
(2009) 03 DEL CK 0358

In the Delhi High Court

Case No : Writ Petition (C) No. 7422 of 2009

Kamal Kishore

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-03-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2009) 03 DEL CK 0358

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : A. Asthanka, for the Appellant; Sonia Mathur, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—The petitioner has challenged the award dated 20th September, 2008 passed by the Presiding Officer, Industrial Tribunal-II, Karkardooma Courts, Delhi in case titled as Centaur Hotel v. Sh. Kamal Kishore in OP Nos. 16/2004, 17/2004 and 18/2004.

2. By virtue of the impugned order, the Industrial Tribunal gave approval u/s 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) to the respondent/Management for the dismissal of the petitioner/workman from the services of the respondent/Management.

3. Briefly stated the facts leading to the filing of the present writ petition are that the petitioner/workman was working with the respondent/Management from 16th July, 1982. From time to time, thereafter, he earned his promotions as House Keeping Attendant, Assistant Steward, Steward on which post he was confirmed. On 9th November, 2000, the Management issued a charge sheet to the petitioner/workman which resulted in filing of his reply which was found to be unsatisfactory. The allegations in the charge sheet were that he was not discharging the duties for which he was employed. It was further alleged that most of the time either he was roaming around with a female employee namely

Ms. Maya Devi, House Keeping Attendant or sitting idle.

4. The Enquiry Officer/Committee was appointed which went into the charge sheet against the delinquent official. Parties adduced their respective evidence before the Enquiry Committee and it came to a finding that the charges against the petitioner/workman were duly proved. A copy of the report and other connected documents were given to the petitioner/workman and the respondent/Management came to a conclusion that since the allegations against the petitioner were very serious in nature, therefore, they dispensed with his services by passing an order of removal after tendering him a cheque for a sum of Rs. 8,795/- drawn on Syndicate Bank, Air Force Station, Palam, New Delhi being his one month's wage in terms of provision of Section 33(2)(b) of the Act.

5. Two matters came to be filed before the Industrial Tribunal, one by the petitioner wherein the issue was as to whether the inquiry which was conducted by the respondent/Management was valid and proper and in compliance with the principles of natural justice. This issue was decided against the petitioner by the Industrial Tribunal vide its order dated 4th August, 2006 by holding that the inquiry which was conducted against the petitioner by the Committee was not only valid and proper but it also complied with the principles of natural justice. Thereafter, additional issue No. 1 was framed, which was in terms as under:

Whether the Management/applicant remitted full one month wage to the respondent at the time of dismissal of the services?

6. Simultaneously, the respondent/Management on the basis of a decision to dismiss the petitioner from the services after complying with the statutory provision of tendering him one month's salary also applied u/s 33(2)(b) of the Act seeking the approval of the Tribunal.

7. With regard to the remittance of one month's salary in compliance to the statutory provision, the Management examined AW-5 Sh. Yogesh Kumar Sharma who filed his affidavit Ex.AW5/A and also proved documents Ex.AW5/1 to AW5/5. The petitioner/workman examined himself as RW-1 and tendered his affidavit as RW1/1 to RW1/5. The Tribunal after hearing the learned Counsel for the parties came to the conclusion that there was sufficient compliance with the statutory provision of Section 33(2)(b) of the Act inasmuch as, tender one month's wages was duly made to the petitioner/workman and accordingly, the approval to the respondent/Management to the dismissal order of the petitioner was given.

8. The petitioner feeling aggrieved by the said approval having been granted by the Industrial Tribunal, filed the present writ petition against the impugned award dated 20th September, 2008.

9. I have heard the learned Counsel for the petitioner. It has been contended by the learned Counsel for the petitioner that there is no compliance with the statutory provision of Section 33(2)(b) of the Act inasmuch as a cheque which was tendered to the petitioner by the respondent was not encashed and

therefore, it could not be treated to be a sufficient compliance. It was urged that the said cheque had been dishonored by the banker of the respondent/ Management and therefore, the approval which was granted by the Industrial Tribunal was not sustainable in the eyes of law.

