
(2006) 12 DEL CK 0076

In the Delhi High Court

Case No : Writ Petition (C) No. 6320 of 1999

Delhi Transport Corporation

APPELLANT

Vs

Vijay Kumar and Another

RESPONDENT

Date of Decision : 07-12-2006

Acts Referred:

Delhi Road Transport Laws (Amendment) Act, 1971 — Section 15, 21

Citation : (2006) 12 DEL CK 0076

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

Bench : Single Bench

Advocate : Saba Rahman and Latika Chaudhary, for the Appellant; Shanta Pandey, for the Respondent

Final Decision : Disposed Off

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has challenged the validity of award dated 26th October, 1998 passed by the Labour Court No. 4, whereby the petitioner was directed to reinstate the workman with full back wages and continuity of service till he attains the age of superannuation.

2. Briefly, the facts are that the workman was working as a Assistant Electrician with the petitioner and was posted at Wazirpur Depot No. 1. On 29.7.1988, the Regional Manager(Tech.) North paid a visit to the Depot and took a round accompanied by Assistant Engineering Ram Swroop, Foreman Mr. O.P. Katyal and Assistant Foreman Mr. K. Singh. The Regional Manager found respondent Vijay Kumar sleeping on a bench during duty hours. When he asked him as to why he was sleeping, in spite of the tea time having come to an end, respondent Vijay Kumar misbehaved with the Regional Manager Mr. G.C. Dubey and used filthy language. He also moved forward to commit physical assault against the Regional Manager who was saved by the accompanied staff. He was placed under suspension on 30.7.1988 and a charge sheet was served upon him for the misconduct to the following effect:

You have refused to give clarification as to why disciplinary action should not be taken against you for the following irregularities under Delhi Road Transport Law(Amended) Act, 1971 read with Delhi Road Transport Authority(condition of appointment and service) regulation, 1952, Section 15/21. It has been reported by Sh. Om Prakash Foreman, BA.TO.S. 1969 that you were found lying on a bench on 29.7.1988 while you were discharging your duties at the depot workshop from 7.30 to 1600. In course of inspection by Shri G.C Dubey, (Regional Manager(Tech.) and upon asking in this context you used unparliamentary language against him and you also tried to beat him in the presence of Sh. Ram Swaroop Asstt. Engineer and Sh. O.P. Katyal, Foreman(Reporter) which show disinterest and careless towards the duty of the corporation.

Therefore, your above conduct tantamount to misconduct certain the meaning of part 19(f)(g)(h) and (m) of performance order which governs the conduct of Delhi Transport Corporation employees.

A copy of report by Shri O.P. Katyal, foreman which on the basis of charge sheet issued, is attached herewith.

A copy of your past record is also attached. This may kindly be kept in mind while giving final order of defending.

If you want a personal hearing then in this situation please make mention to that effect in your clarification.

Your clarification should reach this office within 10 days of the receipt of this charge sheet. If you are unable to do so then the matter will be decided on the basis of its merits and demerits without giving you any further notice.

Sd/-

5.9.98 Depot Manager.

3. After the charge sheet, an enquiry was conducted into the misconduct and he was found guilty of the misconduct and an order of removal from service was passed by the disciplinary authority on 13th December, 1988. The respondent challenged the removal from service and following dispute was referred for adjudication to the Labour Court:

Whether the termination of services of Sh. Vijay Kumar is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?

4. The respondent took the stand that the enquiry was not conducted in accordance with the principles of natural justice. It was not fair and proper and the enquiry officer was biased. In written statement, the management denied the allegations made by the respondent and asserted that the enquiry was conducted in fair and proper manner. However, none appeared for the management on 26.8.1998. The cross examination of the workman was closed and the

management was proceeded ex parte and an ex parte award was passed on 26th October, 1998. The workman/respondent preferred this writ petition in October, 1999. In the writ petition, the reasons for non appearance as stated to be that Mr. S. Siddiqui, AR of the management had resigned from DTC panel, leading to non representation of the petitioner and miscarriage of justice. It is also argued that the award was perverse and without evidence. The Tribunal gave finding on the basis of no evidence. The award resulted in miscarriage of justice.

5. A perusal of the award would show that the Labour Court seems to have considered an affidavit filed by the workman, wherein the workman alleged that the enquiry officer was biased and the statement of Mr. O.P. Katyal, a witness, was not reliable and the enquiry was illegal and unjustified. Since the onus to prove that the enquiry was in accordance with the principles of natural justice, was on the management and the management had not led any evidence, the affidavit of the workman was believed and award was passed.

6. It is settled law that the bias has to be proved and shown by the person alleging bias. A perusal of the affidavit of the respondent/workman would show that the respondent has stated that Mr. G.C. Dubey himself did not appear in the witness box but other witnesses were examined. He was not given a copy of the findings of the enquiry officer by the enquiry officer. His reply to the show cause notice was summarily rejected. The witnesses examined were false witnesses. In the entire affidavit, the workman has nowhere stated that the enquiry officer was biased. However, the learned Presiding Officer had observed that the respondent in his affidavit, has submitted that the enquiry officer was biased. Similarly, in the entire affidavit he has not even mentioned the name of Mr. O.P. Katyal, but the enquiry officer has stated that it is proved from the affidavit that the statement of Mr. O.P. Katyal was unreliable. It would be seen that the award given by the Labour Court is not based on the evidence of the respondent but is based on conjectures and surmises. Even in an ex parte proceedings, the Tribunal has to carefully analyze the evidence which comes on record and then only pass an award. But the award seems to have been passed in a very casual manner without looking into the affidavit and without considering the evidence of the workman.

7. Though this Court, in writ jurisdiction, cannot re-appreciate the evidence and cannot act as a court of an appeal, but this Court can examine the perversity of award and see if the award has been passed on the basis of no evidence or is contrary to evidence on record. In this case, the award passed by the Labour Court is based on no evidence and it is not based on the evidence on record and is a perverse award. The Labour Court has not discussed the evidence led by the workman at all and has imagined some evidence of its own and given an award. The award is liable to be set aside on this ground alone.

8. I, Therefore, set aside the award of the Labour Court. However, the Labour Court is directed to consider the evidence of the workman afresh and pass an award. Since the Labour Court has to consider the evidence of the workman

afresh, the Labour Court shall give one opportunity of cross examining the witnesses to the management and shall also give one opportunity to the management to lead evidence. Parties to appearance before the Labour Court on 12th December, 2006.

9. With these directions, the writ petition stands disposed of. No orders as to costs.