
(2019) 11 DEL CK 0105

In the Delhi High Court

Case No : Civil Writ Petition No. 2792 Of 2007

Management Of M/S Birla Te

APPELLANT

Vs

Chunni Lal

RESPONDENT

Date of Decision : 15-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 33(2)(b)
Code Of Civil Procedure, 1908 — Section 115

Citation : (2019) 11 DEL CK 0105

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : Dr. M.Y. Khan, Vinay Sabharwal

Final Decision : Dismissed

Judgement

Rekha Palli, J

1. The present writ petition filed by the management assails the order dated 29.01.2007 passed by the learned Industrial Tribunal in OP No.100-2005/1987, whereunder the petitioner's application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'ID Act') seeking approval of its order dismissing the respondent/workman from service, came to be rejected. The petitioner has also assailed the award dated 29.01.2007 passed by the same Tribunal in ID No.72/2005 whereunder the petitioner was directed to reinstate the respondent in service with 50% backwages, after holding that he had been illegally terminated.

2. The brief facts of the case are that the respondent/workman joined the services of the petitioner/Mill in October, 1970 and became a member of the Textile Mazdoor Congress (Regd.). On 12.01.1994 the workman was issued a charge sheet alleging that he along with 30 other workmen had, on 10.01.1984 at about 11.30 am, forcibly entered the administrative block and misbehaved with one Mr. Hemant Kumar, the Chief Executive officer of the Mill, because a

transfer order was issued in their names upon the closure of the petitioner's weaving section. It was also alleged that the errant workmen had continued with their gherao of Mr. Hemant Kumar till 6.30 pm and had also stopped the labour officer from entering the premises. When the respondent/workman denied his presence at the site on the date of incident, a departmental enquiry was initiated against him. Even though the inquiry could not be completed due to successive change in the Inquiry Officers, the petitioner dismissed the respondent from service, as also the other 30 workmen accused of being involved in the incident, vide its order dated 28.03.1985. In view of the pending industrial dispute between these parties, the petitioner filed an approval application under Section 33(2)(b) of the ID Act before the Tribunal seeking approval of its dismissal order dated 28.03.1985.

3. In his reply to the approval application, the respondent/workman specifically denied the petitioner's allegations and pointed out that the petitioner, being aggrieved by the genuine and legitimate demands being raised by him as an active union member, had fabricated the incident as it was looking for a reason to oust him and the other union members from service. He further claimed that the petitioner had not even remitted one month's salary to him, which was a necessary precondition for filing an approval application under Section 33(2)(b) of the ID Act.

4. Based on the pleadings of the parties, the Tribunal framed the following issues:

1. Did the respondent indulge in violence activities and gheraoed Shri Hemant Kumar, Chief Executive?

2. Is the applicant entitled to approval of dismissal of the respondent?

5. In support of its claim that the respondent had indulged in violent activity by gheraoing its Chief Executive Officer, the petitioner examined two witnesses, viz., Sh. Mahavir Prasad, the Industrial Relations Officer and Sh. Hemant Kumar, and also placed reliance on the police complaint dated 10.01.1984. The respondent, on the other hand, examined himself as his sole witness. Upon consideration of the evidence led before it, the Tribunal came to the conclusion that, prima facie, there was no proof of the respondent's participation in the alleged incident dated 10.01.1984. It was also found that there was nothing to show that the payment of one month's wages had been remitted to the respondent in accordance with Section 33(2)(b) of the ID Act. The Tribunal, therefore, rejected the petitioner's approval application in the impugned order dated 29.01.2007 by holding as under:-

"32. As per the present approval application, AW1- Mahavir Prasad is an eye witness to the incident dated 10.01.84. If the complaint Ex.AW1/1 is looked into, then, the presence of Mahavir Prasad does not find mention on the date of the alleged incident in the said complaint. The statement of AW1-Mahavir Prasad in his affidavit Ex.AW1/A that he has seen the incident by his naked eyes is not believable as his such version is coming before this Court after a gap of about 18

years. There is no document to corroborate his version. Moreover, the management has also failed to bring on record the attendance record of the workman as on the date of the alleged incident dated 10.01.84.

33. If the complaint Ex.AW1/A is looked into, the SHO Sh. Kalla Roshanara Police Station was already present in his room who let Mr. Hemant Kumar to go for natural call at about 5.00 PM, then, the question is, that, if the police was already there, how he was confined in the room thereafter till 6.30.PM. If the police was there why the investigation of the police is not relied upon by the management. The answer is obvious that the management does not want to bring true facts before this Court.

34. There is no explanation on the record why the management has not examined the security personnels who were deputed on the said date of incident who tried their best to prevent the workman along with the co-workmen who entered into the administrative block without permission. The name of Sh. R.L. Goyal and Sh. Mahavir Prasad who are stated to be eye witnesses to the incident in question, as per the approval application are not mentioned in the complaint Ex.AW1/1 which ipso-facto shows that they were not present at the time of the alleged incident and they were got prepared by the management thereafter as there is no document, proved on record by the management to show that Sh. R.L. Goyal and Mahavir Prasad were present on the date of the alleged incident in the office.

