
(2007) 10 DEL CK 0260

In the Delhi High Court

Case No : Writ Petition (C) No's. 5724 of 2005 and 507 of 2006

DTC

APPELLANT

Vs

Pradeep Kumar and Another
 Pradeep Kumar Vs DTC
and Another

RESPONDENT

Date of Decision : 08-10-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 17B, 33(2)

Citation : (2008) 146 DLT 40 : (2008) 116 FLR 879 : (2008) 3 SLJ 67

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Vinay Sabharwal, in Writ Petition C No. 507/2006 and Atul T.N. and Deepak Sinha, in WP C No. 5724/200, for the Appellant; Atul T.N. and Deepak Sinha, in Writ Petition (C) No. 507/2006 and Vinay Sabharwal in WP (C) No. 5724/2005, for the Respondent

Final Decision : Disposed Off

Judgement

Hima Kohli, J.—By this common judgment, this Court proposes to dispose of both the writ petitions, being W.P. (C) No. 507/2006 filed by the Delhi Transport Corporation (DTC) and W.P. (C) No. 5724/2005 filed by the workman as both arise out of the same impugned order dated 2.9.2002, by which the Industrial Tribunal (hereinafter referred to as "the Tribunal") dismissed the approval application filed by the DTC u/s 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). While DTC by way of its petition has sought for quashing and setting aside of the impugned award and for holding the DTC to be entitled to the approval sought by it u/s 33(2)(b) of the Act, the workman in his petition has prayed for directions to be issued to the DTC to reinstate him in service and pay him full back wages from the date of his termination, till the date of his reinstatement, in view of the rejection order dated 2.9.2002, passed by the Tribunal.

2. For the sake of convenience, facts of W.P.(C) No. 507/2006 are being taken

note of. The respondent workman was employed as a Driver with the petitioner DTC. On 11.12.1991, the police arrested him on charges of kidnapping and rape of a girl. On 17.1.1992, the Depot Manager of Shahadra Depot-II issued a charge sheet to the respondent workman on the ground of concealing the fact of his arrest from the employer, i.e., the petitioner DTC, which amounted to misconduct within the meaning of paras 19(f), (k) and (m) of the standing orders of the D.R.T.C. An oral enquiry was conducted into the charges and the respondent workman was found guilty and removed from service on 19.10.1992. Immediately thereupon, the petitioner DTC filed an approval petition before the Tribunal u/s 33(2)(b) of the Act seeking approval of its action of removing the respondent workman from service. In the said proceedings, a preliminary issue was framed on 10.5.1993 to decide whether the enquiry conducted by the petitioner DTC against the respondent workman was legal and valid and in accordance with the principles of natural justice.

3. In his reply to the said petition, the respondent workman denied that he had committed the said misconduct and stated that he had intimated the petitioner DTC of his arrest at the earliest possible opportunity available to him after his release on bail, i.e. on 6.1.1992. He stated that the enquiry was vitiated since he was not afforded reasonable opportunity to defend himself and the enquiry officer ignored his contentions. Thereafter, evidence of the witnesses of both the parties was recorded, and on the basis of the evidence recorded as also the arguments of both the parties, vide order dated 6.9.2001, the Tribunal observed that there was no reason to hold that the enquiry officer did not follow the principles of natural justice or did not give ample opportunity to the respondent workman to defend himself. However, after going through the report of the enquiry officer and the relevant Office Order and the Standing Orders, the Tribunal went on to hold that since in any case the respondent workman did inform the petitioner DTC about his arrest, before the letter of the police was received in the depot and the reporter submitted his report to the Depot Manager, Therefore the report of the enquiry officer was held to be perverse.

4. After the preliminary issue was decided as above, the petitioner DTC made a request to lead additional evidence to establish the charges, which request was granted and the following additional issues were framed by the Tribunal:

1. Whether the respondent committed the misconduct as alleged against him"
2. Whether the full one month's wages was remitted to the respondent as per provision of Section 33(2)(b) of the I.D. Act"
3. Relief.

