

(2010) 07 DEL CK 0036

In the Delhi High Court

Case No : Writ Petition (C) No's. 6474 of 2004 and 20323 of 2005

Delhi Transport Corporation

APPELLANT

Vs

Shri Satyawar

RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 17B, 33(2)

Citation : (2010) 07 DEL CK 0036

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Uday N. Tiwary, for the Appellant; Anil Mittal, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—W.P.(C) No. 6474/2004 impugns the order dated 31st March, 2003 of the Industrial Tribunal dismissing the application of the petitioner DTC u/s 33(2)(b) of the Industrial Dispute Act seeking approval of its action of dismissal from employment of the respondent employee employed as Conductor with the petitioner DTC. It is the case of the petitioner DTC that on 7th February, 1993 the bus of the respondent workman was checked by the checking officials and in the said checking it was found that a group of seven passengers were given tickets of lesser amount inspite of collection by the respondent workman of full fare from them; upon being confronted the respondent workman admitted his fault and issued un-punched tickets and the amount of cash on him was also not found proper and adequate; since the same constitutes a misconduct under the Standing Orders of DTC after inquiry finding respondent workman guilty, the Disciplinary Authority of the petitioner DTC after inquiry finding the respondent workman guilty, vide order dated 27th July, 1993 removed the respondent workman from the service and remitted one month's wages to him by way of Money Order. Owing to the pendency then of a general dispute between the petitioner DTC and its employees, the approval of such dismissal was sought by filing an application u/s 33(2)(b) supra.

2. The Industrial Tribunal in the said proceedings framed a preliminary issue as

to whether a legal and valid inquiry had been conducted according to the principles of natural justice.

3. The Industrial Tribunal vide order dated 25th October, 2002 decided the said preliminary issue against the petitioner DTC. It was held that the Inquiry Officer did not examine any passenger witnesses and the copy of the statement of the passengers alleged to have been received by post was also not supplied to the respondent workman. It was therefore held that in the absence of primary evidence of the passenger witnesses there was no reliable material before the Inquiry Officer to reach the conclusion that the passengers actually paid the full money to the respondent workman and he did not issue the tickets of correct amount. The report of the Inquiry Officer was thus held to be perverse.

4. The petitioner DTC thereafter sought opportunity to prove the misconduct before the Tribunal. An issue was framed with respect thereto and an additional issue was also framed as to whether the petitioner DTC had remitted one month's wages to the respondent workman at the time of his removal from service.

5. The Tribunal has in the impugned order dated 31st March, 2003 held that the statement of the passenger witnesses was not taken on the back of the challan as was required under the departmental instructions of the petitioner DTC; that the signature of the respondent workman was also not taken thereon; that no passengers were produced before the Industrial Tribunal also to prove the misconduct aforesaid. The Tribunal therefore held misconduct to have been not proved before it also. The Tribunal decided the other issue also against the petitioner holding that no evidence of one month's wages having been sent to the respondent was led. Consequently, the application u/s 33(2)(b) was dismissed.

6. Aggrieved therefrom the W.P.(C) No. 6474/2004 (supra) was preferred and on the basis of the contention of the counsel for the petitioner DTC that as per the dicta in State of Haryana and Another Vs. Rattan Singh, and in DTC v. N.L. Kakkar 110 (2004) DLT 493 the non-examination of the passenger witnesses is not fatal, notice of the writ petition was issued and the operation of the impugned award stayed. The respondent workman filed an application u/s 17B of the ID Act which was allowed on 25th July, 2007. The petitioner DTC has in the writ petition inter alia contended that the Industrial Tribunal had failed to appreciate that to prove the issue No. 2 of sending one month's salary to the respondent workman, the petitioner DTC had filed an affidavit of one Sh. Raj Singh Rana which remained un rebutted and which witness had deposed that one month's salary of Rs. 2,144/- was sent to the respondent workman through Money Order. It was also pleaded that the said witness had also proved the Money Order receipts and postal receipts in this regard. The petitioner has along with the writ petition also filed a photocopy of the said affidavit of Sh. Raj Singh Rana, Sr. Clerk of the petitioner DTC. The file of the Industrial Tribunal was requisitioned. A perusal of the requisitioned file shows that there is no affidavit

as claimed by the petitioner DTC of Sh. Raj Singh Rana therein, though a photocopy of the Money Order alleged to be sent is found on the file of the Industrial Tribunal. The Counsel for the petitioner DTC also during the hearing admitted that the affidavit of Sh. Raj Singh Rana, copy whereof was filed along with the writ petition, in fact does not exist on the file of the Labour Court.