35. There is also no explanation on the record that why the police or the management has not taken photographs of the broken doors and the broken pots on the date of the alleged incident, as narrated in the approval application itself.

36. The date of the incident was 10.01.84 and without completing the enquiry into the charges against the workman, the management filed the present approval application on 28.03.1985 without supporting it with any affidavit of the management's witnesses. The management has filed the affidavits of AW1-Mahavir Prasad and AW2-Hemant Kumar after a gap of more than 18 years with improved versions, as discussed above which clearly shows that the management has not approached to this Court with clean hands to show their bonafide that in fact such incident took place and the workman did participate in the alleged incident. Since, the relations between the management and the workman were not in good terms at the relevant time, it can be said that the management was trying to get rid off the workers, employed in the Weaving and Allied Department and created the present scene in question. Thus, I hold that there is no prima facie evidence on record that the workman infact did participate in the alleged incident dated 10.01.84 and therefore, this issue is decided against the management and in favour of the workman.

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37. The management in the approval application in para-16 has stated that the

management has sent the dismissal letter by registered AD post and simultaneously one month's pay in lieu of notice was also sent by money order. In reply to the approval application, the workman has denied of having received the same. The management has not examined any official from postal authorities that infact the said dismissal letter and the said amount were delivered to the workman concerned. Therefore, the management has failed to prove the compliance of Section 33 (2) (b), in view of the judgment in 2002 LAB IC 605 Anil Kumar Joshi Vs. Air India Limited.

38. Keeping in view the discussions, made above on issue no.1, the management/applicant failed to prove on record the prima facie evidence to show that the workman did participate in the alleged incident dated 10.01.84 and the management further failed to prove on record that the management in fact delivered the dismissal letter along with one month's wages by money order to the workman concerned. Therefore, I accordingly, reject the approval application, moved on behalf of the management. The workman is deemed to be in the employment of the management. It is ordered, accordingly.

6. Even while the petitioner's approval application was pending adjudication before the Tribunal, the respondent, after sending a demand notice to the petitioner, also raised an industrial dispute challenging his termination. The said industrial dispute came to be allowed by the Tribunal vide its award dated 29.01.2007 wherein, upon an appreciation of evidence, it came to the conclusion that the petitioner had failed to prove any misconduct on the part of the respondent. The Tribunal, therefore, set aside the respondent's termination and directed the petitioner to reinstate him with continuity of service and 50% back wages.

7. Assailing the order rejecting its approval application as also the award directing the respondent's reinstatement, the present writ petition has been filed.

8. Learned counsel for the petitioner Dr. M.Y. Khan submits that once the respondent had raised an industrial dispute, the order passed in the petitioner's approval application loses all sanctity and is no longer relevant. He submits that irrespective of the petitioner's approval application being dismissed by the Tribunal, the merits of the respondent's defence in the industrial dispute ought to be considered independently by this Court. He submits that the charges framed against the respondent were of a serious and grave nature as he was guilty of illegally confining and abusing his superior officer. He was, therefore, guilty of misconduct which warranted his dismissal from service. In support of the aforesaid contention, Dr. Khan places reliance on the decisions of the Supreme Court in L.K. Verma Vs. HMT Ltd. & Anr., 2006 Lab. I.C.964, M/s Ralli Chemicals Ltd. Fertilizer Factory Vs Labour Court 1971 (22) F.L.R. 74 and Jay Engineering works vs. State, AIR 1968 Calcutta 407. He further submits that the findings of the Tribunal in the impugned order as well as the impugned Award are not based on a proper appreciation of evidence and are, therefore, not sustainable. Dr. Khan finally submits that even otherwise, since the Mill closed on 30.11.1996

and the respondent having attained the age of superannuation in the year 2009, expired on 27.04.2015, the relief of reinstatement with 50% back wages granted to the respondent was not warranted. He, therefore, prays that the writ petition be allowed.

9. On the other hand, Mr. Vinay Sabharwal, learned counsel for the respondent submits that in view of the settled legal position, as laid down by the Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Ltd. Vs. Ram Gopal Verma (2002) 2 SCC 244, once the petitioner's approval application was dismissed by the Tribunal, the respondent was deemed to be in continuous service. Even if he did not raise an industrial dispute challenging his termination, the same cannot alter the fact that his termination was non-est, being in violation of Section 33(2)(b) of the I.D. Act. He further submits that the Tribunal, after a detailed appreciation of the evidence led before it, has come to the conclusion that the petitioner had not produced any material to show that the respondent had, in fact, indulged in any misconduct. He further submits that the petitioner's plea that the Mill stands closed is belied by its own averments in the present petition to the effect that the petitioner Mill, which was earlier operating in Delhi, had been re-located to Baddi, District Solan, Himachal Pradesh and has, thereafter, merged with M/s Chambel Fertilizer and Chemicals Ltd. He, thus, contends that the petitioner is continuing to operate at Baddi and is also, in any event, maintaining an office at Delhi, on which address it had been served with notices by this Court. He submits that the Tribunal has arrived at a categorical finding not only while deciding the approval application but also while deciding the industrial dispute raised by the respondent/workman that no case of misconduct was made out against the workman. He submits that these findings are based on a due appreciation of evidence warranting no interference by this Court and, therefore, prays that the writ petition be dismissed.

