

(2014) 11 DEL CK 0337

In the Delhi High Court

Case No : LPA 358/2014

Delhi Transport Corporation

APPELLANT

Vs

Ram Kumar

RESPONDENT

Date of Decision : 25-11-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)(b)

Citation : (2014) 11 DEL CK 0337

Hon'ble Judges : Najmi Waziri, J; Kailash Gambhir, J

Bench : Division Bench

Advocate : Arati Mahajan Shedha, Advocate for the Appellant; Rashmi B. Singh, Advocate for the Respondent

Judgement

Najmi Waziri, J.—This appeal is against an order of the learned Single Judge dated 12.11.2013, whereby the award dated 23.9.2003 passed by the Labour Court in ID No. 87/1993 was upheld; the latter had directed grant of full back wages to the respondent/workman. The appellant contends that there could be no such entitlement for the period the workman was out of service.

2. The facts of the case are that on the basis of a newspaper report regarding misbehaviour with a college going female student by a DTC driver and a conductor, the appellant had initiated action against the respondent/driver and the conductor of the bus. These two were identified on the basis of schedule of various buses plying on the route concerned. The appellant's complaint was registered and both were arrested. However, after the test identification, they were let off because the aggrieved female student concerned failed to identify them in the first Test Identification Parade (TIP) . In the subsequent TIP, she did not participate. Subsequently, the respondent/driver and the conductor were discharged on account of insufficiency of evidence.

3. In the departmental enquiry, the respondent was found guilty and as a consequence he was removed from service. In view of the pendency of certain other disputes between the appellant and its workmen, the matter was referred

to the Industrial Tribunal, Delhi for its approval while a month's wages were remitted to the respondent through money order. In his evidence, the respondent had denied knowledge of any such incident having occurred in his bus or of his having misbehaved with the college going female student. After appreciating the evidence, the Industrial Tribunal found that the respondent could not be held guilty of the alleged misconduct in the absence of proof, particularly because the alleged student could not be produced for evidence nor was there any other eye-witness to depose about the alleged incident. The newspaper report was not found sufficient to prove the allegation. Accordingly, the Tribunal held that the termination of the respondent/workman from service was illegal and unjustified, therefore, he would be deemed to be in continuous service from the date of termination and was entitled to full back wages along with consequential benefits and continuity of service. The Award took note of the Supreme Court dicta in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, which held that the non-approval of an order of dismissal under Section 33(2)(b) of the Industrial Disputes Act, renders the dismissal inoperative and it becomes ineffective from the date it was passed, hence, the employee becomes entitled to wages from the date of dismissal to the date of disapproval.

In dismissing the appellant's writ petition against the said Award, the learned Single Judge was conscious of the aforesaid judgment in Jaipur Zila (Supra) and was of the view that "if approval is not given, nothing more is required to be done by the employee as it will have to be deemed that the order of discharge or dismissal had never been passed....." and "that the employee would be deemed to have continued in service entitling him to all benefits available". The learned Single Judge found the reliance of the appellant on Delhi Transport Corporation Vs. Virender Singh, was misplaced because the facts of the present case were different. It was also held that the standard of proof in a criminal trial was different from that in a domestic enquiry. However, for a person to be found guilty of an offence, at least some evidence was required to be brought on record. There being no evidence by the complainant nor by any other person travelling in the bus concerned, therefore, there was no justification or basis to hold the respondent/workman guilty of the allegation. The learned Single Judge further observed that merely on the basis of the newspaper report, where neither the name of the driver nor the number of the bus was mentioned, it could not be concluded that the incident had ever taken place in the bus or that the respondent/workman concerned was involved in such a misbehaviour as was alleged. Therefore, even the principle of preponderance of probabilities, which would be the standard in domestic enquiry, was not met. The standard of proof of it being beyond reasonable doubt would obviously not be applicable in the present case but even the lesser requirement of proof by way of preponderance of probabilities was not met.

4. We have heard the learned counsel for the parties.

5. The appellant has relied upon its internal enquiry apropos the scrutiny of the driver's memo on the date concerned and by inductive reasoning, concluded that the respondent/workman was involved in the alleged misconduct. The departmental inquiry had concluded that the respondent/workman was guilty. This Court is of the view that in the absence of any proof being brought on record either through the aggrieved student or any eye-witness or any corroborating witness about the alleged incident in a bus whose number was neither identified nor were the alleged workmen i.e., either the bus conductor or the present respondent, there was no justification or basis for the dismissal or termination of the respondent from service. Newspaper reports do not constitute evidence for it to be taken cognizance of in any departmental proceedings. Allegations would need to be verified through proper evidence or corroborative facts, neither of which was done in the present case. Dismissal of an employee merely on the basis of sketchy facts or a mere allegation or allusion to misconduct in a newspaper would not be sufficient ground or proper justification. In the absence of any direct or corroborative evidence of the said employee's involvement in the alleged misconduct, his termination from service cannot be sustained. In situations where the right of a workman to continue in employment is sought to be infringed, an inductive reasoning cannot be employed because it would tend to arrive at a general conclusion of guilt or misconduct from unfounded facts. The right of a workman cannot be trifled with on the basis of mere conjectures. When the workman's right to continue in employment is sought to be infringed it would have to be based upon substantive evidence warranting such infraction in law. In *Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others*, , the Supreme Court held as under:

"It is equally well settled that where a quasi-judicial tribunal or arbitrator records findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated. The Industrial Tribunal or the arbitrator or a quasi-judicial authority can reject not only such findings but also the conclusion based on no legal evidence or if it is merely based on surmises and conjectures unrelated to evidence on the ground that they disclose total non-application of mind."

6. There was no basis for termination of the respondent's employment. The Industrial Tribunal had rightly refused to grant permission for the respondent's removal from service under Section 33(2)(b) of the Industrial Disputes Act, 1947. As a consequence thereof, the learned Single Judge was also right in not entertaining the appellant's writ petition. This Court finds no reason to interfere with the impugned order. This appeal is without merit and is accordingly dismissed.