5. In the impugned award dated 2.9.2002, the Tribunal recorded that nothing had been stated by the witness of the petitioner DTC in his affidavit about the alleged misconduct committed and in the absence of any positive evidence of misconduct, it was held that the petitioner DTC had failed to prove the misconduct committed by the respondent workman, and though the second issue

with regard to remittance of one month's wages was decided in favor of the petitioner DTC, in view of the findings on issue No. 1, the approval application of the petitioner DTC was rejected. Aggrieved by the impugned award, the petitioner DTC has approached this Court.

6. The case of the petitioner DTC is that the Tribunal failed to appreciate that the respondent workman had admitted that he could not intimate the petitioner DTC about his arrest immediately or within a reasonable time. Learned Counsel for the petitioner DTC stated that this fact was evident from the pleadings of the parties itself. Reference was made to the reply filed by the respondent workman to the approval application of the petitioner DTC to show that the date on which the respondent workman was released on bail was not stated therein and that while the respondent workman was arrested on 11.12.1991, he informed the petitioner DTC of the said arrest only on 6.1.1992. It was contended that the requirement of the Office Order No. 36 dated 19.2.1960 as also that of sub-para 1 of para 19(k) of the Standing Order governing the conduct of the DTC employees was that the workman must intimate the management of the fact of arrest immediately and failure to do so would render him liable to disciplinary action, and that since in the present case the respondent workman had not only concealed the date of his release on bail, but had also sent the intimation after a long time of his arrest, the same was clearly in violation of the aforesaid Rule, and Therefore a misconduct on the part of the respondent workman.

7. On the other hand, counsel for the respondent workman submitted at the very outset that as against the order dated 6.09.2001 passed on the preliminary issue, the petitioner DTC had already filed a Writ petition before this Court, which was dismissed as withdrawn vide order dated 7.12.2004, and as such the said order is not under challenge in the present petition, and to go into the correctness of the said order would be outside the scope of the present petition.

8. It was argued that the impugned order dated 2.9.2002 clearly records that the petitioner DTC had failed to prove that the respondent workman had committed the misconduct as alleged against him. Therefore in view of the fact that the petitioner DTC had itself failed to prove its allegations, no illegality or perversity could be imputed to the impugned award.

9. It was further stated on behalf of the counsel for the respondent workman that the respondent workman had not committed any irregularities or misconduct inasmuch as he had informed the petitioner DTC of his arrest as soon as he was released on bail, i.e. while he was released on bail on 28.12.1991, he informed the petitioner DTC of the same, within a reasonable time of his release, i.e. on 6.1.1992. It was also averred that not only the respondent workman himself, but even the police authority had informed the petitioner DTC about his arrest, which goes to show that the petitioner DTC was well aware of the factum of arrest of the respondent workman. In this regard, reliance was placed on the reply filed by the respondent workman to the charge sheet dated 17.1.1992 served upon him.

10. I have heard the rival contentions of both the parties and have carefully perused the documents placed on record including the impugned award and the order dated 6.9.2001. The objection raised by the counsel for the respondent workman that to go into the correctness of the order dated 6.9.2001 is beyond the scope of the present writ petition as the petitioner DTC had already filed a writ petition challenging the same which was later withdrawn, cannot be sustained. The position of facts, as it emerges from a perusal of the rejoinder filed by the petitioner DTC is that, though a writ petition was filed by the petitioner DTC earlier in the year 2003, but it was withdrawn on 7.12.2004 with liberty to file a fresh modified writ petition by also raising a challenge to the order dated 6.9.2001. The aforesaid objection of the respondent workman is Therefore not sustainable.

11. The main issue that requires consideration in the present case is that whether the decision taken by the Tribunal to the effect that intimation as given by the respondent workman to the petitioner DTC on 6.1.1992 about the fact of his arrest by the police on 11.12.1991 did not amount to misconduct, is legal, valid and justified.

