
(2012) 12 DEL CK 0103

In the Delhi High Court

Case No : Writ Petition (C) No. 733 of 2012 and CM 1606 of 2012

Mahinder Singh

APPELLANT

Vs

M/s. National Council of Educational Reserach and Training

RESPONDENT

Date of Decision : 03-12-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33, 33(2)(b)

Citation : (2013) 5 AD 277 : (2013) 196 DLT 260 : (2013) 2 LLJ 111

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Niraj Gupta, for the Appellant; R.K. Singh, Ms. Deepa Rai, Ms. Reena Chongtham, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Ms. Justice Mukta Gupta

1. In the present petition the Petitioner impugned the order dated 4th January, 2012 whereby the learned Industrial Tribunal permitted the

Respondent/management to allow the application of the Respondent subject to a cost of Rs. 3000/- and permitted it to lead additional evidence to

prove the charge against the Petitioner. Learned counsel for the Petitioner relying upon Karnataka State Road Transport Corpn. Vs. Smt.

Lakshmiddevamma and Another, states that it is now settled that the learned Tribunal has the power to permit the management to adduce fresh

evidence if the enquiry is found to be vitiated, however no application of the management can be entertained at a belated stage. It is further stated

that the decision in Divyash Pandit Vs. Management, N.C.C.B.M., was on the peculiar facts of that case and did not hold that the application of

the management can be entertained even after the issue of enquiry has been

held against it. Thus, the impugned order be set aside.

2. Learned counsel for the Respondent on the other hand relying upon the majority decision in Karnataka State Road Transport Corporation

(supra) and Delhi Transport Corporation Vs. Sunil Kumar, contends that as per the majority decision there is no dispute that the Court has the

power to permit the management to lead additional evidence and thus allowing the application of the Respondent permitting it to lead fresh

additional evidence is not contrary to the law laid down by the Supreme Court and this Court.

3. I have heard learned counsel for the parties. The management held an enquiry against the Petitioner on the charge that he obtained the job with

the management by filing false and forged educational documents. Pursuant to the enquiry conducted the services of the Petitioner were terminated

and thus the Petitioner raised an industrial dispute on which the following terms of reference were sent by the Govt. of NCT for adjudication:

whether the removal of Shri Mahinder Singh from services with effect from 28th December, 1995 is illegal and/or unjustified, and if so to what

effect is he entitled and what directions are necessary in this respect?

4. In the claim the Petitioner challenged the enquiry pursuant to which he was removed from the services and thus a preliminary issue with regard to

validity of the domestic enquiry was framed. Vide order dated 9th December, 2010 the Tribunal decided this issue in favour of the workman and

held the enquiry to be vitiated. In the written statement filed by the Respondent no permission was sought to lead additional evidence before the

Court in case the enquiry was held to be vitiated. Thus, after the order dated 9th December, 2010 an application was filed by the Respondent for

permission to lead evidence. The learned Trial Court in view of the decision in Divyash Pandit (supra) allowed the application of the Respondent

subject to a cost of Rs. 3000/- to be paid by the Respondent. Thus, the present petition.

5. The only issue in the present case is whether the Trial Court was justified in allowing the application of the Respondent for permission to lead

evidence before it when no such liberty was sought in the written statement. In Karnataka State Road Transport Corporation (supra) a reference

was made to a Bench of 5 Judges in view of the conflict of decisions in Shambhu

Nath Goyal Vs. Bank of Baroda and Others, and Rajendra Jha

Vs. Presiding Officer, Labour Court, Bokaro Steel City, District Dhanbad and Another, . The majority decision in the said case was rendered by

Justice N. Santosh Hegde for himself and Justice S.P. Bharucha and a concurrent view was rendered by Justice Shivaraj V. Patil for himself and

Justice V.N. Khare while the dissenting judgment was rendered by Justice Y.K. Sabharwal. In the judgment rendered by Justice N. Santosh

Hegde it was held that right of the management to lead evidence before the Labour Court or the Industrial Court was not a statutory right and thus

if the management fails to take the alternative plea of adducing evidence in the written statement filed that in case the enquiry issue is held against it

then it cannot be permitted to lead the evidence before the Tribunal. Justice Shivaraj V. Patil however concurring with the decision rendered by N.

Santosh Hegde, J held that though the management had no right to claim the permission to lead evidence before the Tribunal, however the Tribunal

was well within its right to permit the management to lead the additional evidence for a just decision.

6. This Court in DTC Vs. Sunil Kumar (supra) held:

23. Hence, on a careful reading of the majority decision of the Constitution Bench of the Apex Court in Lakshmiddevamma's case and the same

decision as interpreted by the Apex Court in Divyash Pandit's case, there cannot be any manner of doubt that the management has to exercise its

right for seeking opportunity to lead fresh/additional evidence at the first available opportunity by raising a specific plea in the written

statement/reply itself so far the industrial dispute raised by the workman u/s 10 of the Industrial Disputes Act is concerned or in the application filed

u/s 33 I.D. Act and not at a subsequent stage after the enquiry is held to be vitiated by the Labour Court after the decision on the preliminary issue.

This is the position so far the right of the petitioner management is concerned, but however, so far the powers of the Labour Court/Industrial

Tribunal are concerned, the clear legal position that emerges from the above decisions is that the Labour Court/Industrial Tribunals have unfettered

powers to direct the management to lead additional evidence including production of documents at any stage of the proceedings before the hearing

is finally concluded, if in the facts and circumstances of the case, the exercise of

such power is considered just and proper to meet the ends of justice.

24. Applying the aforesaid principles of law in the facts of the present case, let me now examine as to whether the Labour Court correctly rejected the application of the petitioner or not. The learned Labour Court declined the request made by the petitioner to lead additional evidence solely based on the majority view of the Apex Court judgment in Lakshmiddevamma's case, but without taking into consideration the facts and circumstances of the case. No doubt the petitioner management did not take up any plea in the written statement to lead additional evidence in the event of findings in the preliminary issue of the enquiry was held to be vitiated, but certainly the same did not foreclose the right of the petitioner management to lead additional evidence, subject, however to the condition that the petitioner management is able to satisfy the learned Labour Court to grant such an opportunity even at the belated stage in the interest of justice. The matter thus deserves to be remanded back before the learned Labour Court for a fresh decision on the said application of the petitioner seeking to lead additional evidence to prove misconduct on the part of the respondent workman.

7. Thus, in view of the aforesaid discussion and the consistent view it is amply clear that in case the employer does not seek leave to lead additional evidence in the written statement filed in the proceedings u/s 10 of the ID Act or when an application is filed for approval u/s 33(2)(b) of the Act, the employer cannot be permitted to exercise the option again. However, this does not fetter the jurisdiction of the Labour Court/Tribunal to permit the management to lead additional evidence which discretion will have to be exercised on well-settled judicial principles and the Court will be bound to examine the attending circumstances. In the case in hand the Tribunal was of the opinion that the charge against the Petitioner if proved was serious in nature, as a person using forged document for securing a job cannot be permitted to continue in the job and thus held it to be a fit case where management should be permitted to lead the additional evidence and for the delay conducted by the Respondent the Tribunal imposed a cost of Rs. 3000/-. I find no infirmity in the impugned order. Petition and application are dismissed