
(2013) 04 DEL CK 0365

In the Delhi High Court

Case No : LPA 8 of 2010

Delhi Transport Corporation

APPELLANT

Vs

Ashok Kumar

RESPONDENT

Date of Decision : 16-04-2013

Acts Referred:

Citation : (2013) 04 DEL CK 0365

Hon'ble Judges : D. Murugesan, C.J;V.K. Jain, J

Bench : Division Bench

Advocate : J.S. Bhasin and Ms. Rashmi Priya, for the Appellant;

Final Decision : Dismissed

Judgement

1. The respondent-workman who was employed with the appellant did not attend the duty from 29.1.1993 to 16.3.1993 and then from 8.4.1993 to 2.5.1993. Alleging misconduct on the part of the respondent by remaining on leave without prior approval, in contravention of Paragraph 19(b)(m) of the Standing Orders issued by the appellant-DTC, an inquiry was conducted against the respondent. On the basis of the findings recorded in the inquiry, the services of the respondent were terminated vide order dated 25.2.1994. The appellant filed an application u/s 33(2)(b) of the Industrial Disputes Act, seeking approval of the Labour Court to remove the respondent from service. The Labour Court framed a preliminary issue as to whether the appellant had held a legal, proper and legal inquiry against the respondent. Vide order dated 5.3.2001, the aforesaid preliminary issue was decided against the appellant. It was further held that the respondent had not committed misconduct by availing leave. It was also held that the charge-sheet served upon the respondent was not the basis of the findings recorded in the inquiry. As regards the merit of the charges, the Labour Court vide order dated 20.11.2012 held that no misconduct as alleged in the petition u/s 33(2)(b) of the Industrial Disputes Act was committed by the respondent. It was however held that the appellant had sent one month's salary to the respondent-workman by way of money order. However, in view of the

findings that no misconduct had been committed by the respondent, the application u/s 33(2)(b) of the Industrial Disputes Act was dismissed.

2. The order passed by the Labour Court on 20.11.2002 was challenged by the appellant by way of a writ petition. The learned Single Judge vide order dated 15.10.2008 set aside the said order and remanded the matter back to the Labour Court for disposal after hearing the respondent.

3. The Labour Court vide its order dated 16.5.2009 held that the appellant had failed to prove any misconduct on the part of the workman. As regards remitting one month's salary to the respondent, the Labour Court held that the appellant had failed to prove the last drawn wages of the respondent and, therefore, it could not be said that it had complied the requirement of Section 2(b)(i) of the Industrial Disputes Act. The application u/s 33 2(c) was accordingly rejected. Being dissatisfied with the aforesaid order, the appellant filed a writ petition which came to be dismissed vide the impugned order dated 20.10.2009. Being aggrieved from the said order, the appellant is before us by way of this appeal.

4. The first question which comes up for consideration is as to whether the appellant had proved, before the Labour Court, that it had remitted one month wages to the respondent. A perusal of the order of the Labour Court dated 16.5.2009 would show that though the appellant led evidence to prove that an amount of Rs. 2971/- was sent to the workman and was received by him along with letter of termination of his services and this fact had also not been disputed in the written statement filed by the workman, there was no material on record to show as to what was the basis pay of the respondent and what were the other allowances being paid to him. Even in the letter of termination of service Ex. AW1/F, there was no mention as to what was the basis pay of the workman. During the course of hearing, we asked the learned counsel for the appellant to show to us any document on record which would show the total salary of the respondent, at the time his services were terminated was Rs. 2921/-. No such document, however, could be shown to us by the learned counsel for the appellant. It was submitted by the learned counsel for the appellant that while passing the order dated 20.11.2002, the Labour Court had returned a finding that the appellant had remitted one month's salary to the respondent. In our view, since the order dated 20.11.2002 was later set aside by this Court, vide order dated 15.10.2008 passed in W.P.(C) No. 8457/2003, no reliance on the said order can be placed by the appellant to prove that it had remitted one month's wages to the respondent. In these circumstances, we find no ground to interfere with the findings recorded by the Labour Court in this regard vide order dated 16.5.2009. For this reason alone, no fault can be found with the order rejecting the application u/s 33(2)(b) of the Industrial Disputes Act.

5. A perusal of the order passed by the Labour Court on 16.5.2009 would show that the respondent-workman had submitted leave application with the medical certificate, though it was submitted late. It had also come in evidence that the appellant had granted leave without pay to the respondent for the period in

question and the same was done even before the charge-sheet was issued to the respondent.

