

(2015) 12 DEL CK 0112
In the Delhi High Court
Case No : W.P.(C) 4933/2007

Arvinder Singh

APPELLANT

Vs

Management of J.K. Industries Ltd. and Others

RESPONDENT

Date of Decision : 02-12-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 12 DEL CK 0112

Hon'ble Judges : Sunita Gupta, J.

Bench : Single Bench

Advocate : K. Venkataraman, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Sunita Gupta, J.—By way of this writ petition under Article 226 of the Constitution, the petitioner (hereinafter referred to as "the workman") challenges the order dated 15.12.2001 and award dated 16.04.2007 passed by the learned Presiding Officer, Labour Court - XI in ID No. 73/06.

2. The workman was appointed as a typist vide appointment letter dated 15.10.1973. The respondent (hereinafter referred to as "the management") gave three charge-sheets dated 13.01.1977, 15.01.1977 and 27.01.1977 to the workman on the allegations of dispatch of letters at wrong addresses. Instead of sending two parcels through peon, the same were sent by registered post incurring expenditure of Rs. 14.50, instead of sending lease deed to Cochin office same was sent to Hyderabad, non-dispatch of letter for three days, stapling of the letter instead of closing it by gum in such a manner that the cover could not be retrieved. The workman gave a detailed reply to all the charge-sheets, however, without considering the explanation given by the workman, the management decided to conduct an enquiry. Mr. N. Ahuja was appointed as enquiry officer. The enquiry was not conducted in accordance with the principles of natural justice. Despite requests made by the workman, he was not afforded the assistance of a lawyer during the enquiry proceedings. He was dismissed

from service. He approached the Conciliation Officer, Labour Court for redressal of his grievance. Finally, the Secretary (Labour), Delhi Administration referred the dispute for adjudication to the Labour Court vide notification dated 04.01.1978. The claim was filed by the petitioner - workman which was contested by the respondent - management. The Labour Court framed the following issues:

(i) Whether the domestic enquiry is defective, as alleged?

(ii) As per the terms of reference.

3. The issue regarding the domestic enquiry was taken as preliminary issue. Vide order dated 15.12.2001, this issue was decided in favour of the management and against the workman by holding that the domestic enquiry was legal and proper. Vide the impugned award dated 16.04.2007, the reference was answered against the workman.

4. Feeling aggrieved, the present writ petition was filed on number of grounds. During the course of arguments, learned counsel for the petitioner - workman presses the following grounds only:

"E. Because the Ld. Labour Court failed to appreciate that the Enquiry Officer was always under the influence of management and was incorrectly recording the statement of witnesses only to ensure that the petitioner is thrown out from the employment and there was nobody from petitioner to check the said conduct of the Enquiry Officer except the petitioner himself and he was ignored deliberately by the management.

F. Because a perusal of the charges clearly shows that the charges are not a serious nature and these types of incident may occur in respect of any employee, especially when there was heavy load of work which was otherwise to be handled by more than three persons and the petitioner was handling the said work of three persons.

G. Because the Ld. Presiding Officer failed to appreciate that there was no deliberate act on the part of the petitioner and it was only due to the heavy load of work, such mistake could occur and no financial loss was caused to the management. Therefore, the action of the respondent dismissing the petitioner from the service instead of giving warning in respect of trivial charges is per se disproportionate, excessive, harsh and not commensurate with the penalty imposed."

5. Learned counsel for the respondent - management submitted that the impugned award does not suffer from any infirmity which calls interference. Reference was also made to the conduct of the petitioner - workman who committed perjury by making false statement on oath before the Court. As such, it is submitted that the petitioner is not entitled to the discretionary reliefs as prayed for.

6. The ground urged by learned counsel for the petitioner-workman are that the Enquiry Officer was always under the influence of management and was incorrectly recording the statement of witnesses only to ensure that the petitioner is thrown out from the employment which is not fortified by the record. While deciding the preliminary issue pertaining to the enquiry, learned Labour Court has dealt in detail by observing that there was nothing to substantiate the allegations that the Enquiry Officer was biased and partial. There was also nothing to show that the statement of witnesses were not being recorded correctly by the Enquiry Officer or the endeavour of the Enquiry Officer was to somehow throw out the petitioner - workman from employment. A reasoned order has been passed by learned Presiding Officer, Labour Court while deciding the preliminary issue pertaining to the enquiry in favour of the management which does not call for any interference.