12. The Office Order dated 19.2.1960 states that the employee who has been apprehended or challenged by the police and was involved in a criminal case, shall inform such fact to the management immediately and then shall keep the management in touch with the development of the police case against him from time to time, and non-compliance of the instruction would to be viewed seriously.

13. The relevant sub-paras of para 19(k) of the Standing Order state that all employees who may be arrested for any reason shall intimate the fact of their arrest to their superior official immediately, though they might have subsequently been released on bail, and failure on part of any employee in so informing the official superior to him, would render him liable to disciplinary action on this ground alone, apart from the action that might be called forth on the outcome of the police case against him. The intention of the petitioner DTC in formulating the aforesaid Circular and the Standing Order is that it should made be aware of any criminal cases pending against its employees or their involvement in any criminal activities, at the earliest.

14. Now coming to the facts of the present case, in its order dated 6.09.2001, the Tribunal has noted that while the respondent workman was arrested on 11.12.1991, he was sent to judicial custody on 13.12.1991 and was bailed out on 28.12.1991, and finally informed the petitioner DTC of the fact of his arrest on 6.1.1992. Meanwhile, the concerned SHO wrote a letter to the petitioner DTC on 12.12.1991, i.e., immediately on the day following the arrest, informing it about the arrest of the respondent workman, so that necessary action could be taken by the employer at its discretion. However, it is recorded in the impugned order that the said letter was dispatched only on 17.12.1991 and it was received in the Depot of the petitioner DTC only on 8.1.1992, i.e. two days after the letter of the respondent workman dated 6.1.1992 was received in the Depot, by which he

informed the petitioner DTC about his arrest. It was also taken note of that the report dated 15.1.1992 of one Sh Dhuli Chand, (AI (A) at the relevant time), on the basis of which the charge sheet was issued to the respondent workman, did not make any mention of the letter received from the respondent workman, but the fact of the receipt of the letter from the SHO alone was mentioned therein. The Enquiry Officer found fault with the report of Sh. Dhuli Chand, but still went on to hold that the respondent workman was guilty of misconduct in view of the fact that he did not inform the Depot Manager about his arrest till 6.1.1992, though the relevant rules of the petitioner DTC required him to intimate the petitioner DTC about the fact of his arrest immediately after such arrest.

15. Therefore, in the backdrop of the facts of the present case, there appears no reason to believe that there was any attempt or malafide intention on the part of the respondent workman to conceal the fact of his arrest from the petitioner DTC. Considering that he was arrested on 11.12.1991, and was sent to judicial custody immediately thereafter on 13.11.1991, it is not difficult to believe that it may not have been possible for him to have informed of his arrest to his official superiors immediately on his arrest. Also, while he was released on bail on 28.12.1991 he informed the petitioner DTC about his arrest on 6.1.1992, i.e., after a week, which cannot be treated as an unreasonable delay. Moreover, since the police had already sent a letter immediately informing the petitioner DTC about the facts of the arrest of the respondent workman, though the same reached the petitioner DTC only on 8.1.1992, i.e., after the respondent workman had already informed the petitioner DTC on 6.1.1992, coupled with the fact that there appears no intention on the part of the respondent workman to conceal the fact of his arrest from the petitioner DTC, the purpose of the Office Order as also that of the Standing Order stands served. It is to be kept in mind that Office Orders and Standing Orders ought not to be read in such a rigid manner as to cause unreasonable prejudice to a party, as long as the ultimate object sought to be achieved is fulfilled. Thus to interpret the word "immediately" used in the Office Order and Standing Order so strictly is contrary to their intent and purport.

16. So far as the impugned award is concerned, it is the contention of the counsel for the petitioner DTC that the said award is illegal since the Tribunal had not taken into account the fact that the workman had himself admitted that he had failed to intimate the petitioner DTC about his arrest immediately or within a reasonable time, and that the same is also evident from the pleadings of the parties, for which reason, the misconduct stood proved.

