
(2000) 02 DEL CK 0015

In the Delhi High Court

Case No : Civil Writ Petition No. 604 of 1997 and CM No. 1037 of 1997

Chandan Singh

APPELLANT

Vs

Management of M/s. Swatantra Bharat Mills and Another

RESPONDENT

Date of Decision : 08-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33

Citation : (2000) 4 AD 539 : (2000) 85 DLT 673 : (2000) 85 FLR 436 : (2000) 2 LLJ 118

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. N.M. Popli Adv, for the Appellant; Mr. Harvinder Singh, for the Respondent

Judgement

A.K. Sikri, J.—Rule.

Since short question is involved in the matter, with the consent of the parties the matter is taken up today and finally disposed of at this stage.

Petitioner was charge-sheeted and an enquiry was held. After the enquiry. Enquiry Officer gave its report holding that the charges against the petitioner stood proved. Consequently, respondent management passed an order dated 20th July, 1982 dismissing him from service. Petitioner filed complaint u/s 33 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for short) in already pending reference, submitting that the dismissal was in contravention of Section 33 as approval of the Industrial Tribunal was not taken before dismissing the service of the petitioner. On the complaint filed by the petitioner, the Labour Court framed preliminary issue as to whether enquiry conducted against the petitioner was valid and proper. On this issue, evidence was recorded by both the parties and ultimately vide order dated 31st October, 1995 Industrial Tribunal held that enquiry conducted by the management was fair, valid and proper and the preliminary issue was decided against the petitioner-workman. Thereafter the

Industrial Tribunal proceeded to decide the complaint filed by the petitioner and impugned award dated 6th February, 1996 was passed by the Industrial Tribunal holding that although there was violation of provision of Section 33 of the Act by respondent-management inasmuch as approval was not sought but it was only a technical violation. It was further held that in view of the judgment of the Supreme Court in the case of Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another, the petitioner was not entitled to any relief wherein it was held that the enquiry conducted by the respondent-management was proper and valid.

2. In this writ petition, petitioner challenges the findings of the Industrial Tribunal in respect of preliminary issue relating to fairness of the enquiry as well as impugned award dated 6th February, 1986, it is a submission of learned counsel for the petitioner that on 18th May, 1981 when the Enquiry Officer conducted the enquiry proceedings, the petitioner was beaten up and was forcibly made to sign the enquiry proceedings. Petitioner made complaints against that on 19th May, 1981 and together on 25th September, 1981. Learned counsel for the petitioner further submits that after the aforesaid episode on 18th May, 1981 if the petitioner did not participate in the proceedings and the allegation of the petitioner was that Enquiry Officer was biased against the petitioner and was not following the principles of natural justice, absence of the petitioner was justified and such an enquiry conducted was clearly in violation of principles of nature justice.

3. Perusal of the order dated 31st October, 1995 shows that the Labour Court has considered the effect of two letters dated 19th May, 1981 and 25th September, 1981 written by the petitioner in detail and has come to the conclusion that the allegation contained in these letters are not proved. Following portion of the order dated 31st October, 1995 dealing with this aspect reads as under :-

"Workman has mainly relied on his two letters dated 19.5.81 and 29.5.81 in which he alleged that enquiry officer was biased and did not follow the principle of natural justice in conducting departmental enquiry. The allegations in the said letters were denied in communications, copies of which are Annexures 17 and 20 of enquiry file. In letter dated 9.5.81, it was alleged that he was not given opportunity to cross examine the witnesses his signatures on enquiry proceedings were taken forcibly and he was not allowed to take assistance of a colleague during enquiry proceedings. But surprisingly enough none of these objections were taken when workman participated in enquiry on 18.5.81. His plea that his signatures were taken forcibly in prima facie wrong because on the file he has written in his own hand that copies of statements of PW. 2 page was received by him. There is no Explanation from the side of workman as to why he did not complain to enquiry officer regarding the allegations made in letters dated 19.5.81 and 29.5.81. So far as letter dated 29.5.81 is concerned in its earlier allegations in letter dated 19.5.81 are repeated and copies of all

documents are also demanded. As stated above workman never demanded in enquiry proceedings any copy of any document and he also did not say to enquiry officer that he wanted assistance from a college in cross examining the witnesses. So in my view said letters dated 19.5.81 and 29.5.81 of workman does not help the workman and the allegations made in them do not seem to be factually correct. The enquiry officer is an adv. by profession and there is nothing on file to show that he was under the thumb of management or in any way biased towards the workman. His admission in cross-examination that corrections in enquiry report may be in the hand of his clerk does not lead to any advance inference against him. If date on which enquiry report was given is not mentioned in enquiry report. It again is not very relevant."

4. I find no infirmity in the order passed by the Industrial Tribunal which is passed on the basis of evidence recorded before the Industrial Tribunal. It is a finding of fact on appreciation of evidence with which this Court would not interfere, in exercise of its power under Article 226 of Constitution of India unless it is shown that the findings are totally perverse. No such perversity could be pointed out.

5. So far as challenge to award dated 6th February, 1996 is concerned, the Industrial Tribunal has rightly relied upon the judgment of Supreme Court in the case of Punjab Beverages Private Limited (supra). If there was a violation of provision of Section 33 of the Act in the sense that management did not seek approval before dismissing the services of the petitioner, it gave right to the petitioner to file complaint u/s 33 of the Act which could be treated as Industrial dispute and petitioner was not obliged to seek reference u/s 10 of the Act. It was infact so done and Industrial Tribunal proceeded to decide the question as to whether enquiry conducted against the petitioner was fair and proper and it returned its findings on the said issue. It is different matter that petitioner failed to prove that action of the respondent was unfair or bad in law.

6. There is no merit in this writ petition and accordingly writ petition and application stand dismissed. Rule is discharged.

7. There shall be no order as to costs.