
(2007) 08 DEL CK 0025

In the Delhi High Court

Case No : Writ Petition (C) No. 2989 of 2002

M.C.D.

APPELLANT

Vs

Naresh Kumar and Another

RESPONDENT

Date of Decision : 27-08-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 33C(1)

Citation : (2007) 3 LLJ 1053 : (2008) 1 SLJ 541

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Geeta Mehrotra, for the Appellant; Sanjay Ghose, for the Respondent

Judgement

Hima Kohli, J.—The petitioner MCD has impugned the award dated 31st January, 2001 passed by the Labour Court in favor of the respondent workman holding inter alias that he is entitled to be reinstated to his job of a Chowkidar with continuity of service, full backwages and other consequential benefits.

2. A brief narration of the facts is necessary. The respondent workman had joined the services of the petitioner MCD as a Chowkidar with effect from 16th November, 1988 as a daily wager/casual/muster roll worker. His services were terminated on 19th May, 1995 on the allegations of misconduct, without serving any charge sheet or conducting any domestic enquiry against him. Aggrieved by the aforesaid action of the petitioner MCD, the respondent workman approached the Conciliation Officer who was unable to resolve the dispute between the parties resulting in a reference dated 25th October, 1996 forwarded by the appropriate Government to the Labour Court in the following terms:

Whether services of Sh. Naresh Kumar have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this regard?

3. It was averred by the respondent workman in the statement of claim that his services were terminated by the petitioner MCD without affording an opportunity

of hearing and without serving any charge sheet on him. He Therefore prayed for reinstatement in service with continuity of service and full backwages in the proper pay scale. The petitioner MCD contested the claim of the respondent workman by raising preliminary objections with regard to the maintainability of the claim on the ground that the case of the respondent workman was not espoused by a majority and thus the union had no right to contest the reference and that the reference was bad for non-joinder and mis-joinder of parties. On merits, while it was not denied that the respondent workman joined the service of the petitioner MCD as a Chowkidar on 16th November, 1988 as a daily wager, it was stated that the respondent workman had abandoned the job of his own accord. On the basis of the pleadings of the parties, the only issue framed was in terms of the reference and the relief, if any, to which the respondent workman was entitled to.

4. The respondent workman tendered his evidence by way of an affidavit and also filed certain documents. Similarly, the petitioner MCD also examined one witness, namely, MW-1 and placed on record the termination order dated 18th September, 1995, marked as Ex.MW-1/1.

5. The only issue adjudicated by the Labour Court was as to whether the services of the respondent workman had been terminated illegally and/or unjustifiably as alleged by him or whether he had abandoned the services of his own accord, as alleged by the petitioner MCD.

6. After going through the admitted facts as also the materials placed on the record, the Labour Court negated the claim of the petitioner MCD that the respondent workman had abandoned the services of his own accord and it went on to hold that the respondent workman having remained continuously in the services of the petitioner MCD with effect from 16th November, 1988 till 18th September, 1995, the termination of his services vide order dated 18th September, 1995 without holding any preliminary/departmental enquiry was in violation of the principles of natural justice and was also in violation of the provisions of Section 25F of the Industrial Disputes Act, 1947 (for short 'the Act'). Thus the Labour Court arrived at the conclusion that the respondent workman was entitled to reinstatement with continuity of service, backwages and all consequential benefits.

7. Counsel for the petitioner has assailed the impugned award on the ground that the Labour Court failed to appreciate the fact that after the termination order was served on the respondent workman, the petitioner MCD issued him a statement of misconduct in which reference was made to a complaint dated 14th September, 1995 received from a student of the school where the respondent workman was working, wherein it was alleged that the respondent workman had misbehaved with her. It was further stated that after a verbal enquiry, statement of the respondent workman was recorded in which he had accepted the charge of misbehavior and apologized, pursuant to which an FIR was lodged by the brother of the student. Thus the respondent workman was called upon to explain his

conduct but he chose to stay away from the departmental enquiry compelling the petitioner MCD to pass an order dated 15th March, 1996 terminating the services of the respondent workman with effect from 18th September, 1995.

8. On the other hand, counsel for the respondent workman refuted the contention of the petitioner MCD and stated that new pleas were being sought to be raised by the petitioner MCD for the first time in the course of arguments and that no such plea finds mention in the written statement filed by the MCD before the Labour Court. The attention of this Court was drawn to a copy of the written statement filed by the petitioner MCD before the Labour Court. It was stated that as the arguments of the petitioner MCD were beyond the pleadings of the parties, the same could not be permitted to be taken up at this stage. In this regard, he placed reliance on a judgment of the court in case of MCD v. Balbir Singh WP (C) No. 6419/2004 decided on 6th August, 2007.

9. Counsel for the respondent workman submitted that the termination of the services of the respondent workman were not in the nature of termination implicate but a stigmatic termination and thus the petitioner MCD was under an obligation to have issued a notice to show cause and initiate a departmental proceeding before taking any action against the respondent workman. In the present case, the respondent workman was thrown out by the petitioner MCD illegally without holding any enquiry or issuing a charge sheet to him and without affording an opportunity of hearing to him. It was stated that the said illegality could not be made good by subsequently issuing a notice to show cause and holding an enquiry as was sought to be done in the present case. To support his contention, reliance was placed on the judgment of the Supreme Court in the case of M.C.D. Vs. Praveen Kumar Jain and Others, .

