

(2013) 01 DEL CK 0400
In the Delhi High Court
Case No : Writ Petition (C) 21176 of 2005

D.T.C.

APPELLANT

Vs

Dhoj Pal

RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Citation : (2013) 2 AD 672 : (2013) 138 FLR 680 : (2013) LLR 307

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : J.B. Malik, for the Appellant; G.S. Charya, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Ms. Mukta Gupta, J.—By the present petition the Petitioner impugns the order dated 22nd December, 2004 and the award dated 2nd February, 2005 whereby it was held that the report of the Inquiry Officer was not based upon cogent material, was perverse and thus vitiated and since the Petitioner did not seek the leave to lead the evidence even if the issue in the inquiry was decided against him in the written statement, no further opportunity can be granted to him to prove the misconduct of the workman and thus the termination was held to be illegal and unjustified and the Respondent was directed to be reinstated in service with full back wages from the date of the termination. Learned counsel for the Petitioner contends that the order dated 22nd December, 2004 declaring the inquiry to be vitiated as the passenger witnesses were not examined is contrary to the law laid down by the Hon"ble Supreme Court in Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane, and State of Haryana and Another Vs. Rattan Singh, . It is contended that going into sufficiency of evidence in an inquiry proceedings is beyond the jurisdiction of the Trial Court and an interference into the finding of the inquiry report can be made only if it is perverse or contrary to the principles of natural justice. The final award was passed on the basis of the inquiry issue and no opportunity to lead evidence was given to the Petitioner as the same was not prayed in the written statement.

Reliance is placed on Delhi Transport Corporation Vs. Jaipal Singh . The Respondent was permitted to join the services pursuant to the order u/s 17B of the Industrial Disputes Act, 1947 (in short the ID Act) on 1st January, 2009 and thereafter again on checking it was found that he had Rs. 1,294/- in excess thus he again misconducted himself.

2. Learned counsel for the Respondent on the other hand contends that the contentions now being raised by the Petitioner have not been raised in the writ petition. The finding on the issue of inquiry in the approval application does not operate as res-judicata on the finding to be arrived at for the inquiry in an industrial dispute raised by the workman. Learned Trial Court committed no illegality in not permitting the additional evidence as the said liberty was not sought in the written statement. Reliance is placed on Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another, and Surinder Pal Vs. Management of Delhi Transport Corporation, . Further no application was filed seeking permission to lead evidence hence the learned Trial Court rightly did not allow the Petitioner to lead additional evidence. The statement of the Respondent could not be termed as an admission as the same was signed under protest and thus there is no illegality in the impugned order/award.

3. I have heard learned counsels for the parties.

4. The facts giving rise to the filing the present petition are that the Respondent was engaged by the Petitioner as a conductor on 15th November, 1979. On 1st June, 1985 on checking it was found that the Respondent had collected Rs. 2.20 from the passenger and issued him a ticket of Rs. 2 which was valid from Ashram to Faridabad though he had boarded the bus from Lajpat Nagar. A charge sheet was issued to him and since his explanation was not found satisfactory an inquiry was conducted. Pursuant to the report of the inquiry officer the Disciplinary Authority removed the Respondent from service from 30th September, 1991. He was simultaneously sent one month wages by money order and an application u/s 33(2)(b) of the ID Act was filed for grant of approval before the learned Trial Court. On 19th April, 2001 the Industrial Tribunal granted approval for the termination of the Respondent and thereafter the Respondent raised an industrial dispute on which the following terms of reference were sent for adjudication:

Whether the punishment imposed upon Sh. Dhoj Pal S/o. Tota Ram by the management vide its order dated 30.9.91 is illegal and unjustified and if so, to what relief along with consequential benefits in terms of existing law/Govt. Notification and to what other relief is he entitled and what directions are necessary in this respect?

5. A preliminary issue with regard to the inquiry was framed and it was held that the inquiry was vitiated. Consequently the award was passed on 2nd February, 2005 holding that the termination of the Respondent was illegal and unjustified and he was entitled to reinstatement with full back wages.

6. There is no dispute to the proposition that the finding in the Trial Court in an

application u/s 33(2)(b) does not operate as a res judicata in a petition u/s 10 of the ID Act. However, in the present case as regards the preliminary issue as to whether the Management has held a fair and proper inquiry as per the principles of natural justice it was held that since the Inquiry Officer based his report for holding delinquent officer guilty on the basis of the signatures made by the workman on the challan under protest, the same was perverse as there was no material evidence. It is well settled that the statement of the passenger witnesses need not be recorded if there is material on record to show that the workman has misconducted.

7. In the present case even as per the version of the checking inspector only allegation against the Respondent is that he gave one passenger ticket from Ashram though he boarded from Lajpat Nagar. In the cross-examination this witness has stated that there were 57 passengers in the bus and except one passenger all other were having proper tickets. Further the said passenger also had the ticket. It is not stated that due to the ticket being given from Ashram instead of Lajpat Nagar less money was charged. Further the checking inspector admits that he did not count the cash with the Respondent as he was in a hurry. It is further stated that the Respondent admitted his guilt in the challan. The acceptance of guilt by the Respondent is under protest. Thus, the present is clearly a case of no evidence and the learned Trial Court committed no error in coming to the conclusion that the finding of the enquiry officer was perverse. Hence the same could not have been treated as a fair admission and the finding is thus perverse. I find no illegality much less any infirmity in the impugned order dated 22nd December, 2004. As regard the non grant of permission to the Petitioner for adducing additional evidence, it may be noted that the Petitioner neither raised this plea in the written statement nor made an application subsequently. Thus having not sought the liberty to lead additional evidence, the learned Trial Court was not required to grant permission to the Petitioner to lead evidence. Petition is dismissed.