
(1999) 07 DEL CK 0032
In the Delhi High Court
Case No : C.W.P. No. 2534 of 1998

Jagdish Chand

APPELLANT

Vs

Delhi Transport Corporation and Others

RESPONDENT

Date of Decision : 06-07-1999

Acts Referred:

Citation : (2000) 1 AD 138 : (2000) 86 FLR 973 : (2000) 1 SLJ 355

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. H.K. Chaturvedi Adv, for the Appellant; Mr. Vikas Mahajan Advocate, for the Respondent

Judgement

Dr. M.K. Sharma, J.—The present writ petition is directed against the award passed by Presiding Officer, Labour Court No. IX, Tis Hazari Courts, Delhi in I.D.No.961/94 (Old No. 348/87) holding that the petitioner / workman is entitled for reinstatement with continuity in service but without any back wages.

2. The petitioner was working as a conductor in the Delhi Transport Corporation. His service was terminated w.e.f. 23.12.1985. The appeal filed by the petitioner was also rejected by a letter dated 2.5.1986. The petitioner raised an industrial dispute before the Labour Department, pursuant to which a reference was made by the appropriate Government on 16.12.1987 to the Labour Court. The reference reads as follows:-

"Whether Sh. Jagdish Chand himself abandoned his job or whether his services were terminated by the management illegally and/or unjustifiably and, if so, to what relief is he entitled and what directions are necessary in this respect?"

3. The Labour Court on the pleadings of the parties framed three issues, which are as follows:-

1. Whether the order of reference is bad in law for the reasons stated in para No. 2 of the Preliminary Objections of the written statement?

2. Whether the Secretary (Labour) is not empowered to refer the dispute to the Labour Court?

3. As per terms of reference.

4. Before the Labour Court, the petitioner/workman examined himself as workman/witness No.1 and the management examined the Depot Manager, Hari Nagar, New Delhi as management witness No.1. The Labour Court after going through evidence on record held that the reference was valid in law and, Therefore, Issue No.1 was decided in favor of the workman.

So far issue No. 2 is concerned, it was held by the Labour Court that the Secretary (Labour) was empowered to refer the dispute to the Labour Court and the said issue was also accordingly decided in favor of the workman and against the management.

After deciding the aforesaid issues, the Labour Court proceeded to decide Issue No. 3, which was as per terms of reference. On perusal of the evidence on record, the Labour Court found that the present is a case of termination and not abandonment and, Therefore, rule of natural justice was attracted, which requires that a person should be heard before passing any adverse order against him. As neither any chargesheet was issued nor any enquiry held by the management in respect of the charge leveled against the workman, the Labour Court held that the workman was entitled for rein- statement with continuity in service, but denied the relief of payment of back wages to the workman holding that the petitioner/workman used to remain on leave without pay during the major part of his service career and since he was not interested in pay while on the pay rolls of the manage- ment, there was no justification for awarding him wages for the period he was not on the pay rolls.

5. Being aggrieved by the second part of the order passed by the Labour Court, denying the petitioner/workman the relief of payment of back wages, the present petition has been preferred.

6. The service of the petitioner was terminated w.e.f. 23.12.1985 and pursuant to the award passed by the Labour Court directing for his rein- statement, the petitioner rejoined duties on 29.6.1998. Learned counsel appearing for the petitioner, during the course of his submissions, submit- ted that the petitioner was not gainfully employed anywhere during the aforesaid period i.e. from the date of his termination till the date of his reinstatement. He further submitted that even the management had led no evidence to show and indicate that the petitioner was gainfully employed during the aforesaid period and, Therefore, the Labour Court was not justified in denying the aforesaid relief to the petitioner. In support of his contention, learned counsel drew my attention to the statement of the workman before the Labour Court and also relied upon the decisions in M/s. Hindustan Tin Works Vs. Employees of M/s. Hindustan Tin Works reported in 1978 LAB I.C. 1667 and also a Division Bench decision of this court in Management Delhi Transport Corpn. Vs. Ram kumar reported in 1982 LAB.I.C.

1378.

He further submitted that the petitioner submitted his medical fitness certificate during the trial before the Labour Court, in terms of which the petitioner fully recovered from his illness and was fit to discharge his duties and thus, denying him the opportunity to render service, amounted to imposition to penalty on the workman for no fault of his, which is wholly underserved and Therefore, the workman is entitled to payment of full back wages.

7. Counsel appearing for the management/respondent, however, drew my attention to the fact that the petitioner in his cross-examination admitted that the petitioner was in the habit of availing leave without pay. In this connection, evidence of workman/witness No.1 was referred to, which indicates that the workman in his cross-examination admitted that he availed leave without pay from 1.1.1983 to 31.1.1985. Counsel also relied upon the records to show and establish that the petitioner was in the habit of availing leave without pay. It is also stated in the reply filed herein this court that the petitioner availed leave without pay for the year from 1974 to 1985 as follows:-

YEAR	NO.	OF DAYS	1974	161	1975	89	1976	49	1977	100	1978	124	1979
	190	1980	224	1981	264	1982	292	1983	192	1984	202	1985	176

8. He also submitted that the Labour Court considered the entire facts and circumstances of the case, including the aforesaid fact and on the basis thereof was justified in not awarding back wages to the petitioner. In support of his contention, the learned counsel relied upon the decision of Supreme Court in Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved Bhawan Ltd. and Another, and Baldev Singh Vs. Presiding Officer, Labour Court, Patiala and Another AIR 1987 104.

