

(2022) 09 DEL CK 0201

In the Delhi High Court

Case No : Civil Writ Petition No. 4485 Of 2003

Mahinder Singh

APPELLANT

Vs

Presiding Officer Labour Court & Anr.

RESPONDENT

Date of Decision : 27-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 09 DEL CK 0201

Hon'ble Judges : Gaurang Kanth, J

Bench : Single Bench

Advocate : Anil Mittal, Komal Aggarwal Sinha, Sarfaraz Khan

Final Decision : Dismissed

Judgement

Gaurang Kanth, J

1. The present writ petition is filed under Article 226 of the Constitution of India for setting aside the Awards dated 11.09.2002 and 24.09.2002 passed by learned Presiding Officer, Labour Court-IV, Karkardooma Courts, Shahdara, Delhi ("Impugned Awards") whereby the learned Presiding Officer has held that the termination order passed by the competent authority after accepting the report of Enquiry Officer dated 14.07.1987 was correct.

FACTS OF THE CASE

2. The facts borne out of the records leading to the present petition are that the Petitioner was appointed as a driver with the DTC in the year 1979. On 21.10.1983, the petitioner was served with a chargesheet for alleged misconduct. According, to the Charge-sheet, the petitioner along with his two other associates entered the office of Mr. K. K. Berry, Depot Manager, DTC and during the discussion, the petitioner used abusive language and assaulted the Depot Manager. Petitioner filed a reply against the allegations levelled against him in the Charge-sheet. However, the competent authority was not satisfied with his reply and a regular enquiry was initiated against the Petitioner. After

conducting the enquiry, the Enquiry Officer submitted his report dated 14.07.1987 wherein the petitioner was found to be guilty of all the charges levelled against him. Hence vide memorandum dated 19.06.1987, the respondent removed the petitioner from his services.

3. The Petitioner raised an industrial dispute against the termination order dated 19.06.1987 which was referred to the learned Labour Court, Delhi for adjudication with the following terms of reference:

“Whether the termination of the services Sh. Mahinder Singh is illegal and/or unjustified and if so, to what relief is he entitled to and what directions are necessary in this respect?”

4. Initially there was no representation on behalf of the Management/Respondent before the learned Labour Court and by way of ex-parte Award dated 06.12.1999, the learned Labour Court held that the removal of the petitioner from the services is unjustified and directed for the reinstatement of the petitioner with full back wages and continuity in service.

5. The respondent filed Writ Petition challenging the ex-parte Award dated 06.12.1999 passed by the learned Labour Court which stood dismissed vide order dated 11.07.2000. Against the dismissal order, the Respondent/Management preferred an Appeal being LPA No. 630/2000. The Division Bench of this Court vide order dated 07.08.2002 was pleased to set aside the order passed by the learned Single Judge of this Court in W.P.(C) 3616/2000 dated 11.07.2000 and remanded the matter back to the learned Labour Court with directions to give another opportunity to the Respondents to lead evidence in support of their claims.

6. The petitioner examined himself as WW-1 and the Respondents examined Mr. Yusuf, who conducted the domestic enquiry as MW-1. After examining the evidence adduced by the parties, the learned Labour Court vide award dated 04.06.2002 was pleased to declare the enquiry conducted by the Respondents as vitiated as no opportunity was given to the Petitioner to cross-examine the complainant.

7. In view of the same, the learned Labour Court provided opportunity to the Respondent to prove the alleged misconduct committed by the Petitioner. Hence in order to substantiate their case, the Respondent examined 3 Witnesses, Mr. V.K. Singh. Mr. R.K. Kasana and Mr. K.K. Berry. The Petitioner examined Mr. Dhan Singh, Driver as his witness. Mr. Dhan Singh, Driver who claimed to be an eye witness deposed that he was present in the matador from 12.30 pm to 6 pm but he did not hear any commotion or any act of violence against his officer Sh. K. K. Berry with whom he was attached.

8. After considering the additional evidence adduced by the parties, the learned Labour Court vide its Award dated 11.09.2002 held that the petitioner was guilty of misconduct as alleged against him in the charge-sheet. Vide Award dated

24.09.2002, the learned Labour Court held that the offence stood established against the petitioner and are severe in nature and further held that the termination of the petitioner was neither illegal nor unjustified.

