer of the Centaur Hotel Employees Union and highlighted irregularities in the functioning of the management. He was suspended in 2002 and a charge sheet was issued. He had been awarded previous penalty of reduction to two lower stages in the time scale and transferred from the Time Office/Personnel Department to the Health Club.

3. The charges which are the subject matter of the present appeal emanate from the order dated 27.03.2003. This charge sheet alleged that the appellant had manipulated the attendance and leave records from 1991 to 2002. An enquiry was conducted which culminated eventually in the order of dismissal on

27.02.2004. The management which contested the claim sought to support its action by relying upon the enquiry conducted by it. The Labour Court, by an earlier order of 21.02.2013 concluded - on the issue framed by it that the enquiry was conducted in an unfair manner. Consequently, the management was permitted to lead evidence to justify the dismissal order. It was in these proceedings that the management relied upon the primary evidence which was considered during the course of disciplinary proceedings. After addressing the relevant materials, the Labour Court inter alia concluded as follows:

"14. It is a matter of record that the management has filed all the applications in original of the workman vide which he had applied for encashment of PL since 1991, as Ex.MW3/4, 6, 10, 14, 19, 20 and 22. These are applications on a printed format. The first part of the format is an application to be submitted by workman under his signatures wherein he also fills up the columns of total leave due, balance of PL to be retained and 50% of the PL to be en-cashed. The next column or part is for the office use wherein the Time Office through the Time Keeper verifies the said record/balance/account of the PL of the employee under the signatures of the Time Keeper and only thereafter it is signed by the Superintendent and then by the HoD where after the payment is made by the Accounts Department.

15. A bare perusal of these applications, particularly, Ex.MW3/4, 6, 19 and 20 makes it clear that it was the workman himself who was then also working as Time Keeper, who verified his application for encashment of PL and balance/account of PL under the signatures of Time Keeper, in the part meant for office use. It was only on the basis of this office verification that his applications were forwarded by the Superintendent and the HoD. Thus, he not only misused his position as Time Keeper but also committed manipulations amounting to fraud and misappropriation of the funds of the management. It is also worth mentioning that the signatures of the Time Keeper on his application Ex.MW3/10 are also forged and manipulated as the Vigilance Department of the management obtained the statement of the other four Time Keepers working along with the workman during the said period and who all had denied their signatures on it at point B and have further failed to identify those signatures.

16. It is the case of the management as stated in the written statement that only after the control/supervision/functioning of the Time Office was handed over to the Security/Vigilance Department that the discrepancies in the attendance and leave record of the workman were detected and immediately thereafter he was issued a charge sheet dated 27.3.2003 for the said act, on the basis of the report received from the Security and Vigilance Department dated 14.2.2003. Hence, the delay if any, and as alleged by the workman in issuing the charge sheet after 8 years cannot be attributed to the management as it promptly took action as and when the discrepancies came to its knowledge. The fact as asserted by the workman that the alleged discrepancies could not be detected during the routine yearly audit or that the management never reported the said alleged acts of the

workman to the police would in no manner dilute or efface the acts of the workman and he cannot avail any benefit for the same.

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19. It is clear from the aforesaid discussion that the workman misconducted himself by manipulating his leave and attendance record and en-cashing PL for which he was not entitled too from 1991 to 2002 causing wrongful gain to himself and wrongful loss to the management by misusing his position in office. Such an employee deserves no sympathy and deserves the ultimate punishment of dismissal. It has been held in a catena of judgments that the punishment should be interfered with by the courts only if is shocking to conscience or is too harsh. Reference can be made to the judgment delivered in Apparel Export Promotion Council v. AK Chopra 1999 1 CLR 597 SC and State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya (2011) 4 SCC 584, where this principle has been reiterated."

4. In the light of these findings, the Labour Court held that the workman appellant was dis entitled to any relief. The workman's writ petition was dismissed by the learned Single Judge who considered the submissions of the parties as well as the decision of the Labour Court. The learned Single Judge considered the evidence as well as the various judgments of the Supreme Court which delineated the jurisdiction of the authorities and disturbed the findings of fact under Article 226 of the Constitution and concluded that no justifiable grievance to interfere with the Award had been made out.

5. This Court has considered the grounds urged in the present appeal and submissions on behalf of the appellant. The reliance placed upon the first order setting aside the enquiry - made on 21.02.2013, is of little relevance in the opinion of the Court. What fell for consideration by the Labour Court was whether the procedure adopted during the disciplinary proceeding and the domestic enquiry conducted by the management was fair and if so, to what extent the workman was prejudiced in the course of those proceedings. Clearly, the sufficiency or otherwise of the evidence was not the subject matter of discussion at that stage. It is settled law that the findings with respect to the fairness of an enquiry do not preclude the management of an establishment from leading or adducing evidence in support of its disciplinary order - the line of authorities to this end were considered and affirmed by the Supreme Court in its decision reported as Karnataka State Road Transport Corporation v. Smt. Lakshmidevamma and Another AIR 2001 SC 2090. Thus, the reliance upon the earlier order of the Labour Court is of no assistance to the appellant in this case. As far as the findings of the Labour Court on the merits of the reference go, the learned Single Judge was clearly justified in holding as he did as the fact appreciation fell within the primary domain of the Tribunal and unless a radically unreasonable prejudice whereby the Labour Court had overlooked material evidence or had drawn conclusions unsupportable by materials on record, were established, the exercise of writ jurisdiction was not warranted. The exercise of

discretion by the learned Single Judge, declining to interfere with the order in the circumstances of this case clearly was warranted and correct. This Court, therefore, is of the opinion that the appeal is without merit. It is accordingly dismissed.