10. Counsel for the respondent workman also submitted that had the petitioner MCD been serious about the enquiry stated to have been held against the respondent workman, nothing prevented it from proving the allegations of misconduct against him before the Labour Court. However, for reasons best known to the petitioner MCD, it did not seek any opportunity to prove the allegations.

11. It was further submitted that pursuant to the impugned award, the respondent workman had filed an application u/s 33C(1) of the Act for recovery of the backwages and a recovery certificate was issued against the petitioner/ MCD in terms of which the respondent workman received a sum of Rs. 4,44,802/- as backwages and thus the impugned award stood satisfied in so far as the backwages part was concerned. However, the respondent workman was not permitted to join duty in accordance with the award.

12. Lastly, it was submitted that during the pendency of the present proceedings, a criminal case pending against the respondent workman pursuant to the FIR lodged against him and referred to in the order of termination dated 15th March, 1996 has since been withdrawn by the complainant therein, the brother of the

student with whom the respondent workman had alleged to have misbehaved and vide order dated 19th September, 2003, after recording the statement of the complainant, the Metropolitan Magistrate recorded that a compromise had been arrived at between the parties as the matter was amicably settled. Thus the offence was compounded.

13. I have heard the counsels for the parties and have also perused the materials placed on record.

14. The facts of the case are undisputed. It is not denied by the petitioner MCD that the services of the respondent workman were terminated with effect from 18th September, 1995 without issuing a notice to show cause to him, much less a charge sheet. No departmental proceedings were conducted by the petitioner MCD. Thus on the face of it, principles of natural justice were violated by the petitioner MCD. The submission of the counsel for the petitioner MCD that after termination of the services of respondent workman, on receiving legal advice in this regard, a notice to show cause was issued to the respondent workman but he refused to participate in the enquiry proceedings and he was consequently proceeded *ex parte* followed by the order of termination, is misconceived and unacceptable. Having put the cart before the horse, the petitioner MCD cannot be heard to state that the earlier order of termination could be held to be legal and valid by holding an enquiry against the respondent workman subsequently. Thus the Labour Court rightly arrived at the conclusion that the respondent workman could not be faulted for not participating in the departmental enquiry as his services were initially terminated by the petitioner MCD without holding an enquiry and in violation of the principles of natural justice.

15. Even if it is assumed that the termination of the services of the respondent workman was not stigmatic in nature but a termination simplicitor, a bare perusal of the order of termination issued to the respondent workman shows that the provisions of Section 25F of the Act were not complied with as he was neither given a proper notice, nor was the termination order accompanied by salary in lieu of notice as payable to the respondent workman.

16. The counsel for the respondent workman has rightly relied on the judgment of the Supreme Court in the case of Praveen Kumar Jain (*supra*) where the circumstances were similar to the case in hand, the employee having indulged in a misconduct, his services were terminated without holding a departmental enquiry. After taking note of the facts of the case, the Supreme Court held as below:

Para 4 : Unfortunately, for the appellant the impugned order of termination extracted above does not show that it was passed after a departmental enquiry wherein the disciplinary authority was satisfied about the said misconduct. On the contrary, it seeks to terminate the services of Respondent 1 by way of a simple discharge and not by way of any penalty. It is only during the proceedings before the Labour Court that a different stand was taken that it was by way of

penalty. This stand was obviously taken by the appellant because the order of simplicities termination would have remained stillborn as Section 25F of the Industrial Disputes Act was admittedly not complied with by the appellant. With this difficulty staring in the face, a stand was taken that it was by way of penalty. If it was by way of penalty then at least a regular departmental enquiry had to be conducted. It was also required to be followed by the enquiry officer's report resulting in adverse finding against Respondent 1 and its acceptance by the disciplinary authority. Nothing of this sort was done. There is neither the enquiry officer's report holding Respondent 1 guilty of charge which in fact was never framed against him nor is there any acceptance of such a finding of the enquiry officer by the disciplinary authority. In fact the disciplinary authority has never held Respondent 1 guilty of any charge of misconduct....

17. Same is the situation even in the present case. The petitioner MCD did not conduct any departmental enquiry prior to issuance of the termination order and consequently, the impugned order of termination is illegal and non est. As observed above, even a implicate discharge order, passed without following the due process of law is vocative of Section 25F of the Act. The respondent workman before being visited by such a grave civil consequence as termination of service was entitled to be afforded an opportunity of hearing followed by a departmental enquiry. There is force in the plea of the respondent workman that the petitioner MCD was well entitled to prove the misconduct even before the Labour Court. However, neither was such a plea taken in the written statement, nor was any other effort made by the petitioner MCD to seek an opportunity to prove the allegations leveled against the respondent workman.

18. For the reasons stated above, it can only be held that the petitioner MCD alone is to be blamed for the present situation in which it finds itself as the said situation is a creation of the petitioner MCD. The respondent workman cannot be faulted for taking advantage of the said situation created by the petitioner MCD. In these circumstances, this Court finds no infirmity or illegality in the impugned award. The same is based on the evidence, documents and other materials placed on the record and, Therefore, the inference drawn by the Labour Court is justified. However, while upholding the impugned award and rejecting the present petition, it may be observed that the petitioner MCD is not precluded from initiating fresh proceedings against the respondent workman in respect of the misconduct alleged against him, in accordance with law. No orders as to costs.