

(2012) 04 DEL CK 0382

In the Delhi High Court

Case No : Writ Petition (C) 8060 of 2010

Delhi Transport Corporation

APPELLANT

Vs

Balraj Singh (Deceased) Through LR.

RESPONDENT

Date of Decision : 25-04-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2012) 04 DEL CK 0382

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : Sarfaraz Khan, for the Appellant; Sunita Harish, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Bhasin, J.—By way of this writ petition, the petitioner, Delhi Transport Corporation, has challenged the Award dated 26th April, 2010 passed by the Labour Court whereby it was held that for unauthorized absence from duty for a period of 17 days the punishment of removal from service awarded to the workman Balraj singh, who died during the pendency of the proceedings before the Labour Court, was unjustified and accordingly after setting aside that punishment the Labour Court passed an order for payment of family pension and gratuity to the legal heirs of the deceased workman while back wages were denied. The deceased workman was charge-sheeted for unauthorized absence from duty for a period of 97 days. Since the reply submitted by him to the charge-sheet was not found to be satisfactory the management had decided to conduct a departmental enquiry. Enquiry officer was accordingly appointed who found the charge of unauthorized absence established by observing that the deceased workman himself had accepted the same at the commencement of the enquiry. Accordingly the Disciplinary Authority awarded the punishment of removal from service to the deceased workman.

2. Feeling aggrieved, the deceased workman raised an industrial dispute which came to the labour Court for adjudication. The labour Court, as noticed above,

passed the impugned Award directing the management to pay to the legal heirs of the deceased workman his family pension and gratuity while denying him the relief of back wages after coming to the conclusion the punishment of removal from service was unjustified.

3. The management then felt even aggrieved with the grant of aforesaid relief of payment of gratuity and family pension only to the legal heirs of the deceased workman by the Labour Court and therefore, the present writ petition was filed.

4. It has been contended by the learned counsel for the petitioner-management that since in the impugned Award the labour Court itself had also come to the conclusion that this was a case of unauthorized absence from duty for 17 days no relief whatsoever could have been given to the legal heirs of the deceased workman and further that the findings of the labour Court that the removal from service of the deceased workman was unjustified is also not sustainable considering the fact that on earlier occasions also the deceased workman had been found absent from duty and not only that he had been penalized also for remaining absent unauthorizedly from duty. It has also been contended that even if the labour Court was of the view that punishment of removal from service was highly disproportionate to the charge of misconduct of unauthorized absence from duty for 17 days then either the management should have been directed to take a fresh decision on the quantum of punishment or the labour Court itself should have awarded a lesser punishment but instead of doing that the deceased workman was rewarded by directing the petitioner-management to pay his legal heirs the benefit of gratuity and family pension. While making this submission learned counsel for the petitioner-management, however, did not dispute that in case the deceased workman had been alive and the labour Court had come to the conclusion that he had been wrongly removed from service then of course his heirs would be entitled to get family pension after his death but since in the present case he has been found guilty of misconduct none of these benefits are available to his legal heirs.

5. On the other hand, learned counsel for the legal heirs of the deceased workman submitted that this was not a fit case of interference by this Court in exercise of the writ jurisdiction in the decision of the learned Labour Court to the effect that the punishment of removal from service awarded to the deceased workman was unjustified since labour Court did have the jurisdiction and discretion u/s 11-A of the Industrial Disputes Act, 1947, to give a finding that the punishment awarded to the deceased workman was disproportionate to the charge of misconduct proved against him and in the present case the labour Court cannot be said to have exercised that jurisdiction and discretion arbitrarily justifying interference by this Court.

6. A perusal of the impugned Award shows that the learned labour Court had come to the conclusion that the punishment of removal from service awarded to the deceased workman was not justified for the reason that as per the management's own case the deceased workman had submitted leave

applications for a period of 80 days out of a total period of alleged unauthorized absence of 97 days. It is also been noticed that even though leave applications had been submitted by the deceased workman on the ground of his sickness and he had submitted medical certificates as well as fitness certificates but the management had rejected the same on the ground that there was no leave available to his credit. The labour Court has also accordingly come to the conclusion that it was a case of unauthorized absence from duty for a period of 17 days only as the deceased workman had not submitted any leave applications for that period. This position is not being disputed from either side.

7. I am of the view that the labour Court's decision cannot be said to be perverse justifying any interference by this Court and it cannot be said to have exercised its discretion available to it u/s 11-A of Industrial Disputes Act arbitrarily by coming to the conclusion that punishment of removal from service for absent from duty for a period of 17 days only was not justified.

8. As far as the submissions made by the learned counsel for the petitioner-management that there should have been some penalty imposed on the deceased workman by the labour Court after coming to the conclusion that he had remained absent from duty unauthorizedly for a period of 17 days and he could not have been let off without any penalty. However, I do not find any merit in this submission also for the reason that the deceased workman has been denied the back wages by the labour Court after coming to the conclusion that he had remained unauthorizedly absent from duty for a period of 17 days and denial of back wages can be considered to be a sufficient punishment and it cannot be said to be a case of no punishment having been given to the deceased workman for the misconduct of 17 days absence from duty. This writ petition is, therefore, dismissed.