9. It is undoubtedly true and settled position of law as submitted by the counsel for the petitioner that ordinarily, a workman whose service has been illegally terminated either by dismissal, discharge or retrenchment would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. The said position of law has been held to be a normal rule by the Supreme Court in Hindustan Tin Works" case (supra). In the said case it was further held that when termination of service was found to be neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered services they would legitimately be entitled to the wage for the same and if the workmen were always ready to work but they were kept away there from on account of invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.

10. In the decision of Division Bench of this court in Management, Delhi Transport Corporation (supra) the aforesaid principle of law laid down by the Supreme Court was reiterated. The Supreme Court, however, in the said decision hastened to add that in the very nature of things there cannot be a strait-jacket

formula for awarding relief of back wages and that all relevant considerations will enter the verdict and more or less it would be a motion addressed to the discretions of the Tribunal. The Supreme Court added that the Tribunal, however, would exercise the said discretion keeping in view all the relevant circumstances in a judicial and judicious manner and must record the reasons for exercising such discretion. The reasons, it is held, must not be arbitrary, vague and fanciful but legal and regular. The decision of the Labour Court in the present case, therefore, is to be tested in the touch tone of the aforesaid principles of law.

11. I have carefully considered the award passed by the Labour Court. While discussing the evidence on record the Labour Court, referred to various documents filed by the workman indicating that he was ill and thereafter, became fit on treatment. After analysing the said documents, the Labour Court found that none of the aforesaid document prescribed bed-rest or recommended leave. On appreciation of the said evidence on record, the Labour Court found that absence from duty stands established against the workman which constituted misconduct. The Labour Court, however, interfered and directed for reinstatement of the petitioner on the ground that the service of the petitioner could not have been dispensed with without any enquiry or chargesheet as the rule of natural justice applies to the facts and circumstances of the case which requires that a person should be heard before passing any adverse order against him.

12. The Labour Court also considered the fact that the petitioner used to remain on leave without pay during major part of his service career as is indicated above, which shows that from the year 1974 to the year 1985 the petitioner was on leave without pay for 2063 days. On consideration of the said fact the Labour Court held that as the workman was not interested in pay while on the pay roll of the management, there was no justification in awarding him wages for the period he was not on the pay roll. It thus appears that as a matter of facts the Labour Court found that the allegation against the workman of remaining absent was proved but it held that he is liable to be reinstated in service as no formal charge was drawn up against the petitioner nor any enquiry was held against him. For denying the relief of payment of back wages to the petitioner, the Labour Court has recorded reasons which cannot be said to be arbitrary or fanciful. It is apparent that the Labour Court has applied its judicial mind to the facts and circumstances of the case and came to the aforesaid conclusion after rationally taking into consideration the facts and circumstances of the case.

13. In Jitendra Singh Rathore's case (supra), it was held by the Supreme Court that wide discretion is vested in the Tribunal u/s 11-A of the Industrial Disputes Act and in a given case on the facts established the Tribunal can vacate the order of dismissal or discharge and could given suitable directions for Section 11-A of the Act empowers the Tribunal to direct "reinstatement of the workman on such terms and conditions, if any, as it thinks fit". The aforesaid expression used in Section 11-A of the Industrial Disputes Act, indicates that the Tribunal has a wide

discretion to take a decision with regard to back wages when in a particular case reinstatement is ordered. In the aforesaid decision of Jitendra Singh Rathore (supra), the Supreme Court reiterated principles of law that the Tribunal while directing reinstatement and keeping in view the delinquency in view could withhold payment of a part or the whole of the back wages. It was further stated in the said decision that since u/s 11-A of the Act, wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case, the High Court under Article 227 of the Constitution of India does not enjoy such power though as a superior court, it is vested with the right of superintendence. It was reiterated that the High Court indisputably entitled to scrutinise the orders of the subordinate tribunals with the well accepted limitations and Therefore, it could in an appropriate case quash the award of the Tribunal and thereupon remit the matter to it for fresh disposal in accordance with law and directions, if any, and that the High Court is not entitled to exercise the powers of the tribunal and substitute an award in place of the one made by the Tribunal as in the case of an appeal where it lies to it.

14. Reference may also be made to the decision of Supreme Court in Baldev Singh's case (supra) that if the award of the Tribunal is found to be in conformity of Section 11-A of the Act, there is no lack of jurisdiction or want of jurisdiction in making the order in question and it cannot be said that the order is contrary to the provisions of Section 11-A of the said Act which vests the Labour Tribunal to whom a dispute has been referred with jurisdiction to pass appropriate orders which the Tribunal would think proper and expedient in the facts and circumstances of the case. It has been indicated hereinbefore that the Labour clearly held that absence from duty stands established against the petitioner which constituted misconduct but ordered for reinstatement of the petitioner as no enquiry was held because of which there was violation of the principle of natural justice. The Labour Court also considered the fact that the records revealed that the petitioner used to be on leave without pay for prolonged period and, Therefore, he could not be entitled for payment of back wages for the period during which he was not on the pay roll.

15. The aforesaid award passed by the Labour Court, in my considered opinion, is in conformity with the provisions of Section 11-A of the said Act. Thus, I do not find any infirmity and/or illegality in the aforesaid order passed by the Labour Court. In the result, the writ petition stands dismissed but without any costs.