
(2009) 04 DEL CK 0446

In the Delhi High Court

Case No : Writ Petition (C) No. 3823 of 2000

Delhi Transport Corporation

APPELLANT

Vs

Shri Roop Singh

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 04 DEL CK 0446

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Arti Mahajan Shedha, for the Appellant; S.S. Tomar, for the Respondent

Final Decision : Disposed Off

Judgement

Kailash Gambhir, J.—By way of this petition filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the impugned award primarily on the ground that due to the negligence of representing the DTC before the Labour Court, the petitioner could not lead the evidence to prove misconduct on the part of the respondent. Ms. Aarti Mahajan Shedha counsel for the petitioner submits that serious allegations of cheating were leveled against the respondent as he had issued sold tickets to almost 10 passengers travelling in his bus who were intercepted by the checking staff of the petitioner. Counsel further submits that the statement of the passengers was obtained in the presence of respondent No. 1 and he had also signed the said statements. His cash was also found short when the same was checked by the said checking staff. Necessary remarks were also given by the checking staff on the statements and necessary Chargesheet was also issued under his signatures. Counsel thus submits that if the matter is remanded back to the Labour Court then the petitioner will be able to establish the said mis-conduct on the part of the respondent who had issued the sold tickets to the ten passengers.

2. Mr. S.S. Tomar, counsel for the respondent, on the other hand, strongly

refutes the submissions made by the petitioner. He states that at least 11 opportunities were granted to the petitioner but the petitioner failed to avail the said opportunities and therefore no option was left with the court but to close the evidence of the petitioner. Counsel further submits that the petitioner has not offered any plausible explanation to show as to why the petitioner had failed to adduce evidence despite grant of numerous opportunities in this regard.

3. I have heard counsel for the parties and perused the record.

4. Vide order dated 16.10.1999 dismissal of the workman by the petitioner was held illegal and unjustified and directions were given to the petitioner to reinstate the petitioner/workman with continuity of service and grant of full back wages. Perusal of the award shows that the Labour Court found that the enquiry officer did not follow the laid down procedure of enquiry and even reasonable opportunity was not afforded to the respondent workman to defend the enquiry proceedings. The workman had also served the demand notice dated 28.08.1993 upon the petitioner but the same was also not responded by the management. Under these circumstances, the respondent workman had filed an application before the Conciliation Officer and thereafter the reference was made for adjudication of the dispute before the Labour Court. On the basis of the pleadings of the parties issues were framed and vide order dated 8.5.1998 the issue No. 1 was treated as preliminary issue. The petitioner management was given adequate opportunity to lead its evidence on the preliminary issue i.e. on 15.1.1996, 27.6.1996, 7.2.1992 and on 4.3.1997 but it failed to lead any evidence and ultimately the evidence of the petitioner management on preliminary issue was directed to be closed, therefore, the said preliminary issue was decided against the petitioner and the enquiry was held to be vitiated being in violation of the principles of natural justice. Thereafter, fresh opportunity was granted to the petitioner to lead evidence so as to prove misconduct of the respondent before the Labour Court but even that opportunity was not availed by the petitioner despite number of opportunities granted in this regard. On 13.4.1999 last opportunity was granted to the petitioner and the matter was adjourned on 13.5.1999 but still no evidence was led by the petitioner, therefore, evidence of the petitioner was again closed. In the absence of any evidence led by the petitioner management on the preliminary issue as well as on main issue subsequently the Labour Court came to the conclusion that the petitioner management failed to prove mis-conduct on the part of the respondent. In these circumstances, the dismissal of the respondent workman was held to be illegal and unjustified and accordingly directions were given to the management to reinstate the respondent with continuity of service with full back wages.

5. Nowhere in the present petition any explanation has been offered as to why no evidence was led by the petitioner when number of opportunities were granted by the court. I do not find any merit in the explanation offered by the petitioner that the advocate representing the petitioner did not properly communicate the progress of the case. In all such cases where there is a lapse

on the part of a party it has become a practice to put blame on the previous counsel. The petitioner being a Government Corporation has a complete back up of legal staff and nowhere it has been stated that why the matter was not affectedly prosecuted by the legal department of the petitioner and if not what action was taken against the staff member due to whose negligence the evidence was not led for such a long period of three years. Unless there is ample proof to show negligence on the part of a counsel such a practice is highly deprecated. In these circumstances, I am not inclined to remand the matter back after a gap of a period of ten years. However, since the matter could not be tried on merits although there were serious charges of cheating leveled against the respondent, therefore, I am not inclined to uphold the directions of the Labour Court so far the award of grant of full back wages are concerned. This view is also supported by the recent judgments of the Apex court where in such like cases 50% or less back wages a compensation has been awarded.

6. In the light of the above position the impugned award is upheld but with the modification to direct grant of 50% back wages by the petitioner in favour of the respondent. Except the said modification, I do not find there is any merit in the present petition. The petitioner shall implement the impugned award as well as the order of this Court within one month from the date of this order.

7. In terms of the above directions, the petition is disposed of.