10. I have considered this submission of the learned Counsel for the petitioner/ workman. However, this submission has absolutely no merit. It is not in dispute that a cheque for sum of Rs. 8,795/- drawn on Syndicate Bank, Air force Station, Palam, New Delhi bearing No. 403038 dated 8th April, 2004 along with dismissal order was sent to the petitioner in terms of provisions of Section 33(2)(b) of the Act. As a matter of fact, he has admitted the receipt of the cheque. It has been contended by the learned Counsel for the petitioner that the cheque on presentation was dishonored. The averment about the dishonour of the cheque is nowhere made by the petitioner in the pleadings before the Industrial Tribunal much less the proof of the same by him before the Court. On the contrary, the learned Tribunal has observed that the petitioner has been trying to conceal the material facts. Further, the Industrial Tribunal has referred to the judgment of the Supreme Court in case titled as Management of Delhi Transport Undertaking Vs. Industrial Tribunal, Delhi and Another, wherein it has been held that under the proviso of Section 33(2)(b) of the Act, the payment of wages of one month"s does not mean the actual payment to the workman. What is to be shown to the Industrial Tribunal is that the money is actually tendered and if this is shown to be so that will be treated with a sufficient compliance of the aforesaid provision. The language used by the Supreme Court is as under:

The proviso does not mean that the wages for one month should have been actually paid, because in many cases the employer can only tender the amount before the dismissal but cannot force the employee to receive the payment before dismissal becomes effective. In this case the tender was definitely made before the order of dismissal become effective and the wages would certainly have been paid if Hari Chand had asked for them. There was no failure to comply with the provision in this respect.

11. In the light of the aforesaid observation by the Supreme Court and the fact that one month?s wage were tendered to the petitioner, which admittedly have been received by him. This is sufficient compliance of Section 33(2)(b) of the Act and it could not be said that there has been no compliance of the said statutory provision which will make the grant of approval by the learned Labour Court as unsustainable in the eyes of law. On the contrary, it seems that not only the petitioner/workman is raising the false and frivolous plea, but he is deliberately concealing the facts as has been observed by the learned Labour Court. This is being done only to ensure that he gets a favourable order. If such is the conduct of the petitioner/workman even before the quasi-judicial forum, one shudders as to what he must have been doing with the respondent/management on the administrative side. Therefore, this submission of the learned Counsel for the petitioner does not have any merit.

12. Next it was contended by the learned Counsel for the petitioner that he was victimized on account of the fact that he was the Chairman of the Scheduled Casts and Schedules Tribes Welfare Association. Further, he was espousing the cause of his fellow colleague Ms. Maya Devi being a widow lady and therefore, he was being victimized by the respondent/Management. It was also urged that the petitioner has 22 years of service to his credit which is totally unblemished and therefore, he is seeking reprieve against the order of dismissal.

13. The question that the petitioner was a Chairman of the Scheduled Casts and Schedules Tribes Welfare Association may be a statement of fact. It may be also that he may be espousing the cause of her fellow workman Ms. Maya Devi, but there is absolutely no evidence or defence taken by the petitioner before the Industrial Tribunal that these were the grounds for which he was being victimized by the respondent/Management. It is for the first time that the petitioner before this Court is raising these pleas which are essentially pleas of fact. Having not taken these pleas before the Court below, this becomes an afterthought and cannot be a ground for setting aside the award of the Industrial Tribunal. As regards the past unblemished service record of the petitioner/workman, I may only add that the past record is not of relevance because it cannot absolve the petitioner of the misconduct of which he has been found guilty by the Enquiry Committee. The past misconduct may be relevant only if the respondent/Management was trying to rely on past bad conduct for the purpose of enhancing the punishment to be imposed on the petitioner/workman. There is no such evidence, much less discussion in the learned Industrial Tribunal's award that the order of dismissal has been passed on the ground other than the misconduct of which he was found guilty. Therefore, this argument also does not have any merit.

14. For the reasons mentioned above, I am of the considered opinion that there is no infirmity in the award dated 20th September, 2008 passed by the Industrial Tribunal-II in OD Nos. 16/2004, 17/2004 and 18/2004 nor has the petitioner been able to show that there is any violation of principles of natural justice in rule and regulation or it suffers from any infirmity, which was warrant any interference in exercise of power of judicial review under Article 226.

15. Accordingly, the writ petition is dismissed in limine. File be consigned to the Record Room.