7. It appears that the respondent workman also raised a dispute u/s 10 of the ID Act qua his termination. A reference dated 9th August, 2001 was made. The petitioner DTC however did not file a written statement to the statement of claim of the respondent workman nor appeared in those proceedings and was proceeded against ex parte. The Industrial Tribunal on the basis of the ex parte evidence of the respondent workman and on the basis of the order dated 31st March, 2003 (supra) of dismissal of the application u/s 33(2)(b) of the ID Act, made an ex parte award dated 4th December, 2003 holding the termination of services of the respondent workman by the petitioner DTC to be illegal and unjustified and directed the petitioner DTC to reinstate the respondent workman with full back wages and consequential benefits.

8. W.P.(C) No. 20323/2005 impugning the said award was filed after considerable delay. It is mentioned in the writ petition itself that the respondent workman, in enforcement of the award had already recovered a sum of Rs. 6,39,793/- towards full back wages. Notice of W.P.(C) No. 20323/2005 was also issued and operation of the award stayed. Both the writ petitions, involving the same questions of fact, were taken up together for hearing.

9. The counsel for the petitioner DTC has again relied on Rattan Singh (supra). The counsel for the respondent workman has contended that Rattan Singh would not be applicable because not only did the petitioner DTC fail to examine the passenger witnesses before the Inquiry Officer but before the Labour Court too. That would however not make a difference. Post Rattan Singh, this Court in N.L. Kakkar (supra) and in Delhi Transport Corporation Vs. Om Pal and Another, has held that production of passengers either in a domestic inquiry or before the Labour Court is not at all necessary and in most cases would be highly impracticable.

10. However, there is an important aspect of the present matter. The respondent workman had in the approval application u/s 33(2)(b) denied that one month's wages were sent by the petitioner DTC or received by him. An issue to that effect was also framed. The petitioner DTC however failed to lead any evidence whatsoever on the said issue. On the contrary before this Court, along with W.P. (C) No. 6474/2004 a photocopy of an affidavit by way of evidence in this respect was filed and it was stated on oath that such evidence led before the Industrial Tribunal had remained unnoticed. It was enquired from the counsel for the petitioner DTC as to on what basis the said statement came to be made. The counsel was unable to explain. On further probing, he contended that another opportunity be given to prove the same.

11. The counsel for the respondent has contended that without the petitioner DTC having paid one month's wages, the application u/s 33(2)(b) is liable to be dismissed in any case. There is merit in the said contention. Reliance is placed on Bharat Electronics Ltd., Bangalore Vs. Industrial Tribunal, Karnatak, Bangalore and another, . In my view, the application u/s 33(2)(b) was correctly dismissed on this ground alone and which does not require any interference by this Court. Moreover, the petitioner DTC having falsely represented certain facts before this Court is in any case not entitled to the discretionary remedy. The W.P.(C) No. 6474/2004 is in the circumstances dismissed.

12. That brings me to W.P.(C) No. 20323/2005. The dismissal of W.P.(C) No. 6474/2004 against the order of application u/s 33(2)(b) would not make any difference to the outcome of the other writ petition. The inquiry u/s 33(2)(b) is of a prima facie nature and any findings therein do not come in the way of adjudication of a reference u/s 10. The award impugned in W.P.(C) No. 20323/2005 however came to be made ex parte. The same is inexplicable. As aforesaid, the reference was in the year 2001 when the approval application u/s 33(2)(b) was still pending. There is no explanation whatsoever as to why it was not brought to the notice of the petitioner DTC in the 33(2)(b) proceedings that it was going unrepresented in the Section 10 proceedings. The impugned order in W.P.(C) No. 6474/2004 and the award in W.P.(C) No. 20323/2005 is of the same Industrial Tribunal. It is often found that the Industrial Tribunal/Labour Court are not linking the two proceedings and which sometimes is also resulting in inconsistent orders/awards in the two. When the respondent workman could inform the Industrial Tribunal in the Section 10 proceedings of the earlier order on the application u/s 33(2)(b), he ought to have also informed the petitioner DTC of the Section 10 proceedings. It is not as if the petitioner DTC was not pursuing the Section 33(2)(b) proceedings also. The Section 10 proceedings remained pending even after the decision on the application u/s 33(2)(b). Though the record of the Industrial Tribunal in the said case has not been requisitioned, but from the award also it is not clear as to whether the petitioner DTC was served and if so, how. This Court, in the circumstances, is of the considered opinion that the ex parte award impugned in W.P.(C) No. 20323/2005 is liable to be set aside/quashed and the petitioner DTC is entitled to an opportunity to contest the Section 10 proceedings.

13. W.P.(C) No. 20323/2005 is accordingly allowed and the ex parte award is set aside. The parties are directed to appear before the Industrial Tribunal on 2nd August, 2010. Since the matter has remained pending for long, the Industrial Tribunal is directed to decide the same within six months of that date.

Both writ petitions are accordingly disposed of.

No order as to costs.