

(2003) 02 DEL CK 0005

In the Delhi High Court

Case No : Civil Writ No. 7 of 2002 and C.M. No. 24 of 2002

Hari Nandan Prasad

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 14-02-2003

Acts Referred:

Citation : (2003) 3 AD 729

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : Ajay Kumar, for the Appellant; R.K. Saini, Gaurav Kumar and Hemant Arya, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mahajan, J.—RULE.

2. With the consent of the parties, the matter has been heard and disposed of by this order.

3. The services of the petitioner were terminated after holding an enquiry into the charges leveled against him by the management. On a dispute being raised by the workman, the appropriate Government made a reference of the industrial dispute to the Labour Court for adjudication in accordance with law. The management in its written statement filed before the Labour Court had taken a specific plea that in case the enquiry conducted by the management was set aside, an opportunity should be given to the management to prove the allegation of misconduct in Court. The Labour Court on 8.12.2000, passed an award holding that there was a clear violation of the principles of natural justice while holding the enquiry and the enquiry was, accordingly, set aside and as a consequence thereof the workman was held to be entitled to reinstatement with continuity of service and with full back wages. On 14.12.2000, the Labour Court took up the file suo-moto and noticed that the management having taken a plea in the written statement to prove the misconduct in Court, an opportunity ought to

have been given to the management to prove the same. The Labour Court, accordingly, after issuing notice to the parties directed the management to lead evidence to prove the misconduct alleged against the workman in the charge-sheet. It appears that despite number of opportunities, the management did not produce any evidence and on 12th July, 2001 when the matter came up before the Court, it was directed that looking to the facts and circumstances of the case, only one opportunity is given to the management to prove the misconduct of the workman failing which the evidence shall stand closed. The management had also filed an application for review of the award dated 8.12.2000. By the same order dated 12th July, 2001, the Labour Court fixed the review application of the management for hearing on 18.9.2001. The matter for recording of evidence of the management was, however, fixed on 5th October, 2001. On 18.9.2001, the Presiding Officer of the Labour Court was on leave and the matter was, accordingly, adjourned to 5th October, 2001 for consideration of the application of the management for review of the award. On 5th October, 2001, when the matter came up for hearing before the Labour Court, proxy authorised representative of the management was present and the Labour Court after noticing that management's witness was not present, closed the evidence of the management and adjourned the matter to 29th October, 2001 for hearing arguments on the review application. The application of the management for review of the award was rejected by order dated 1.11.2001. On that day the management filed an application for recalling the order dated 5.10.2001 by which its evidence was closed. This application was heard by the Labour Court on 3.12.2001 and by the impugned order the Court recalled its order dated 5.10.2001 and granted one more opportunity to the management to produce its evidence on the misconduct of the worker. This order has now been challenged by the petitioner-workman by filing the present writ petition in this Court.

4. The contention of learned counsel for the petitioner is that firstly the conduct of the management did not warrant the recalling the order dated 5.10.2001 as the management was intentionally delaying the proceedings before the Labour Court and secondly there was no power in the Labour Court to review its own order dated 5.10.2001 and permit the management to lead evidence to prove the misconduct of the workman. For this learned counsel has relied upon the judgment of the Supreme Court in *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, .

5. The Supreme Court in the aforesaid case has held that there was no provision in the Act from which the power of the State Government to review its own order u/s 63 could be gathered. It was held that the Commissioner functioning as delegates of its functions u/s 63 cannot review their orders. It was held that it was well-settled that the power to review was not an inherent power; it must be conferred by law either specifically or by necessary implication. The Court held that if the Government had no power to review its own order. It is obvious that its delegate could not have reviewed its order. The contention of learned counsel, Therefore, is that as there being no provision either in the Industrial Disputes Act

or in the Rules framed there under to review its orders, the Labour Court could not review the order dated 5.10.2001 whereby the evidence of the management was closed. It is also contended that the management had taken large number of adjournments for producing its evidence and its conduct did not, Therefore, warrant the discretion to be exercised in its favor or an opportunity to be given to lead evidence to prove the misconduct of the workman.

6. I have carefully considered the arguments advanced by learned counsel for the petitioner but I have not been able to make myself agreeable with him. On 12.7.2001, when the matter was listed before the Labour Court, the Court had given two dates- one for consideration of the application of the management for review of the award and another for recording of evidence of the management on the misconduct of the workman. On 18.9.2001, when the matter was fixed for consideration of the application for review, the Presiding Officer of the Labour Court was on leave and the case was, Therefore, adjourned to 5.10.2001 for consideration of the application for review. The case set up by the management in its application for recalling the order dated 5.10.2001 was that as the matter was fixed for consideration of the application for review, it was under the impression that the evidence would not be recorded on that day and only the application for review would be considered by the Court. The Court considered these arguments of the management and observed that admittedly on 12.7.2001 two dates were fixed, one was fixed for hearing of the arguments on the review application on 18.9.2001 and another was fixed for recording of evidence of the management on 5.10.2001. The Court observed that it was correct that on 18.9.2001 the Court was on leave and the reader of the Court inadvertently fixed the case for 5.10.2001 for consideration of the application for review. The Court further observed that it could safely be presumed that some misconception must have taken place in the mind of the management about the recording of evidence on 5.10.2001 but the management was in any case duty bound to comply with the order dated 12th July, 2001 and should have produced their witnesses. The Court was thus of the view that non-compliance of the order dated 12.7.2001 by not producing evidence on 5.10.2001, management has caused delay in the proceedings for which workman needed to be compensated and accordingly allowed the management to lead evidence on the date given by the Court subject to payment of costs of Rs.5,00/-. The Court thus having held that there was some misconception in the mind of the management about the recording of evidence on 5.10.2001 has exercised discretion in favor of the management by giving it an opportunity to lead evidence. The discretion having been exercised by the Labour Court in favor of the management for leading evidence there is no case for setting aside the said discretion of the Labour Court. This Court in the exercise of its jurisdiction under Article 226 of the Constitution of India cannot sit as a Court of appeal over the decision of the Labour Court and substitute its own views for those of the Labour Court. Even otherwise once the Labour Court has held that because of the application of the management having also been fixed for hearing on 5.10.2001, there was a

misconception in the mind of the management about recording of evidence, in my view, the Labour Court in these circumstances was fully justified in recalling the order dated 5.10.2001 whereby the evidence of the management was closed. The question as to whether or not the Labour Court had the power to review its order will not arise in the present case in as much as the Labour Court in the present case has come to the conclusion that because of some mistake on the part of the reader in fixing the same date for consideration of the application for review on the date on which the management was to lead evidence there was some misconception in the mind of the management, the Labour Court had a right to correct the said mistake.

7. In this view of the matter, I do not find any infirmity or illegality in the order of the Labour Court, which may call for interference by this Court. However, because of the conduct of the management, delay has been caused in the disposal of the case before the Labour Court, I direct that the management will be permitted to lead evidence only on payment of Rs.5,000/- as costs to be paid to the workman. It is also made clear that in case the management does not lead evidence on the date fixed by the Labour Court, the Labour Court will be within its right to close the evidence of the management. With these observations the petition stands disposed of.