
(2013) 07 DEL CK 0112

In the Delhi High Court

Case No : Writ Petition (C) 6685 of 2010

Management of D.T.C.

APPELLANT

Vs

Jai Pal Singh

RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2013) 6 AD 141

Hon'ble Judges : Veena Birbal, J

Bench : Single Bench

Advocate : Arati Mahajan Shedha, for the Appellant; Sunil Kumar Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Veena Birbal, J.—By way of this petition, petitioner/management has challenged the award dated 7th October, 2009 passed in I.D. No. 194/08/98 by the Presiding Officer Labour Court, Karkardooma Courts, Delhi whereby the petitioner/management has been directed to reinstate the respondent/workman in the same post where he was working with continuity of service for the purposes of fixing the wages, pension, gratuity only and no back wages have been awarded by the Labour Court. The facts relevant for the disposal of the present petition are as under:-

Respondent/workman was working as a driver with the petitioner/management w.e.f. 29th March, 1989. On 18th November, 1996, a charge sheet was issued to him on the allegations that he remained absent unauthorizedly for 55 days between 1.1.1996 till 30.9.1996. Respondent/workman filed reply to the charge sheet. As the same was not found satisfactory, a domestic inquiry was conducted wherein respondent/workman was found guilty of the charges levelled against him. The Disciplinary Authority i.e., the Depot Manager after considering the inquiry report dated 17th December, 1997 issued show cause notice to the respondent/workman proposing the punishment of removal from service.

Respondent/workman did not file reply to the said show cause notice. Thereafter the Depot Manager confirmed the punishment of removal from service vide order dated 8th January, 1998. Thereupon, respondent/workman raised an industrial dispute. The appropriate Government referred the same for adjudication before the Labour Court with the following terms of reference:-

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

2. Upon receipt of reference by the Labour Court, notices were directed to be issued to both the parties. Thereupon, respondent/workman had filed his statement of claim stating therein about his employment with the petitioner/management as well as issuance of charge sheet dated 18th November, 1996 for remaining absent from duty for 55 days and his submitting reply to the said charge sheet. He had further alleged that in the inquiry conducted against him he was not given an opportunity to fully represent his case. He had further stated that pursuant to the inquiry report, his services were terminated on 8th January, 1998. Respondent/workman had alleged that his termination was illegal and mala fide.

3. Petitioner/management had opposed the statement of claim by filing written statement stating therein that the inquiry was conducted after following the principles of natural justice and as per inquiry report, respondent/workman was found guilty. The Disciplinary Authority i.e., the Depot Manager after considering the inquiry report issued a show cause notice proposing punishment of removal from service as the charges levelled against him were proved. However, the respondent did not file reply. The Depot Manager after considering the case, confirmed the punishment vide his order dated 8.1.1998 i.e., removal of respondent from service.

4. The following issues were framed before the Labour Court:-

1. Whether a proper and fair enquiry was conducted in accordance with the principles of natural justice?

2. As per terms of reference.

5. The Labour Court vide its order 7th October, 2009 decided issue number 1 with respect to the validity of inquiry in favour of respondent/workman and against the petitioner/management. The petitioner/management requested for an opportunity to lead evidence to prove the charge against the respondent/workman. However, the same was declined by the Labour Court and it proceeded to dispose of the matter in terms of the reference. The Labour Court observed that absence of respondent from service was under compelling circumstances, as such, dismissal of workman was highly disproportionate to the misconduct alleged. Accordingly award of reinstatement had been passed without granting back wages to the respondent/workman. Aggrieved with the same, present writ

petition is filed.

6. Learned counsel for the petitioner has contended that the Labour Court has held that the Inquiry Officer had no material to sustain the charges, as such inquiry was not fair and proper and in these circumstances, the Labour Court ought to have given chance to the petitioner/management to lead evidence to prove the charge against the respondent/workman before the court. In support of his contention, learned counsel has relied upon a judgment of this court in Pradeep Kumar Vs. M.C.D., .

7. On the other hand, learned counsel for the respondent/workman has contended that the respondent/workman had admitted his absence before the Inquiry Officer, however, he had explained the circumstances due to which he remained absent, as such, the Labour Court has considered the compelling circumstances which have not been denied by respondent/workman, as such there is no point in giving an opportunity to the petitioner/management to lead evidence as the absence was admitted by him. It is contended that as per findings of the inquiry officer, out of 55 days, respondent/workman had sent applications in the office for 36 days and rest 19 days was absence without permission. It is contended that the respondent/workman has given an explanation before the Inquiry Officer which has not been denied by the petitioner/management either before the labour court as well as before this court and no relief for back wages has been given to him. In these circumstances, the impugned award needs no interference of this court.

8. I have considered the submissions made and perused the record.

9. Perusal of the record of the inquiry proceedings shows that the charge sheet which was in Hindi was read over to the respondent/workman. Respondent/workman had stated before the Inquiry Officer that he was constrained to go on leave due to compelling circumstances as his sister was murdered for dowry and thereafter he himself suffered jaundice and due to these compelling circumstances, he could not report for duty. However, he had sent all the applications in time in the depot. He had further stated before the Inquiry Officer that he also suffered leg injury and was under medical treatment due to which he had taken leave for 55 days and the inquiry officer gave a finding that respondent/workman had sent leave applications for 36 days and for rest of 19 days, there was no leave application, as such, he remained unauthorisedly absent for 19 days. The respondent/workman had admitted his absence of 19 days and the Labour Court had proceeded to decide the matter on the basis of admission by him. However, the Labour Court had observed that absence was under compelling circumstances. In these circumstances, it will not be appropriate to remand back the matter to the petitioner/management to prove the charges against the respondent/workman. Further the charge sheet was issued in November, 1996. The finding of the Labour Court on the said admission is as under:-

However, the Ld. AR for the management relied on the admission by the workman during the enquiry which is permissible to be looked into u/s. 11A of the I.D. Act. The workman no doubt had admitted the absence under the compelling circumstances. This cannot be winked at. However, considering that the dismissal of the workman being highly disproportionate to the misconduct alleged, I find that the workman is entitled to be reinstated.

10. As is already noted, out of 55 days, petitioner/management had received leave applications for 36 days and the absence was of 19 days and the respondent/workman explained the reasons i.e., due to dowry death of his sister by her in-laws and he having suffered jaundice and leg injury, he could not report for duty. There is no denial of compelling circumstances due to which respondent/workman remained absent. No arguments in this regard have been advanced before the Labour Court or before this court. No doubt u/s 11A of the I.D. Act, the Labour Court has limited power to interfere with the quantum of punishment. In the present case, after considering the relevant facts and circumstances of the case, the Labour Court has interfered and ordered for reinstatement of respondent/workman. No back wages has been awarded to him. No case for interference is made out.

Writ petition stands dismissed.

There is no order as to costs.