9. Being aggrieved by the impugned Awards dated 11.09.2002 and 24.09.2002, the Petitioner preferred the present writ petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER

10. Mr. Anil Mittal, learned counsel appearing on behalf of the petitioner contended that the Impugned Awards dated 11.09.2002 and 24.09.2002 are liable to be set aside as both are based on conjecture and surmises ignoring the material evidence on record. Learned counsel further contended that the learned Labour Court erred in passing the impugned Awards dated 11.09.2002 and 24.09.2002 against the appellant as the testimony of Mr. Dhan Singh, Driver of Sh. K. K. Berry clearly proves that no such incident as alleged in the charge-sheet has ever taken place. He further contended that the learned Labour Court has not followed the directions contained in order dated 07.08.2001 passed by Division Bench of this Court in LPA No. 630/2000 wherein it was clearly observed that both the parties are at liberty to adduce additional evidence. The very intent of the directions passed by the Division Bench has been surpassed by the learned Labour Court as the Presiding Officer, Labour Court failed to take into consideration the evidence of Mr. Dhan Singh, Driver.

11. Learned counsel further contended that the testimonies of MW-1 and MW-3 are not trustworthy and have been made with a vengeance against the petitioner and concocted the whole story only to remove him from the organisation due to his involvement in the labour union activities. Learned counsel further contended that there are material contradictions in the testimonies of Mr. K. K. Berry, Depot Manager and Mr. V. K. Singh and the learned Labour Court erred in relying the testimony of Mr. K. K. Berry, Depot Manager.

SUBMISSION OF THE RESPONDENT

12. On the other hand, Mr. Sarfaraz Khan learned counsel appearing on behalf of respondent contended that no interference in the Impugned Awards are called for by this Court as the same have been passed on the clear, concrete and credible evidence of Mr. K. K. Berry, Depot Manager. He further contended that there is no reason to disbelieve the testimony of Mr. K.K. Berry, Depot Manager as there is no contradiction in his statements before the Enquiry Officer and before the learned Labour Court. He further contended that the enquiry has been conducted following the principles of natural justice and learned Labour Court has also passed the Impugned Awards taking into consideration all the evidences produced before the learned Labour Court and hence the present writ petition is liable to be dismissed.

COURTS REASONING

13. Both the parties have produced witnesses in their support of their case

before the learned Labour Court. In order to ascertain the fact whether the petitioner has been involved in the alleged misconduct of abusing and assaulting the Depot Manager, it is relevant to rummage through the evidence produced by the parties. Mr. K.K. Berry, Depot Manager during his cross-examination deposed as under:-

"I was appointed as Assistant Foreman in June, 1957. I do not know name of the day on 10.10.83, as it is a matter of 20 years old. I did not use to sanction or reject the leave applications, of the workers working in my depot. My subordinate used to do the same job. It is correct that security guards had been deployed at the gate of the depot. At the time of alleged incident, I was sitting in my office. I cannot tell the dimension of my cabin. I am not remembering whether previously workman ever met with me or not. I cannot say for how long the workman remained in my cabin. They told me their grievances which have been recorded in the affidavit. All the three were speaking to me simultaneously. They were standing in my cabin.

It is 20 years old case. I cannot exactly tell which side of me they all were standing. They had beaten me only and not abused me. All the three assaulted me but exactly I cannot tell which part of my body was punched by whom

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Mr. V.K. Singh, Assistant Accounts officer and Dhan Singh driver saved me. V.K. Singh was sitting with me already at the time of incident. Sh. Dhan Singh driver came in the office at that moment. It is incorrect to suggest that I was not assaulted. It is incorrect to suggest that there were instructions from higher management that the active members of union should be sacked by any means. It is further incorrect to suggest that just follow the alleged instructions, I had levelled false allegations against the workman....."

