

(2007) 11 DEL CK 0026
In the Delhi High Court
Case No : LPA 1353 of 2007

Bal Swaroop

APPELLANT

Vs

The Management of CPWD

RESPONDENT

Date of Decision : 30-11-2007

Acts Referred:

Citation : (2007) 11 DEL CK 0026

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Puneet Verma, for the Appellant;

Judgement

1. This appeal is directed against the order dated 21st May, 2007 whereby the learned Single Judge dismissed the writ petition No. 3811/2007 filed by the appellant in which the appellant had assailed the award dated 4th January, 2007.
2. The case herein has a chequered history. The appellant herein was working as a Khalasi when his service was terminated as far back on 16th February, 1977. Being aggrieved by the aforesaid order of termination, the appellant filed a Civil Suit challenging the order passed by the Management terminating his service. The Trial Court dismissed the aforesaid suit and the subsequent appeal filed against the said judgment and decree was also dismissed.
3. The petitioner was still aggrieved but instead of filing a second appeal in terms of the provisions of Code of Civil Procedure, he preferred to file an application before the appropriate Government seeking for reference of the said dispute in terms of the Industrial Disputes Act. The prayer was not entertained and the request for reference was rejected in view of the decision rendered by the Civil Court, which had become final and binding.
4. The appellant being aggrieved filed a writ petition in the Allahabad High Court registered as WP(C) No. 22255/1987. The learned Single Judge of the Allahabad High Court allowed the aforesaid writ petition holding that the impugned order dated 8th September, 1987 passed by the Regional Labour Commissioner

directing the closure of the case and declining to make reference on the ground that the Civil Court has already passed a decree against the appellant was illegal. Consequently, an order was passed that Regional Labour Commissioner would proceed with the industrial dispute raised by the appellant in accordance with law. The said order was passed by the Allahabad High Court on 13th October, 2000. It transpires from the records that reference was made and the Industrial Adjudicator thereafter, took up the proceeding. After recording evidence adduced by the parties, the Industrial Adjudicator passed an award on 4th January, 2007 holding that action of the Management in terminating the service of the appellant was legal and justified. The Industrial Adjudicator also held that the workman was given several opportunities for presenting himself in the inquiry proceedings but the worker absented himself from the said inquiry after attending one hearing. Adjudicator also noted that the worker had been given show cause notice but the same were returned undelivered with the remark "addressee not available".

5. On consideration, it was held by the Industrial Adjudicator that the inquiry was conducted in accordance with the principles of natural justice and, Therefore, the grievance and the challenge made cannot be sustained.

6. Being aggrieved by the aforesaid award passed by the Industrial Tribunal, a writ petition was filed in this Court registered as W.P.(C) No. 3811/2007. The learned Single Judge after hearing the learned counsel for the appellant dismissed the writ petition on the ground that the appellant had concealed material facts in the claim statement regarding orders/judgments of the Civil Court and also on the ground that the order passed by the Industrial Adjudicator on merit does not suffer from any infirmity.

7. Being aggrieved by the aforesaid order passed in the writ petition, the appellant has filed the present appeal on which we have heard the learned counsel appearing for the appellant. Two charge sheets were issued to the appellant. The charge sheet dated 23rd October, 1975 was pertaining to leave without permission and absence from duty without prior permission of superior. The second charge sheet issued on 29th December, 1975 related to use of threatening language against the J.E. Mr. Pandey and negligence while on duty.

8. An enquiry was conducted in respect of the aforesaid charge sheets. The said departmental proceeding instituted against the appellant were brought to a logical end and on conclusion thereof, an order for termination of service of the appellant was passed by the Management.

9. Be that as it may, one of the ground on which the writ petition filed in this Court by the appellant was dismissed was the concealment of facts before the Industrial Adjudicator. In the said proceedings, it was held by the learned Single Judge that the appellant concealed and did not specifically refer to the judgments of the Civil Courts and a reference was only made to the order passed by the Allahabad High Court.

10. We have considered the said findings of the learned Single Judge as the same are under challenge in this appeal. In the statement of claim what was stated by the appellant in respect of the Civil Suit is as under:

16. That aggrieved workman sought legal remedies and ultimately this case as per the decision of Hon"ble High Court of Allahabad in civil Misc. Writ Petition No. 22255 of 1967.

The aforesaid statement is very vague and there is no reference at all to the judgments passed by the Civil Courts except for stating that the present case has arisen as per the decision of the Allahabad High Court. Needless to state that though the aforesaid civil proceedings were separate proceedings altogether, but the said civil proceedings were initiated at the behest of the appellant only, the learned Single Judge has rightly held that there was suppression and concealment of facts by the appellant.

11. However, the learned Single Judge has also considered the issues raised on merits including ex parte departmental proceedings. In this regard it would be useful to encapsulate background facts of the present case. At the time of initial appointment of the Enquiry Officer, the appellant raised an objection with respect to the perceived bias of the enquiry officer, vide his letter dated 6th May, 1976, subsequently the enquiry was kept in abeyance. The charges of bias as imputed by the appellant were found baseless and the enquiry was ordered to be resumed on 24th June, 1976.

12. Consequently, plethora of letters dated viz 25.6.1976; 07.7.1976; 21.7.1976; 22.7.1976; 28.7.1976; 03.8.1976 and 02.9.1976 were sent to the appellant directing him to present himself for the enquiry. However, the appellant deliberately absented himself as revealed from the acknowledgment slips for the Registered letters listed above. The attempts proved futile and finally the enquiry proceedings had to be carried on ex parte. The enquiry was carried on with respect to 14 charges. Out of these 10 were proved, 2 were partly proved and 2 held to be not proved.

13. Subsequently by office Memorandum dated 31st March, 1977, the appellant was given an opportunity to show cause as to why his services should not be terminated. Registered post letters written to the appellant could not be served and were received back with the report "addressee not available". The appellant was avoiding receiving the office Memorandum dated 31st March, 1977. It also transpires from the order of the Industrial Adjudicator that copies of all proceedings were sent to him through A/D post at the address provided by the appellant but he did not accept the same. It is also established from the records that since the appellant could not be served by registered post, Therefore, Management had to resort to substituted service by publication in a newspaper. He was served by publication in a newspaper. Therefore, the plea taken by the appellant as he was not served cannot be accepted and was rightly rejected by the learned Single Judge. Finally, on 2nd June, 1977, the appellant's services as

an employee of CPWD were terminated.

14. Considering the entire facts of the case, we find no merit in this appeal and the same stands dismissed.

15. Since arguments were addressed on merits before us, apart from the application CM No. 16347/2007 seeking condensation of delay, we have decided the appeal on merit. So far as the application for condensation of delay is concerned, the same also stands disposed of accordingly.