7. The other ground urged during the course of arguments was that the charges were not of serious nature and the misconduct as set up in the charge-sheet occurred due to heavy load of work as such the action of the respondent - management in dismissing the petitioner - workman from service instead of giving warning in respect of trivial charges is disproportionate. In this regard, the record reveals that as many as three charge-sheets were issued to the petitioner - workman leading to his misconduct. No evidence was produced by the workman to prove that his termination was disproportionate to the misconduct proved against him. Rather a detailed narration was given by the Labour Court regarding the conduct of the petitioner - workman who spoke lies on oath before the Court. The observation in this regard made by the Labour Court deserves to be reproduced hereinbelow:

"The workman has not produced any evidence on record to prove that his termination is disproportionate to the misconduct, proved against him. From the perusal of evidences which have been produced on record after the enquiry had been upheld, it is apparent that the workman has been speaking lies on oath even before the court. In his cross examination, the workman has stated that he had been unemployed and had not worked anywhere after his dismissal. He even went to the extent of showing his ignorance about the surname of his father and about the address of his father. He has shown his inability to say whether ID No. 950/1997 was filed by him. He even went up to the extent of denying his signatures on the affidavit filed by him in the court of Shri Pradeep Chaddha in the name of Shri A.S. Ahluwalia. He was evasive in his answer when he was asked whether in the CBSE examination held in the year 1971, his name was Arvinder Singh Ahluwalia s/o. Shri Bhupinder Singh Ahluwalia bearing roll No. 19123. He had even stated that he did not know that his date of birth is 01.03.1953. He went to the extent of denying his knowledge about the year in which he passed his Higher Secondary Examination and whether he received the appointment letter and denied his signatures on Mark A and point X. He has denied his signatures on Mark B or point A and denied his application mark C. He has denied the setting of the PF Accounts after his termination. He has denied

that Mark D is his PF form and bear his signatures. He had stated that he did not remember his date of birth. He has further submitted that he did not remember filing of the application Mark E alongwith medical certificate and leave application and also did not identify his signatures on these documents and on Mark F. He even did not identify his photograph on the application mark G. He has gone up to the extent of saying to the court that he could not tell whether the particulars read over to him on mark H were his or not. He did not identify mark I and his signatures on mark J. He has stated that no dispute is pending against IIT in Labour Court No. 4 and no other case against the management of M/s. Blue Bird Services Pvt. Ltd. bearing ID No. 11/99 is pending in Labour Court No. 7 where he has stated his name as A.S. Ahluwalia. He was again cross examined on 27.09.2006 and on that day he had admitted that the case titled as A.S. Ahluwalia vs. IIT, Old ID No. 275/1996 and new ID No. 96/2004 pertains to him and that in that case the claim had been filed by him. However, he has again stated that he had not filed any case titled as A.S. Walia vs. Blue Bird Service Pvt. Ltd. ID No. 111/1999. The management sought deferment of the cross examination of the workman to produce the record of case ID No. 111/1999 in order to confront the workman with that records on 23.11.2006 and on that day the workman in his cross examination admitted as correct that he has raised an industrial dispute against the M/s. Blue Bird Services Pvt. Ltd. and the number of the case is ID No. 111/1999 in the court of Shri O.P. Saini, Labour Court and has further stated that he had seen the original file of the said case and the claim and the affidavit bears his signatures. He has also admitted that he is known as A.S. Ahluwalia and A.S. Walia. All these facts clearly shows that the workman is prima facie guilty of perjury since he has been making false statement on oath before the Court."

8. Relying upon Madhya Pradesh Electricity Board Vs. Jagdish Chandra Sharma, wherein it was held that the Labour Court/Tribunal should not interfere with the quantum of punishment based on irrational or extraneous factors and certainly not on a compassionate ground, the court arrived at a conclusion that there was no reason to interfere with the dismissal order which was passed after a valid and fair enquiry. The findings of the Labour Court are based on the material available on record. Even otherwise the conduct of the petitioner - workman, who has the audacity to tell lies before the Court on oath does not deserve any indulgence of this Court in exercise of the extraordinary jurisdiction conferred upon this Court under Article 226 of the Constitution of India.

9. That being so, the writ petition is dismissed, leaving the parties to bear their own costs.

The petition stands disposed of accordingly.