
(2015) 03 DEL CK 0315

In the Delhi High Court

Case No : Writ Petition (C) 2619 of 2011

Dharamvir Sharma

APPELLANT

Vs

Fena Pvt. Ltd.

RESPONDENT

Date of Decision : 02-03-2015

Acts Referred:

Citation : (2015) 145 FLR 709 : (2015) LLR 429

Hon'ble Judges : V.P. Vaish, J

Bench : Single Bench

Advocate : Sanjoy Ghose and Farrukh, for the Appellant; Harminder Singh and A.K. Goyal, Advocates for the Respondent

Final Decision : Disposed off

Judgement

V.P. Vaish, J.

1. By way of the present petition, the petitioner impugns the order dated 29.08.2009 passed by learned Presiding Officer, Labour Court-IX, Karkardooma Courts, Delhi in I.D. No. 1128/1998 whereby it was held that the domestic inquiry by the Management was valid and proper and further impugns the Award dated 08.09.2009 whereby the petitioner was held not entitled to any relief. Brief facts of the case are that the petitioner was employed by the respondent company (previously known as M/s. Syndet and Chemical Industries Ltd.) on 16.07.1988 for the post of electrician. The petitioner was drawing wages of Rs. 2,553 (Rupees Two thousand five hundred fifty-three) per month. On 28.12.1996 the petitioner was accused of misappropriating money which was meant to be used for the purchase of diesel. Pursuant to the said allegation the respondent company served a charge-sheet on the petitioner on 30.12.1996 alleging that he was supposed to bring 200 liters of diesel for the company generator. However, when the same was measured by the employees of the respondent company, 18 liters of diesel was found to be missing. An inquiry was conducted by the respondent company and on 28.08.1997, the inquiry officer appointed by the respondent company submitted his report wherein the petitioner was found guilty

of the charges mentioned in the charge-sheet and a show-cause notice was served upon the petitioner.

2. The petitioner submitted his reply dated 18.11.1997 to the show-cause notice. Thereafter, the respondent terminated the services of the petitioner vide letter dated 17.12.1997.

3. The petitioner raised an industrial dispute which was referred to the Labour Court for adjudication in I.D. No. 1128/1998 by the competent authority on 14.10.1998 under the following terms of reference:

"Whether termination of services of Sh. Dharam Vir Sharma is illegal and/or unjustified, and if so, to what relief is he entitled and what directions are necessary in this respect?"

4. In the said I.D. a statement of claim was filed by the petitioner, written statement was filed by the respondent company and evidences were produced from both the sides. Vide impugned order dated 29.08.2009, learned Labour Court held that the departmental inquiry suffered from no infirmity which culminated to the passing of the Award dated 8.9.2009, which is also impugned in the present petition.

5. Learned counsel for the petitioner contended that the trial court failed to appreciate that the petitioner had been employed for nearly 10 years and the respondent had never raised any cause or concern with the petitioner. The domestic inquiry was not conducted by the respondent following the principles of natural justice. The petitioner was not permitted to be represented by a co-worker in the inquiry and the inquiry officer had not explained the rules of the inquiry and the proceedings to the petitioner.

6. It was further contended by learned counsel for the petitioner that it was not the course of regular duty of the petitioner to obtain fuel and the fact that the fuel had been diverted by the petitioner could not be conclusively established by relying on the coerced apology written by the petitioner. The petitioner had obtained and brought the diesel to the office premises at 3:00 p.m., it was measured two hours later and it was only then that the discrepancy was noted. There is no certainty that the alleged discrepancy in the amount of fuel filled could not have happened at the filling station without the complicity of the petitioner.

7. Lastly, it was contended on behalf petitioner that the respondent company failed to adduce any evidence to support the contention that the full and final payment had actually been accepted by the petitioner. In fact, while considering the facts peculiar to the case where the petitioner is said to have received the full and final settlement amount on the same day as the date of his termination, the trial court should not have automatically come to the conclusion that the petitioner had accepted the said settlement.

8. Per contra, learned counsel for respondent urged that the gravity of

misconduct proved to have been committed by the petitioner led to the loss of confidence in the service of the petitioner by the respondent which was a sufficient enough reason to impose the punishment of termination. The inquiry was conducted after following the principles of natural justice. The inquiry officer had specifically asked the petitioner during the inquiry on 14.03.1997 as to whether he wanted to be represented in the inquiry by a co-worker, which he himself refused to avail of.

9. It was also contended on behalf of respondent that the petitioner had led no satisfactory evidence in the inquiry to prove that he was unfairly implicated by Mr. Kailash Chander. The diesel obtained by the petitioner was measured soon after it was brought by the petitioner and subsequently the quantity had been verified more than once and the final report was prepared at about 5:00 p.m., from which it cannot be validly implied that the measurement took place at 5:00 p.m.

10. I have given my thoughtful consideration to the submissions made by learned counsel for the parties and have also perused the material on record. A perusal of the record shows that learned Labour Court on 11.04.2001 had framed the following issues:

- (i) Whether the enquiry conducted by the management was not fair and proper?
- (ii) Whether the workman Sh. Dharamvir Sharma has accepted the result of the enquiry by settling full and final account with the management?
- (iii) Whether the termination of services of Sh. Dharamvir Sharma is illegal and/or unjustified?
- (iv) Relief.

11. In the said order learned trial court had considered issue No. 1 as a preliminary issue and held that a valid and proper domestic inquiry was conducted by the respondent Management against the petitioner in accordance with the principles of natural justice. Subsequently, on 08.09.2009, learned Labour Court considered the remaining three issues and passed the impugned order. In the said Award with regard to issue No. 2 it was observed as under:--

"15. There is sufficient material on record in this regard and more particularly there is a document titled as "Statement of full and final settlement" dated 17.12.97 on record signed at the bottom of it by the workman herein through which he had received Rs. 6222 (Rs. Six Thousand Two Hundred Twenty Two) vide cheque No. 62278 dated 17.12.97 drawn on Bank of India towards full and final settlement of all his claims against the management. It clearly shows that the workman herein had accepted the result of enquiry by settling full and final account with the management. Accordingly, this issue is also decided against the workman and in favour of the management."

12. The Labour Court held that the workman had accepted the result of the

inquiry by settling full and final account with the Management based on the document titled as "statement of full and final settlement" dated 17.12.1997. Further, on the basis of issue No. 1 and 2 so decided by learned Labour Court with regard to issue No. 3, it was held that the services of the workmen had not been terminated illegally and/or unjustifiably by the Management.

13. From the records it is observed that the document titled as "statement of full and final settlement" dated 17.12.1997 (at page 149 of trial court record) was not proved before the Labour Court and in its absence the Labour Court could not have reached to the aforesaid conclusion.

14. Hence, in the light of the aforementioned reasons, the matter is remanded back to the learned Labour Court to re-hear the matter after giving a fair opportunity to both the parties to present their case and pass a fresh Award expeditiously and preferably within a period of four months.

15. Both the parties are directed to appear before the concerned Labour Court on 12.03.2015 at 10:00 a.m.

16. With the aforesaid observations, the petition stands disposed of. The trial court record be sent back forthwith.