

(2013) 04 AHC CK 0084

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 23810 of 2007 and CMWP No. 25093 of 2010

Hindustan Aeronautics Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-04-2013

Acts Referred:

Citation : (2013) 6 ALJ 56 : (2013) 5 AWC 4728 : (2013) 138 FLR 316 : (2013) LLR 925

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Advocate : S.D. Singh, for the Appellant; Abhinav Krishna, S.C., for the Respondent

Final Decision : Allowed

Judgement

Sibghat Ullah Khan, J.—This writ petition filed by the employer is directed against award dated 18.1.2007 given by Central Government Industrial Tribunal-Cum-Labour Court, Kanpur (C.G.I.T., Kanpur) in Industrial Dispute No. 2 of 1999. The matter which was referred to the Labour Court was as to whether the action of petitioner employer dismissing the services of its workman Mahesh Chandra Bhardwaj, respondent No. 3, w.e.f. 29.6.1994 was legal and justified or not. Through the impugned award dismissal was held to be illegal and full back wages were directed to be paid as the workman had crossed the age of retirement by then. The charge against the workman was that he was caught red-handed while leaving the factory of the employer carrying some factory material with the intention of stealing the same. Services were terminated after holding domestic inquiry in which the workman was found guilty. Charge-sheet was given on 7.11.1992. Inquiry Officer submitted report on 24.5.1994.

2. Initially Sri Girish Chandra was appointed as Inquiry Officer, however on the objection of the workman Inquiry Officer was changed and Sri V.K. Gupta was appointed as Inquiry Officer. By the time inquiry was concluded, Sri Girish

Chandra was promoted to the post of Deputy General Manager, which was appointing authority of the workman and dismissal order was passed by Sri Girish Chandra. Before the Tribunal below the workman specifically took the ground that inquiry was not fair. Instead of deciding the said question as preliminary issue the C.G.I.T. decided the same along with the final award. Earlier it had been indicated that the question of fairness of inquiry would be decided along with final award and parties had been directed to adduce evidence in support of and against the allegations leveled against the workman. The employer filed about 50 photostat copies of different documents.

3. The C.G.I.T., Kanpur in the impugned award held that the domestic inquiry was not fair and charges had not been proved before it. However, no specific finding has been given as to why the inquiry was not fair. In this regard, the contention of the workman has been recorded to the effect that he was not provided photostat copies of the inquiry proceedings held day to day, that documents called for from the inquiry officer were not supplied to the workman. The Tribunal below mainly criticised the employer on the ground that Sri Girish Chandra, who was earlier appointed as Inquiry Officer and who had subsequently been promoted to the post of Deputy General Manager, could not pass punishment order as on the application of the workman he had earlier been changed as Inquiry Officer. The workman also contended that FIR for the same allegation had been lodged against him in which he had been acquitted. It was also contended that the material which was alleged to have been stolen by the workman was not produced before the Inquiry Officer.

4. There cannot be any presumption of unfairness of domestic inquiry. If workman alleges that inquiry was unfair, he has to prove that. There is no requirement that the copy of the order sheet (proceedings held day to day) prepared by the Inquiry Officer shall be supplied to the workman. The second allegation of the workman was that he demanded certain documents from the Inquiry Officer which were riot supplied to him. In the entire award, there is no mention that what were those documents which were demanded by the workman but not supplied by the Inquiry Officer and more importantly how the defence/case of the workman was affected by non-supply of any particular document.

5. The Tribunal below held that the documents filed by the management before it were photostat copies, hence not admissible; no oral evidence was adduced by the management and the workman had orally examined himself and stated that he had not committed any theft, hence management failed to prove the charges before it.

6. There is no allegation by the workman that he made any application that Sri Girish Chandra should not pass final order in his matter. It was also contended by the workman that in the show-cause notice after completion of inquiry, it was mentioned that the workman should show-cause as to why he should not be dismissed from service, hence it amounted to predetermination of the case. This was an untenable argument. In the show-cause notice proposed punishment has

to be mentioned.

7. The workman had been caught carrying on 12 rods of different sizes and shapes belonging to the employer, total weight 25 kg. valued at approximately Rs. 2500/-. Second show-cause notice issued to the workman on 30.5.1994 is Annexure-5 to the writ petition in Clause-7 of which, it is mentioned that photostat copy of the report/findings of the Inquiry Officer was enclosed along with the notice. Show-cause notice which was initially sent through registered post returned with endorsement of the postman that the house was generally locked. Accordingly, it was published in "Dainik Jagran" daily Hindi newspaper on 15.6.1994. The workman asked for one month's time to file reply, however he was granted seven days time. Instead of giving reply he filed an application asking for copies of evidence and further time for submitting the reply, which was not granted. The workman had fully participated in the inquiry and cross-examined all the witnesses of the management. Appeal was also dismissed by General Manager. In the order of appellate authority, Annexure-7 to the writ petition, it is mentioned that the workman was given opportunity to inspect entire, record of disciplinary proceedings before filing appeal but he did not avail the said opportunity.

8. The Tribunal below held that as the workman had crossed age of superannuation hence he would be entitled for his entire terminal benefits like P.F., leave gratuity etc. and entire back wages after adding annual increments together with revision of pay.

9. Even if there was some error in the order of dismissal passed by Deputy General Manager on the ground that earlier he was Inquiry Officer but was changed on the application of the petitioner the same stood cured as appeal was decided by the General Manager.

10. In case of theft, services are bound to be terminated.

11. Accordingly, I find that the impugned award is utterly illegal hence it is set aside.

12. Writ petition is allowed.

Through interim order dated 21.5.2007 passed in this writ petition, it was directed that petitioner employer should pay Rs. 2 lacs to the workman as interim relief. It is directed that the said amount shall not be recovered from the workman respondent No. 3.

13. Second writ petition.--This writ petition by the same employer as in the first writ petition and against the same workman as in the first writ petition is directed against order dated 31.3.2010 passed by the appellate authority under Payment of Gratuity Act/Deputy Chief Labour Commissioner, Delhi. The appeal had been filed by the workman, Mahesh Chandra Bhardwaj, respondent No. 4 in the second writ petition. In the impugned order, it is mentioned that amount of Rs. 2 lacs directed to be paid to the workman under interim order passed in the

first writ petition had admittedly been paid to the workman. The sole basis of the judgment of the appellate authority under P.G. Act is that the C.G.I.T. through award dated 18.1.2007 had held that workman was entitled to gratuity.

14. As the said award has been set aside through earlier part of this judgment in respect of the first writ petition, hence this writ petition is also allowed. Order challenged in this writ petition dated 31.10.2010 is set aside. The amount of Rs. 2 lacs paid to the workman under interim order passed in the first writ petition shall be deemed to include all terminal benefits payable to the workman treating him to have rightly been dismissed from service w.e.f. 29.6.1994.