14. Mr. V. K. Singh, Assistant Accounts Officer who stated to have been present with Mr. K. K. Berry, Depot Manager at the time of alleged incident during the registration of the complaint has stated as under:-

"On 10th Oct.83, I went to Depot Manager's room to discuss certain matters about the depot at about 1630 hrs. When I was discussing with the Depot Manager, 3 workers namely S/Shri Mohinder Singh, Driver, B.No. 7834, Dharam Bir Driver, B.No. 6865 and Harish Chander Cond. 9529 entered the office of the Depot Manager. They stated that they would like to discuss certain difficulties faced by the workers of SND. During the course of the discussion, the workers stated that the leave applications of the staff are being rejected, the recovery of the damage charges from the driver should not be made at all and the drivers on workshop duty should be booked on seniority basis. The position regarding leave application was explained to the workers the depot authorities take utmost care in rejecting only those leave application which are received late. They were further informed the leave applications are rejected because of the high rate of absenteeism prevailing in the depot. They were also informed by the Depot

Manager that if there is specific case in which leave application has been rejected without considering the genuine grounds, the same may be put up to his for consideration. Regarding damage ones, the workers were informed that those cases are dealt with in accordance with the rules and regulations and if they feel that any injustice has been done with any driver, he should be asked to file an appeal with appellate authority.

So far as the matter regarding booking of senior drivers on workshop duty is concerned, it was informed by the Depot Manager that the same is under process and will be implanted very soon.

At this S/Shri Mohinder Singh and Mariah Chander stated that "AAP HAMARI HUNION KALKAAM NAHI KARTE. HAM AAP SAI DOOSRI TARHAN SE NIMTENGE". They Booed upon Depot Manager and gave fist belows on his face. I immediately got up from my seat and saved Shri Berry. Shri Than Singh, Driver, B.No.2251 also entered the office of Depot Manager and help in this respect."

15. Mr. V. K. Singh, Assistant Accounts Officer during his cross-examination deposed as under:-

"On the date of incident that is, 10,10,83, I was posted as Asst, Accounts officer, DTC, K,K Bedi was depot manager S.M, Depot, Around 10,30, I had gone to Mr. Bedis office, 3 workers were already sitting over there. They were having discussions with Mr. Berry regarding some obligations, DM had rejected the leave applications on the ground that large number of staff members had started absented themselves. He told them that in case any problem with his order they could file appeal. Workers were also agitated over damages/ penalties imposed on them for causing damage to the DTC, Depot Manager told them that they would file appeal against his order. Thereafter, workmen present over there Mr. Berry that he was not obliging their union members they would teach him a lesson, I came to know about names of the workmen as Harish, Mahinder, Dharmveer, I did not know them before the incident. After the discussion, the workmen all pounced upon Mr. Berry in my presence, and gave me blows. I then separated and they ran away from the room"

16. Mr. Dhan Singh, Driver of Mr. K. K. Berry, who is allegedly stated to be an eye witness to the incident of assault stated in his chief examination as under:-

"I was driver to the Depot Manager in the year 1982 to 1986. On 10.10.83, I was posted and on duty at S. N. Depot from 1 P.M. to 9 P.M. Name of Depot Manager was Mr. Berry Sahab. No incident of marpeet took place in my presence on 10.10.83 in my presence. I had not seen anything or heard anything in the depot on 10.10.83. I had gone to Depot Manager at 6 P.M. to Secretariat. I was asked by the Depot Manager to give in writing something. I do not remember what he had asked me to write but I told him that I can give in writing in Urdu only. But they refused to accept any writing in Urdu. I had not appeared as a witness in the enquiry against Mahender Singh. It is my first chance to appear in the court today"

17. Mr. Dhan Singh, Driver during his cross-examination deposed as under:-

"I retired from my employment with DTC in the year 1987 on 30.4.1987. I am not related to Mahender Singh workman. I was called for evidence in the court today by Sh. Mahender Singh through one of his person. Sh. Mahender Singh met me in the court today only and is told me to give evidence. He did not tell me what to depose. I do not have very good personal relations with the workman. Neither I have love nor quarrel with him.

My duty as a driver to Depot Manager was to at the Matador which was allotted to him and drive the vehicle for him whenever he directed. It is correct that I was not related to the work in the office of Depot Manager nor I had to do anything to go there. I had reached the depot on 10.10.1987 at 12.30 noon. I had at 6 p.m. on that day went in the matador XXX with the depot manager as per his direction to the Secretariat. During all the time from 12.30 p.m. to 6 p.m. I was at the matador only. It is wrong to suggest that I have good relations with Mahender Singh and to help him I had come to depose in his favour in the court."

