

(2009) 04 DEL CK 0006

In the Delhi High Court

Case No : L.P.A. No. 170 of 2009 and CM No's. 5491-92 of 2009

Hindustan Photofilms Manufacturing Company Ltd.

APPELLANT

Vs

Ganesh Prasad and Another

RESPONDENT

Date of Decision : 21-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 04 DEL CK 0006

Hon'ble Judges : A.P. Shah, C.J.; Neeraj Kishan Kaul, J

Bench : Division Bench

Advocate : Deepti, for the Appellant;

Final Decision : Dismissed

Judgement

1. The present appeal is against the judgment dated 10th September, 2009 of the learned Single Judge. Briefly stated the facts of the case are as follows:
2. The respondent No. 1 (original respondent No. 1 in the writ petition) was employed with appellant (original petitioner in the writ petition) as Packer. His services were terminated on 18th October, 1983. The respondent No. 1 is stated to have written several letters to the management seeking reinstatement but to no avail. Ultimately, even the conciliation proceedings failed to yield any result and dispute with regard to termination of respondent No. 1 was referred to the Industrial Adjudicator.
3. It was the stand of the management in the writ petition that respondent No. 1 during the period of his employment, was reported to have committed theft on 18th October, 1983 of one packet of single weight glossy special paper. The management charge-sheeted respondent No. 1 as per their standing order and also placed him under suspension.
4. Since the explanation of the respondent No. 1 was not found satisfactory an enquiry was ordered. The respondent No. 1 denied the charge of misconduct. On behalf of the management, it was stated that though the respondent No. 1

participated in the enquiry initially, he absented himself later and the enquiry officer proceeded to conduct the enquiry ex-parte. The respondent No. 1 was found guilty of the charges framed against him and was terminated from his services by the management.

5. Vide order dated 7th March, 2003, the Industrial Adjudicator came to the conclusion that the enquiry proceedings held by the enquiry officer besides being perverse were arrived at in haste without affording fair opportunity to the worker. The Industrial Adjudicator proceeded to hear the merits of the reference with direction to the parties to produce evidence by way of affidavit on the issues framed. Vide order dated 28th March, 2003, the Industrial Adjudicator held that the management had failed to discharge the onus to prove that the workman was appointed on probation. The respondent No. 1, on the other hand, had been able to establish that his last drawn wages were Rs. 750/- per month as his testimony on this issue went uncontroverted during his cross-examination by the management. The termination of the services of the respondent No. 1 was found illegal, unjustified and the management was directed to reinstate the workman with continuity of service. However, the Industrial Adjudicator also arrived at a finding that it was the workman who had delayed adjudication of reference and its disposal for a period of two years and thus the payment of back wages was limited to the extent of 50% by the Industrial Adjudicator.

6. It was the stand of the appellant before the learned Single Judge that the respondent No. 1 had delayed proceedings before the Labour Court thereby causing serious prejudice to the management and that the management-company had been declared a sick industrial company by BIFR in the meantime. It was further urged that it was only on account of delay caused by the workman that the management failed to put-forth their defence during the crucial stages of the hearing before the Industrial Adjudicator for reason of sickness as aforesaid. The appellant also urged that the Labour Court had failed to appreciate that despite the workman not cooperating the management had conducted a fair enquiry and imposed a penalty of dismissal from service after due consideration of the grave and serious misconduct on the part of respondent No. 1.

7. The counsel for respondent No. 1 urged before the learned Single Judge that the management had failed to produce the witnesses to the purported confession made by the workman in respect of the alleged misconduct and failed to seek an opportunity to lead evidence before the Industrial Adjudicator and consequently they could not by way of present petition seek re-adjudication or re-appreciation of the facts as found by the Industrial Adjudicator.

8. We are in complete agreement with the findings and conclusions of the learned Single Judge. There is no infirmity in the impugned order. The learned Single Judge has rightly held that findings of facts recorded by a fact finding authority duly constituted for the purpose cannot be interfered with as long as they are based upon some material relevant for the purpose or even on the

ground that there is yet another view which can reasonably and possibly be taken. The findings of the Industrial Adjudicator have been arrived at after appreciation of evidence produced before it. The learned Single Judge has rightly held that the findings cannot be said to be based on no evidence at all. As correctly observed by the learned Single Judge, the findings of the Industrial Adjudicator do not suffer from any error of jurisdiction or breach of principles of natural justice or are vitiated by a manifest or apparent error of law. There is no fallacy in the finding of the learned Single Judge that the entire adjudication process cannot be frustrated by picking holes in the award on trivial points.

9. As held by the Supreme Court of India in *H. B. Gandhi v. Gopi Nath and Sons* that judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. It will be erroneous to think that the court sits in judgment not only on the correctness of the decision making-process but also on the correctness of the decision itself. Further, the Supreme Court in *The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S. Patil and Another*, observed that interference with the decision of authorities can be permitted while exercising jurisdiction under Article 226 of the Constitution of India if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case; or if the conclusions made by the authority on the very face of it is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion; or grounds very similar to the above. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.

10. For the above stated reasons, the appeal must fail. We see no reason to interfere with the judgment of the learned Single Judge. Accordingly the appeal is dismissed with no orders as to cost. The pending applications are also disposed of accordingly.