

(2009) 07 DEL CK 0417

In the Delhi High Court

Case No : Writ Petition (C) No. 18138 of 2005

Delhi Transport Corporation

APPELLANT

Vs

Manjeet Singh

RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2009) 07 DEL CK 0417

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : Saroj Bidawat, for the Appellant; Jagjit Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—This writ petition filed by Delhi Transport Corporation (in short "DTC", the petitioner herein) is directed against an order dated 26.07.2003 u/s 33(2)(b) of the Industrial Disputes Act, 1947 declining approval to it for removal of the respondent from its service w.e.f. 20.09.2003.

2. Heard.

3. Briefly stated the facts of the case relevant for disposal of this writ petition are that the respondent was employed as Assistant Fitter with the petitioner w.e.f. 17.08.1984. He was charge-sheeted vide charge-sheet dated 17.09.1992 with allegations that on 23.06.1992 at about 13:00 hours, he had entered the office of Mr. M.L. Aggarwal, Depot Manager, Naraina Depot without his permission and attempted to hit and manhandled him with chair, table glass, pen stand and telephone receiver. The respondent also disconnected the telephone receiver and its wire and tried to bind the telephone extension wire around the neck of Mr. M.L. Aggarwal with intention to kill him. It was further alleged against the respondent that he had broken the pen stand lying on the table of Depot Manager Mr. Aggarwal and torn his baniyan and shirt. The respondent was charge

sheeted for major penalty for his alleged misconduct within the meaning of Clauses 19 (a) (c) (g) & (m) of the Standing Orders governing the conduct of DTC employees. A domestic inquiry was conducted against the respondent in which he was found guilty of charges leveled against him vide charge-sheet dated 17.09.1992. The disciplinary authority after considering the inquiry report removed the respondent from its service vide order dated 20.09.2003 and since an industrial dispute relating to general demands by the workers' union was pending adjudication before the Industrial Adjudicator, the petitioner filed an application u/s 33(2)(b) of the Industrial Disputes Act, 1947 for approval of its action for terminating the respondent from its service w.e.f. 20.09.2003 and it is this application which has been rejected by the Industrial Adjudicator vide impugned order dated 26.07.2003. Before rejection of the petitioner's application u/s 33(2)(b) vide impugned order, the Industrial Adjudicator had decided the preliminary issue relating to legality and validity of the inquiry against the management of the petitioner corporation vide order dated 26.08.2002. In the said order it has been held by the Industrial Adjudicator that not only the inquiry held against the respondent was violative of principles of natural justice but even the findings recorded by the Inquiry Officer in his report were perverse.

4. With the assistance of counsel for the parties, I have gone through the order of the Industrial Adjudicator dated 26.07.2003 on the inquiry issue line by line and word by word. The court below in its impugned order on inquiry issue has found that the respondent was on leave on the date of incident and he had got his leave sanctioned from the management for the period from 23.06.1993 to 26.06.1993 in advance. The court below has taken note of admission of this fact by the witness of the petitioner management itself. It was also noted by the court below that the Inquiry Officer had not looked into the attendance register to find out if the workman was on duty or not on the date of incident. Mr. M.L. Aggarwal who was allegedly assaulted by the respondent on the date of incident was not examined by the petitioner management either before the Inquiry Officer or even before the Industrial Adjudicator. The inquiry against the respondent was got conducted from an officer who was lower in rank to Mr. M.L. Aggarwal who was allegedly assaulted by the respondent on the date of incident. Since the inquiry was conducted by an officer below the rank of person who was allegedly assaulted then there is every possibility of inquiry report being influenced by Mr. Aggarwal, senior in rank to the Inquiry Officer. FIR of the incident was not got registered against the respondent by the petitioner corporation. All the witnesses examined by the management before the Inquiry Officer did not say that they had seen the respondent assaulting Mr. M.L. Aggarwal on the date of incident. No evidence was produced by the petitioner management before the Inquiry Officer or before the court below to show why the respondent would come to hit and assault Mr. M.L. Aggarwal on the date of incident when he was on sanctioned leave on that day with permission to leave the station.

5. In view of the above facts being taken into consideration by the court below while rejecting the approval for termination of the respondent, the impugned order by no means can be said to be suffering from perversity. The court below was absolutely right in its conclusion to say that the findings contained in the inquiry report were perverse. The impugned order also cannot be faulted with on the aspect of inquiry issue.

6. For the foregoing reason, I do not find any infirmity or illegality in the impugned orders that may call for an interference by this Court in exercise of its extraordinary discretionary writ jurisdiction under Article 226 of the Constitution. This writ petition therefore fails and is hereby dismissed.