18. From perusal of the aforementioned testimonies, it is evident that at the time of alleged incident Mr. V. K. Singh, Assistant Accounts Officer was available in the office of Mr. K.K. Berry, Depot Manager. Mr. V.K. Singh during his initial statement recorded by the Enquiry Officer informed in writing that the petitioner along with two other officials abused and assaulted the Depot Manager. During his examination-in-chief as well in his cross-examination he has stated explicitly that he was present in the room of the Mr. K. K. Berry, Depot Manager at the time of the alleged incident and he saved the Depot Manager from further assault.

19. Mr. K. K. Berry, Depot Manager categorically stated in his evidence that during the conversation with the petitioner and his colleagues in his office, the petitioner assaulted him. He further deposed that he was saved from further assault by Mr. V. K. Singh who was present in his room at the time of the alleged incident. There is no contraction in the statement of Mr. K.K. Berry, Depot Manager recorded at the time of complaint and statement before the learned Labour Court.

20. Petitioner has challenged the impugned Awards on the basis that the learned Labour Court erred in not considering the testimony of Mr. Dhan Singh, Driver despite recording of his evidence.

21. This Court has analyzed the testimonies of Dhan Singh minutely and carefully. Mr. Dhan Singh in his evidence stated that he had reached the depot on 10.10.1983 at 12.30 noon and during all the time from 12.30 p.m. to 6 p.m., he was at the matador only. He further deposed that no incident of "marpeet" took place in his presence on 10.10.83 and he had not seen anything or heard anything in the depot on 10.10.83. The incident happened at the office of Mr. K.K Berry, Depot Manager. Mr. Dhan Singh was not present there according to his own evidence and hence the only thing which can be deduced from his evidence is that Mr.Dhan Singh is not an eye witness to the incident. Mr. K.K Berry in his

evidence stated that Mr. V.K Singh saved him from the Petitioner's assault. However, Mr. Dhan Singh stated that he was not present at the time of incident. In the opinion of this Court, the evidence of Mr. Dhan Singh is not cogent enough to turn around the decision rendered by the learned Labour Court. Mr. Dhan Singh during the course of his evidence admitted that he was deposing at the behest of the petitioner. Hence Mr. Dhan Singh cannot be treated as an independent witness. He is already a retired employee and hence his evidence at the behest of the petitioner cannot be relied upon.

22. As such no reliance can be placed on the testimony of Mr. Dhan Singh, Driver. The testimony of Mr. K. K. Berry, Depot Manager and Mr. V. K. Singh, Assistant Accounts Officer are corroborative and without any material contradictions.

23. Accordingly, after perusing the testimonies of the aforementioned witnesses, this Court is of the view that the petitioner has assaulted Sh. K. K. Berry, Depot Manager in the presence of Mr. V. K. Singh, Assistant Accounts Officer and has been saved by Mr. V. K Singh from further assault.

24. The learned Labour Court had dealt with the evidence adduced by the parties and came to the conclusion that the petitioner is guilty of the misconduct alleged against him. The relevant portion of the impugned award reads interalia as follows:

" I have already observed above that there was no cogent reason for an elderly well-placed person like Mr. K.K. Berry to make allegation against workman Mahinder Singh. There is every likelihood Mr. K.K.Berry was assaulted in his office by the workman. I therefore, hold that Management has succeeded in establishing misconduct of the workman by leading evidence in the Court. It has been established on record that workman alongwith his associates gave unwarranted beatings to the Depot Manager Mr. Berry. They are guilty of assaulting him..."

25. The act done by the petitioner assaulting his superior officer at the workplace amount to gross indiscipline. Even under gravest of provocation no employee can be allowed to assault his superior, so the punishment of termination from service cannot be said to be wholly inconsistent. The courts cannot allow the employees to break the discipline with impunity.

26. It is well settled principles of law that while exercising jurisdiction under Article 226 of the Constitution of India, the order passed by the learned Labour Court is to be interfered with, only if (i) it suffers from an error of jurisdiction or (ii) there is a breach of principle of natural justice or (iii) vitiated by a manifest or apparent error of law. This Court has no jurisdiction to reappraise the evidence unless the findings of facts are contrary to the evidence on record.

27. In view of the detailed discussions herein above, this Court is of the view that the finding of facts arrived at by the learned Labour Court is based on the

evidence on record and hence there is no perversity or illegality in the findings arrived at by the learned Labour Court. Hence this Court is not inclined to interfere with the Awards dated 11.09.2002 and 24.09.2002 passed by the learned Labour Court.

28. Accordingly, the present writ petition is dismissed. No order as to cost.