10. I have considered the submissions of the parties and with their assistance perused the record.

11. As noted above, Dr. Khan has raised two primary contentions, the first being that once an industrial dispute was raised by the respondent, he cannot rely on the Tribunal's order rejecting the management's approval application to substantiate his claim in the industrial dispute. In my view, merely because the respondent also chose to raise an industrial dispute cannot imply that the order rejecting the approval application loses its sanctity. On the contrary, in the light of the decision of the Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Ltd. (supra) categorically holding that once the management's approval application is rejected, a necessary consequence thereof is that the termination/dismissal will not have any effect, it is evident that once the petitioner's approval application was rejected, the order of termination passed against the workman would be rendered void. In fact, as has been held by a Division Bench of this Court in Badshah Singh Vs. Delhi Jal Board passed [LPA No.604 of 2014], in such a situation where the management's approval application is rejected, it would not

even be necessary for the workman to raise a formal claim in this regard. Thus, I find no merit in the petitioner's first contention.

12. At this stage, it may be noted that as a consequence of the rejection of the approval application, the respondent could have claimed reinstatement with full backwages without raising any industrial dispute. Even when the respondent proceeded to raise a specific industrial dispute wherein he has been granted reinstatement with only 50% backwages, this aspect of quantum of backwages payable to the respondent could have engaged this Court but in view of the fair stand taken by the learned counsel for the respondent that the respondent is satisfied with the award of 50% backwages made in his favour, this aspect need not be determined by this court.

13. I do not find any merit even in the second contention of the learned counsel for the petitioner that the Tribunal's finding that no misconduct had been proved is perverse and liable to be interfered with by this Court. Even though this Court, while exercising writ jurisdiction, is not expected to re-appreciate the evidence unless some perversity is pointed out, yet I have carefully examined the evidence and find absolutely no reason to differ with the conclusion of the Tribunal which is based on a correct appreciation of evidence. None of the Management witnesses were able to conclusively establish the alleged misconduct on the part of the respondent and, therefore, the Tribunal was fully justified in coming to the conclusion that no misconduct was made out. It is not the case of the petitioner that any admissible or material evidence was ignored by the Tribunal or that any inadmissible evidence had been considered by the Tribunal. On the other hand, I find that the learned Tribunal has meticulously examined the evidence led on record and has provided cogent reasons for disbelieving each of the management witnesses. Therefore, while exercising my writ jurisdiction I see no reason to interfere with the findings of fact recorded by the Tribunal, both in its impugned order and award dated 29.01.2007. Reference may be made to the decision in Harjinder Singh Vs. Punjab State Warehousing Corporation 2010 (3) SCC 192 wherein the Supreme Court has, by referring to its earlier decision in Surya Dev Rai vs. Ram Chander Rai (2003) 6 SCC 675, reiterated the scope of interference by a writ Court while dealing with an award passed by a Labour Court by observing as under:-

"13. In Surya Dev Rai case [(2003) 6 SCC 675] , a two-Judge Bench, after threadbare analysis of Articles 226 and 227 of the Constitution and considering large number of judicial precedents, recorded the following conclusions: (SCC pp. 694-96, para 38)

"(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46

of 1999 are nevertheless open to challenge in, and continue to be subject to certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction-by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction-by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not

convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case."

14. I also do not find any merit in the petitioner's contention that the respondent could not be granted reinstatement as the Mill was closed on 30.11.1996, pursuant to the orders passed by the Supreme Court. Once it is the petitioner's own case that its factory was relocated to Baddi, it is evident that all similarly placed workmen continued to be employed in Baddi unless they had chosen to voluntarily leave the services of the respondent. Therefore, there is no reason to deprive the respondent, now represented through his legal heirs, of the consequential benefits arising out of the impugned order and award passed in his favour.

15. Before I conclude I may also refer to the decisions relied upon by the learned counsel for the petitioner. I find that these decisions pertain to cases where the workman's misconduct regarding misbehaviour/assault of senior officers stood conclusively proved by way of cogent evidence and, therefore, the only question before the Court in those matters was regarding the nature of penalty imposed on the workman. In the present case, in view of the Tribunal's conclusion that no case of misconduct was made out against the workman, with which I see no reason to differ, the decisions relied upon by the petitioner would be wholly inapplicable.

16. For the aforesaid reasons, I find no infirmity either in the impugned order dated 29.01.2007 rejecting the petitioner's approval application or in the impugned Award dated 29.01.2007 directing the respondent's reinstatement with continuity of service and 50% back wages.

17. The writ petition being meritless, is dismissed.