

(2006) 11 DEL CK 0020

In the Delhi High Court

Case No : Writ Petition (Civil) No. 4883 of 2003

Delhi Transport Corporation

APPELLANT

Vs

Shri Siri Bhagwan and Another

RESPONDENT

Date of Decision : 27-11-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2006) 11 DEL CK 0020

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : Saroj Bidawat, for the Appellant;

Judgement

Manju Goel, J.—The respondent a Driver with the petitioner Corporation, absented from duty from 1.1.1991 to 31.8.1991, i.e. for a period of full eight months. He was issued a charge-sheet dated 17.9.1991 for having availed of 148 days leave without pay during the said period which showed that he was not taking interest in his work and that the action amounted to misconduct within the meaning of para 19(h) and (m) of the Standing Orders governing the conduct of the DTC employees. An inquiry was instituted on 22.1.1993. In the inquiry proceedings the respondent admitted the charge but said that he was not on leave out of free will but that he was unwell and that he did not want to produce either any documentary or oral evidence in his support and that he did not want any inquiry. In view of his admission, the Inquiry Officer did not examine any witness and held that the charge was proved. However, after his services were terminated, the petitioner filed an application u/s 33(2)(b) of the Industrial Disputes Act which was decided by the order dated 1.10.2002. Referring to the above statement of the respondent and to the grant of leave without pay, the Industrial Tribunal gave its opinion as under:

In the present case even the charge sheet is not sustainable as proceeding on leave without pay does not amount to misconduct as per para 19(h) and (m) of the standing orders governing the conduct of DTC employees, what to say

proving the charges. It is held that management has failed to prove the allegation amounting to misconduct against the respondent.

2. On this ground, the application u/s 33(2)(b) of the Industrial Disputes Act was dismissed.

3. The order of the Industrial Tribunal is in challenge in the present writ petition. It is contended on behalf of the petitioner Corporation that the Supreme Court in the case of Delhi Transport Corporation Vs. Sardar Singh, considered whether the grant of leave without pay will mean that the worker or employee had not committed any misconduct. It was observed in this judgment that leave was required to be obtained before actually proceeding on leave or before actually absents from work and that subsequent sanction of leave without pay, at best, could straighten the records but not obliterate the misconduct. Paras 9, 10, 11, 12 and 13 of this judgment are exactly on the issue before this Court. The Supreme Court held that it was improper to refuse to grant permission u/s 33(2) (b) on the ground that leave without pay had been sanctioned. Paras 9, 10, 11, 12 and 13 are as under:

9. When an employee absents himself from duty, even without sanctioned leave for very long period, it prima facie shows lack of interest in work. Para 19(h) of the Standing Order as quoted above relates to habitual negligence of duties and lack of interest in the Authority's work. When an employee absents himself from duty without sanctioned leave the Authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's work. Ample material was produced before the Tribunal in each case to show as to how the concerned employees were remaining absent for long periods which affect the work of the employer and the concerned employee was required at least to bring some material on record to show as to how his absence was on the basis of sanctioned leave and as to how there was no negligence. Habitual absence is a factor which establishes lack of interest in work. There cannot be any sweeping generalization. But at the same time some telltale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings.

10. Great emphasis was laid by learned Counsel for the respondent-employee on the absence being treated as leave without pay. As was observed by this Court in State of Madhya Pradesh V. Harihar Gopal (1969) (3) SLR 274 by a three-Judge Bench of this Court, even when an order is passed for treating absence as leave without pay after passing an order of termination that is for the purpose of maintaining correct record of service. The charge in that case was, as in the present case, absence without obtaining leave in advance. The conduct of the employees in this case is nothing but irresponsible in extreme and can hardly be justified. The charge in this case was misconduct by absence. In view of the Governing Standing Orders unauthorized leave can be treated as misconduct.

11. Conclusions regarding negligence and lack of interest can be arrived at by

looking into the period of absence, more particularly when same is unauthorized. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials. Clause (ii) of Para 4 of the Standing Order shows the seriousness attached to habitual absence. In Clause (i) thereof, there is requirement of prior permission. Only exception made is in case of sudden illness. There also conditions are stipulated, non- observance of which renders the absence unauthorized.

12. The Tribunal proceed in all these cases on the basis as if the leave was sanctioned because of the noted leave without pay. Treating as leave without pay is not same as sanctioned or approved leave.

13. That being the factual position, the Tribunal was not justified in refusing to accord approval to the order of dismissal/removal as passed by the employer. The learned Single Judge was justified in holding that the employer was justified in passing order of termination/removal. The Division Bench unfortunately did not keep these aspects in view and reversed the view of learned Single Judge.

4. The respondent despite service of notice from this Court has not cared to defend the writ petition. The Supreme Court has sufficiently covered the issue and nothing more is required to be added by this Court. The Industrial Tribunal should have granted the permission sought by the petitioner u/s 33(2)(b) of the Industrial Disputes Act.

5. Writ petition is accordingly allowed and the impugned order is quashed. All pending applications also stand disposed of.