

(2010) 11 DEL CK 0324

In the Delhi High Court

Case No : Writ Petition (C) No. 6652 of 2008

Asharfi Lal

APPELLANT

Vs

The Management of Delhi Cloth Mills

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 250

Citation : (2011) 2 LLJ 629 : (2011) LLR 118

Hon'ble Judges : Veena Birbal, J

Bench : Single Bench

Advocate : Mohd. Nayeemuddin, for the Appellant; Harvinder Singh, for the Respondent

Final Decision : Dismissed

Judgement

Veena Birbal, J.—By way of present petition, Petitioner has challenged the impugned award dated 01.09.2006 by which the Labour Court has answered the reference against him.

2. The Secretary (Labour), Government of NCT Delhi, had referred the dispute between the parties for adjudication to the Labour Court vide Notification No. F.24 (1561)/85 Lab./1499 dated 14.01.1986 with the following terms of reference: "Whether the services of the workman Sh. Asharafi Lal have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitle?"

3. Before the Labour Court, the workman had filed a statement of claim alleging therein that he was in the employment of the Respondent/management in the cone-winding department as a cone winder since 23.04.1966. As per him, he was an active cadre of the Union as a result of which the management was annoyed with him. Petitioner had alleged that he was victim of inter union rivalry. Petitioner had alleged that I.N.T.U.C. was a pocket Union of the management and its leader Sh. Sahib Singh and Mool Raj had abused him on 14.05.1997 and had

also threatened that the Majdoor Sangh's Workers would not be allowed to work in the department. Petitioner further alleged that he was beaten by Ram Avtar and Rang Dev of I.N.T.U.C. Union on 06.02.1982. Petitioner also lodged FIR with the police on that day and also made a complaint to the management on 07.02.1982. However, without taking action against the aforesaid two persons, the management in order to victimise him had issued a charge-sheet on 17.02.1982. No inquiry was held in the matter by the management. On 12.10.1982 Petitioner was dismissed from the service. Petitioner has alleged that the act of dismissal by the management was unfair and in violation of the principles of natural justice. He had prayed for reinstatement with full back wages as he remained unemployed and could not get employment despite best efforts.

4. The aforesaid claim was opposed by the management wherein relationship of employee and employer was not denied. As per management, the conduct of the Petitioner workman was not proper. Petitioner was issued warnings on account of his alleged misbehavior with co-employees. The management further denied having supported any Union as is alleged. The management denied that the charge sheet was issued in order to victimize him. It was alleged that same was issued on the basis of alleged incident having taken place. Management had also alleged that enquiry was instituted into the charges levelled but in the interest of discipline of the management, the enquiry was dispensed with and Petitioner was dismissed after taking into consideration all the circumstances including past record and that they would lead the evidence to prove charges before the Court. It was further stated that approval application was not maintainable, as such, same was withdrawn. It was further alleged that the management was closed down w.e.f. 01.04.1989 for the reasons beyond the control of management and necessary permission was granted by the Lt. Governor u/s 25-O of the Industrial Disputes Act in compliance of discretion of High Court of Delhi which were confirmed by the Supreme Court. It was further alleged that the Petitioner was not entitled for reinstatement and was also gainfully employed.

5. On the pleadings of parties following issues were framed before the learned Labour Court.

1. As per terms of reference.

2. Whether the D.C.M. has been closed w.e.f. 01.04.1989? OPM.

6. The workman had examined himself as WW1 and was duly cross-examined by the management. The management had examined three witnesses, namely, Ram Avtar Singh (MW-1), Niranjana Singh (MW-2) and Nanak Chand (MW-3). The Petitioner had cross-examined only one witness, namely, Ram Avtar Singh (MW-1) and did not cross-examine the other two witnesses and also stopped appearing in the court, as such, after hearing the arguments of the Respondent/management, the Labour Court held that the charges leveled against the Petitioner stood proved by the uncontradicted testimony of MW-1 Ram Avtar and

MW-2 Niranjn Singh. It was further held that the evidence of MW-3 Nanak Chand had duly proved that the management concern had been closed w.e.f. 01.04.1989 by the order of Lt. Governor, accordingly, no relief was granted to the Petitioner/workman.

7. Aggrieved with the aforesaid impugned award, the present petition has been filed.

8. The main contention of counsel for the Petitioner is that after examination-in-chief of MW-2 and MW-3, their cross-examination was deferred on 22.01.2003. Thereafter, on 07.10.2003 management closed its evidence and no opportunity was given to the workman to cross-examine the aforesaid witnesses. It is contended that as the opportunity to cross-examine the aforesaid witnesses was not been given, the Labour Court ought not have read the evidence of MW-2 and MW-3 while deciding the present case. It is contended that impugned award is illegal and is liable to be set aside.

