

(2010) 03 DEL CK 0326

In the Delhi High Court

Case No : Writ Petition (C) No. 2699 of 2007

Delhi Transport Corporation

APPELLANT

Vs

Kuldeep Singh

RESPONDENT

Date of Decision : 04-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (2011) 176 DLT 358 : (2011) 128 FLR 810 : (2011) LLR 400

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Jitendra Kumar and Summeet Pushkarna, for the Appellant; None, for the Respondent

Final Decision : Disposed Off

Judgement

Kailash Gambhir, J.—By this petition filed under Article 226 of the Constitution of India, the Petitioner seeks to challenge the impugned award dated 18.4.2006 whereby the Industrial Tribunal has directed the payment of compensation of Rs. 75,000 in favour of the legal heirs of the deceased workman i.e. the Respondents herein.

Brief facts relevant for deciding the present petition are that the Respondent workman was appointed as a driver with the Petitioner corporation on 22.10.83. It is the case of the Petitioner that the Respondent remained absent without any prior information in 1989 for 114 days, in 1990 for 102 days, for 139 days in 1991 and for 49 days in 1992. Thereafter, the Respondent absented himself from duty for two days from 12.3.1993 to 14.3.1993 for which he was charge sheeted. Also taking into consideration his past record of absence, a show cause notice was issued to the Respondent on 22.4.1993 and the penalty of "Removal from the service of the Corporation" was imposed upon him. Thereafter, the Respondent raised an industrial dispute bearing ID No. 384/06/98 where vide order dated 18.4.2006, the legal heirs of the workman were awarded a

compensation of Rs. 75,000. Feeling aggrieved with the said order, the Petitioner corporation has preferred the present petition.

2. Mr. Jitendra Kumar, counsel for the Petitioner submits that the case of the Respondent is squarely covered by the judgment of the Apex Court in the case of Delhi Transport Corporation Vs. Sardar Singh, , as the Respondent workman remained absent unauthorizedly for a period of two days i.e. from 12.3.1993 to 14.3.1993 and also for 49 days in the year 1992, 139 days in the year 1991, 102 days in the year 1990 and 114 days in the year 1989. Counsel for the Petitioner further submits that a composite chargesheet was issued to the Respondent workman and a domestic enquiry was conducted by the management in which the Respondent was held guilty and his services were terminated. The Respondent-workman challenged the order of removal before the Labour Court which was decided in favour of the Petitioner and against the workman. Counsel further submits that although it was proved on record by the Petitioner management that enquiry by the management was conducted in a fair and proper manner after due observance of principles of natural justice but yet the Ld. Labour Court had interfered in the order of punishment. The contention of the counsel for the Petitioner is that interference u/s 11A of the I.D. Act would arise only if the punishment awarded by the management is shockingly disproportionate and so far as the facts of the present case are concerned, the same being a case of repeated unauthorized absenteeism on the part of the Respondent, the Ld. Labour Court ought to have upheld the order of punishment directing removal of the Respondent from his service. Counsel thus submits that the Ld. Labour Court has not properly exercised its jurisdiction and illegally and improperly interfered in the punishment awarded to the Respondent.

3. I have heard counsel for the Petitioner at considerable length and gone through the records.

4. At the outset, it is observed that nobody has appeared for the Respondents. Even on the last date nobody had appeared for them. Hence, the matter is taken up for final hearing.

5. It is an admitted case between the parties that no separate charge-sheet was issued by the Petitioner management to the Respondent so far the alleged unauthorized absenteeism in the year 1989, 1990, 1991 & 1992 are concerned. A composite charge-sheet was issued to the Respondent only when he was absent from 12.3.1993 to 14.3.1993. Once the Petitioner itself has not issued any charge-sheet for the previous absenteeism of the workman, therefore, it is quite manifest that the Petitioner itself did not take any serious note of the earlier absenteeism on the part of the Respondent. So far as the unauthorized absenteeism of the Respondent from 12.3.1993 to 14.3.1993 is concerned, I do not find any illegality or perversity in the impugned award so far it has interfered with the order of the punishment directing payment of compensation of Rs. 75,000 to the legal heirs of the deceased workman. The Ld. Labour Court took into consideration the fact that the Petitioner management failed to prove any

past misconduct of the Respondent workman and the said unauthorized absenteeism of two days being a solitary incident, therefore, the case certainly deserved interference by the Labour Court in exercise of its power and jurisdiction u/s 11A of the I.D. Act.

It would be useful to reproduce Section 11A of the Industrial Disputes Act here:

11A. Powers of Labour Courts, Tribunals and National Tribunals to Give Appropriate Relief in case of discharge or dismissal of workmen.-- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and; in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

As would be evident, Section 11A, couched in wide and comprehensive terms, gives wide discretion to the labour court to give appropriate relief in case of discharge and dismissal of a workman. Indisputably, the discretion of the Labour Court needs to be exercised both judicially and judiciously and cannot be arbitrary or based on whims and caprice. It cannot be lost sight of the fact that Industrial Disputes Act is a beneficial piece of social legislation and hence industrial tribunals are established with the purpose of pre-empting industrial tensions, providing the mechanics of dispute resolutions and settling up the necessary infrastructure so that the energies of employers and employees both may not be dissipated in counter-productive battles and assurance of industrial justice may create a climate of goodwill. It would be pertinent here to refer to the judgment of the Apex Court in U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, , held that:

Industrial Courts while adjudicating on disputes between the management and the workmen, therefore, must take such decisions which would be in consonance with the purpose the law seeks to achieve. When justice is the buzzword in the matter of adjudication under the Industrial Disputes Act, it would be wholly improper on the part of the superior courts to make them apply the cold letter of the statutes to act mechanically. Rendition of justice would bring within its purview giving a person what is due to him and not what can be given to him in law.

Hence, in the background of the aforesaid observation, in my considered view the Labour Court has judiciously exercised its discretion in interfering with the

punishment given to the workman. Therefore, in the grant of compensation of Rs. 75,000 to the legal heirs of the deceased workman, I do not find any illegality or perversity in the impugned award.

6. The operation of the impugned order was not stayed by this Court and it appears that the Petitioner has not paid the said compensation amount to the Respondents. At this stage, counsel for the Petitioner states that the Ld. Labour Court has awarded a higher rate of interest and the same may kindly be reduced. Let the said amount of compensation be paid by the Petitioner along with upto date interest @ 12% per annum from the date of the Award. In case the Petitioner does not pay the compensation to the Respondents within a period of one month from the date of this order, then the Petitioner will be liable to pay the interest @ 18% per annum from the date of the award.

With the above directions, the petition is disposed of.