6. The standing order being relied upon by the appellant reads as under:

4. Absence without permission-(i) An employee shall not absent himself from his duties without having first obtained the permission from the Authority or the Competent officer except in the case of "sudden illness". In case of sudden illness he shall send the intimation to the office immediately. If the illness lasts or is excepted to last for more than 3 days at a time, applications for leave should be duly accompanied by a medical certificate, from a registered medical practitioner or the Medical Officer of the DTS. In no case shall an employee leave station without prior permission, (ii) Habitual absence without permission or sanction of leave and any continuous absence without such leave for more than ten days shall render the employee liable to be treated as an absconder resulting in the termination of this services with the organization.

A perusal of the aforesaid standing order would show that it would not apply to a case where the employee falls ill all of a sudden. In case the leave lasts more than three days, the application for leave is required to be accompanied by medical certificate. Habitual absentee, without permission or sanction of leave and continuous absence without such leave for more than ten days also renders the employee liable to be treated as absconder resulting in termination of his services with the organization. The Labour Court found from the deposition of RW1 Deepak Kumar that the respondent was ill and he submitted the applications with medical certificates from time to time and leaves were sanctioned to him. Ex. AW1/2 is the leave application of the respondent dated 27.4.1993 for the period from 11.4.1993 to 26.4.1993. A copy of the medical certificate was also attached with this application. Ex. AW1/R1 is the joining report of the respondent after availing leave from 31.1.1993 to 15.3.1993. A perusal of this application shows that even before submitting the said application, the respondent had submitted several applications seeking leave. Medical and fitness certificates were also attached to this application. In these circumstances, the Labour Court recorded findings that the workman had given application earlier as well and at the time of joining duty, he had given the application along with the medical certificate.

7. Admittedly, the appellant did not conduct any inquiry to verify as to whether the respondent was actually ill or not. No evidence was led by the appellant to prove that the workman had not fallen ill all of a sudden or that the medical certificates submitted by him were forged documents.

8. We are in agreement with the learned counsel for the appellant that even if the leave is granted to an employee, who remains absent from duty, at a later date, that would not by itself take his case out of the purview of the above referred standing orders, but, since the standing orders itself excludes from its ambit the cases where an employee falls ill all of a sudden, applies for leave at a

later date, leave is duly accompanied by the requisite medical certificate, the illness of the employee is found to be sudden and genuine, the appellant, in our view will not be justified in treating such an employee to be an absconder, thereby giving it a cause to terminate his services.

9. The learned counsel for the appellant then relied upon the decision of the Supreme Court in *Delhi Transport Corporation Vs. Sardar Singh,]*. In the above referred case, the Supreme Court on consideration of the above referred Standing Orders of the appellant observed that para 19(h) of the said Standing Orders relates to habitual negligent in duty and loss of interest in work. It was further observed that when an employee absconds himself from duty without leave, the authority can on the basis of record come to a conclusion about the employee being habitual negligent in duty and exhibiting lack of interest in the employer's work. There is no quarrel with the legal proposition laid down by the Supreme Court in the above referred case, but it would be difficult to say that such a conclusion can be drawn even in the case of an employee against whom there are no charges of habitual negligence, whose absence from duty is solely on account of sudden illness, while submitting application for leave, he submits medical certificate evidencing his illness and the authenticity of such a medical certificate is not disputed by the Corporation. In the above referred case, the Supreme Court was of the view that the burden is on the employee to claim that there was no negligence and/or lack of interest to establish it by placing on record the material. In the case before us, the respondent, in our view, discharged the burden placed upon him by the producing medical certificates in support of his illness, once no attempt was made by the appellant to dispute the authenticity of the medical certificate and/or to verify the illness claimed by the workman by making any inquiry etc. In our view, the Standing Orders cannot be interpreted in a manner which would give power to the appellant, to terminate the services of an employee who genuinely falls sick all of a sudden and for this reason is unable to get leave sanctioned in advance, submitted the leave application without undue delay and a medical certificate from the prescribed medical attendant is also submitted to confirm the illness claimed by the workman. Therefore, the Labour Court was justified at least in taking a prima facie view that no misconduct had been committed by the respondent.

10. In any case, even if we proceed on the assumption that the respondent workman contravened the standing orders referred above and thereby he misconducted himself, that would make no difference to the outcome of this appeal because the appellant failed to establish that the amount of Rs. 2921/- sent by it to the respondent-workman represented the whole of his monthly pay and allowances. For the reasons stated hereinabove, we find no ground to interfere with the impugned order. The appeal is devoid of any merit and is hereby dismissed. There shall be no orders as to costs.