9. On the other hand, the stand of the Respondent-management is that opportunity to cross-examine the aforesaid witnesses was given to the Petitioner-workman but he did not avail the same and as such the management closed its evidence on 07.10.2005. It is contended that there is no illegality in the impugned award which calls for interference of this Court.

10. The charge sheet against the Petitioner is as under:

On 6.2.82 you were on duty in 2:30 PM - 10:30 PM shift. You were working as C.P. Winder Helper that day. You were engaged for supplying of material to 4 Karigars working on Mettler Machine and for feeding material on B C Spooler No. 5. On that day at about 5: 15 PM when Sh. Rang Dev asked you to bring material, you refused the same. On you refusal, Sh. Rang Dev informed about it to Sh. S.C. Gupta, Officer-in-charge. When he was coming back to his work place after informing the officer-in-charge, you abused him in filthy language near B.C. Warping Machine No. 1, pushed him and gave him beating. You had earlier been served also with warning letters for similar act but you did not mend yourself.

Your above-said act constitutes serious misconduct as per Clause 27 (i) of the standing orders applicable to the Mill.

You are directed to furnish your written explanation, with next 2 days of receipt of this charge-sheet as to why serious disciplinary action should not be taken against you.

Take notice that if your explanation is not received within the prescribed time then it will be presumed that you have nothing to say in your defence.

11. To prove the charges against the Petitioner, management has produced Ram Avtar MW-1 and Niranjn Singh MW-2 before the Labour Court. Ram Avtar MW-1 in the examination-in-chief has categorically deposed that he was employed as Mistri. Petitioner Asharfi Lal was also an employee in the Mill and was working in

the same khata (department) while he was working. He deposed that on 06.02.1982 Petitioner stopped working. The other workers, namely, Rang Dev, Sohan Lal and two more went to inform Sh. Gupta about the loss caused by him. Thereafter, Asharfi Lal came back and told all the aforesaid workers that he would see them and thereafter started abusing Rang Dev and picked him up and threw him on the ground. He also made a complaint to Shri Gupta about the misconduct of Petitioner. He also deposed that his statement was recorded in the inquiry conducted by the management. Petitioner/workman had cross-examined him at length. His material testimony was not demolished in the cross-examination. The said witness also stated in the cross-examination that prior to the alleged misconduct, the Petitioner-workman was given warning. The said witness had also deposed that he has given a correct statement in the court of the alleged incident.

The other witness Niranjan Singh (MW-2) had deposed that he had worked with the management from 1963 to 1989. He had also deposed that he had seen Petitioner-workman quarreling with Sh. Rang Dev and using filthy language and was also beating him. Examination-in-chief of the said witness was recorded on 22.01.2003. Perusal of record shows that thereafter on that day his cross-examination was deferred and the case was adjourned to 11.07.2003. Thereafter, the matter had been adjourned for one reason or the other. On 07.10.2005, the management witnesses MW-2 and MW-3 were present for cross-examination. The authorised representative of the workman was also present but he did not avail the opportunity to cross-examine the said witnesses, as such, the management closed its evidence on the said date.

Perusal of record shows that thereafter the worker had not appeared in the court. Only on one date, i.e. on 18.4.2006 proxy for A.R. for the workman had appeared. From the record, it cannot be said that without giving the opportunity to the workman the evidence of Petitioner/management was closed. Petitioner has cross examined MW1 at length who is a material witness to the alleged incident for which Petitioner was charge sheeted. As regards MW2 is concerned, Petitioner-workman has not availed the opportunity of cross-examining the said witnesses despite ample opportunity given to him. MW3 had deposed about closure of management. Perusal of record shows that the evidence of management was closed on 07.10.2005, thereafter, matter remained pending for one year. No application was moved by the Petitioner-workman for recalling the aforesaid witnesses for the purposes of cross-examination. Under these circumstances, the contention of the Petitioner that the management closed its evidence without giving him the opportunity to cross-examine the management witnesses, is not correct. The contention of the Petitioner is rejected.

12. The testimony of MW-1 and MW-2 clearly proves the charges of misconduct against the Petitioner-workman levelled against him vide charge-sheet dated 17.02.1982. Reading the evidence it cannot be said that the finding arrived by the Labour Court is a perverse finding. No illegality is seen in the impugned

award passed by the learned Labour Court.

13. The stand of Petitioner-workman is that he has been victimized due to inter-rivalry union, but he has failed to lead any evidence in this regard before the Labour Court. Petitioner has deposed in cross-examination that he was Secretary of the Union at the time of dispute but did not produce any material in this regard. About the alleged incident, Petitioner has given evasive reply in cross-examination.

14. The evidence on record also shows that the management concern stood closed w.e.f. 01.04.1989 by the order of Lt. Governor.

15. In view of above, it is not a fit case to exercise discretionary jurisdiction under Article 226 of the Constitution of India. The impugned award is upheld. The writ petition is dismissed with no order as to costs. Trial court record be sent back with a copy of this order.