17. As has been stated earlier, pursuant to the order dated 6.9.2001 by which the enquiry report was held to be vitiated, the petitioner DTC was given an opportunity to lead further evidence to prove the misconduct as alleged against the respondent workman, at its request. However, from a perusal of the impugned order it is evident that only Sh. Desh Pal (AW2) was produced as a witness by the petitioner DTC for leading its additional evidence, who filed his affidavit, Ex. AW- 2/A and relied upon the documents AW2/1 to Ex. AW 2/6. As

recorded by the Tribunal, the said witness had deposed in his affidavit that on receipt of the enquiry report, a show cause notice was issued to the respondent/workman pursuant to which the removal order was passed, and that nothing had been said in the affidavit about his alleged misconduct. In this view of the matter, the Tribunal held that since the enquiry report already stood vitiated vide order dated 6.9.2001, and in the absence of the petitioner DTC having been able to prove the charges by leading additional evidence, the petitioner DTC had failed to prove the misconduct committed by the respondent workman.

18. This Court finds no perversity or illegality in the view taken by the Tribunal because after having reserved its right to lead additional evidence to prove the charge of misconduct and also having led additional evidence to prove the same, if it still could not prove the misconduct, then there could be no other conclusion at which the Tribunal could arrive. In this view of the matter, it is not tenable for the petitioner DTC to contend at this stage that as the petitioner DTC had asserted that the respondent/workman could not inform the petitioner DTC about his arrest immediately or within a reasonable time, and the same being the position in the pleadings itself, there was no requirement for any evidence to prove the misconduct.

19. It is a settled position of law that a writ court should not interfere with factual findings of the lower courts and should restrain itself from re-appreciating evidence while exercising powers of judicial review under Article 226. Reliance may be placed on the following judgments rendered by the Supreme Court and this Court concerning the scope of judicial review by a writ court:

- (i) Harbans Lal Vs. Jagmohan Saran,
- (ii) B.C. Chaturvedi Vs. Union of India and others,
- (iii) Indian Overseas Bank v. I.O.B. staff Canteen Workers" Union AIR 2000 SC 1508.
- (iv) Municipal Corporation of Delhi Vs. Asha Ram and Another,
- (v) Filmistan Exhibitors Ltd. v. N.C.T. Secy. Labour and Ors. 131 (2006) DLT.

20. In all the above judgments, it has been held that a writ court should refrain from interfering with the orders of an inferior tribunal or subordinate court unless it suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. This Court, in exercise of its extraordinary jurisdiction, cannot interfere with the findings of facts of the trial court only on the ground that two views are possible, and cannot substitute its own views with the views of the subordinate court.

21. Moving next to the relief sought by the respondent workman in W.P. (C) No. 5724/2005, it is no longer rest integra that if approval is not given to the order of termination passed by the management, it is deemed that such an order of dismissal was never passed and the workman would be deemed to be in service.

Reliance in this regard may be placed on the judgment rendered by the Supreme Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, wherein it has been held as under:

Para 14: Where an application is made u/s 33(2)(b), Proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not etc....

...If approval is not given, nothing more is required to be done by the employee as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need for a separate or specific order for his reinstatement.

22. It is Therefore settled law that once the approval application filed by the management is dismissed/rejected, the concerned workman is deemed to be in service for all effects and purposes from the date with effect from which his services stood terminated.

23. In view of the aforesaid discussion, there is no ground for this Court to interfere with the impugned award or the order dated 6.9.2001.

Consequently, WP(C) No. 507/2006 filed by the DTC is dismissed, while WP(C) No. 5724/2005 filed by the workman is allowed. As a result, no orders need to be passed on CM No. 10331/2007 filed by the workman in WP(C) No. 507/2006 u/s 17B of the Act, as he is deemed to be in service from 19.10.1992, the date on which his services were terminated by the DTC. No orders as to costs.