
(2009) 08 DEL CK 0248

In the Delhi High Court

Case No : Writ Petition (C) No. 10615 of 2009

Shri Vijay Singh

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 7 ILR Delhi 400

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : H.K. Chaturvedi, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—This writ petition filed by the workman (petitioner herein) is directed against an award dated 01.04.2009 passed by the Industrial Adjudicator holding his removal from the service of respondent Corporation to be legal and just.

2. Heard.

3. Briefly stated, the facts of the case are that the petitioner was appointed as a driver with the respondent since 1977 and he was served with a charge sheet dated 15.01.1992 for unauthorized absence from duty for a period of 102 days during the period from 01.01.1991 to 31.12.1991. Domestic inquiry was held against the petitioner in which he was found guilty of remaining unauthorizedly absent for a period of 102 days. The Disciplinary Authority, after considering the inquiry report and past conduct of the petitioner, decided to remove him from its service and accordingly, the petitioner was removed from the service of the respondent w.e.f. 28.04.1992.

4. The petitioner, aggrieved by his removal from the service of the respondent, raised an industrial dispute which was referred by the appropriate Government for adjudication to the Labour Court and was registered as ID No. 199/1994

(New No. 272/2008). The Court below vide its order dated 13.05.2008 decided the inquiry issue against the petitioner and in favour of the respondent management. After deciding the inquiry issue against the petitioner, the Labour Court vide its impugned award dated 01.04.2009 has held the removal of the petitioner from the service of the respondent as legal but still granted some relief to him and that was that the respondent was directed to calculate and pay the gratuity for the period of the service rendered by the petitioner and also to consider his case for pension, if found eligible without being influenced by the order of removal.

5. Mr. H.K. Chaturvedi, learned Counsel appearing on behalf of the petitioner, has argued that the impugned award suffers from perversity because according to him, the principles of natural justice were not followed while conducting domestic inquiry into the charges against the petitioner. Mr. Chaturvedi has contended that there was no Presenting Officer before the Inquiry Officer and according to him, the Inquiry Officer who conducted the inquiry into the charges of unauthorized absence against the petitioner acted as Inquiry Officer as well as Presenting Officer himself. Mr. Chaturvedi has also argued that no witness was examined by the respondent management before the Court below to prove the legality and validity of the inquiry.

6. I have given my anxious consideration to the above arguments advanced by the learned Counsel for the petitioner but I have not been able to persuade myself to agree with him on any of the above two points.

7. The contention raised on behalf of the petitioner that the inquiry is vitiated as no Presenting Officer was appointed by the appointing authority appears to be misconceived. The domestic inquiry cannot vitiate only on the ground that there was no Presenting Officer before the Inquiry Officer. The inquiry on this aspect can vitiate only in case there is some rule in the department which mandates appointment of a Presenting Officer before the Inquiry Officer. No such rule has been shown to me by the learned Counsel appearing on behalf of the petitioner. Therefore, it cannot be said that the domestic inquiry held against the petitioner was vitiated for non-appointment of Presenting Officer.

8. As far as the argument of the petitioner's learned Counsel that the inquiry is vitiated for non-examination of any witness by the management to prove the legality and validity of inquiry is concerned, it will be significant to refer to a portion of the impugned order dated 13.05.2008 on inquiry issue, relevant portion of which is extracted herein below:

It has been specifically mentioned in the Enquiry proceedings Ex.WW-1/M-1, that the workman himself stated that he does not require assistance of any co-worker. This clearly suggests that the workman was offered assistance of co-worker but it is the workman who refused to take the assistance. The workman was given opportunity to ask question from the witness Narain Singh and the workman himself did not ask any question to witness Narain Singh. This clearly

suggests that the Enquiry officer gave full opportunity to the workman to defend his case. In the enquiry proceedings when the charge sheet was read over to the workman, the workman stated that he had taken the leave in accordance with the record but he had taken the leave under some MAZBOORI (compelling circumstances). Even during the enquiry, the workman has admitted that he has taken the leave, as per the record available with the management. Even the workman has not cross-examined MW-Narain Singh who has deposed during the enquiry that as per MAR, Shri Vijay Singh Driver, had availed 102 excess leave, during the period January 1991 to December 1991, out of which for 79 days leaves, he did not give any application and leave applications for 23 leaves, was rejected. Accordingly there is nothing on record to disbelieve the statement of MW-Narain Singh. All this clearly suggests that the Enquiry was conducted by the Enquiry officer in accordance with the principles of natural justice and is not perverse. The workman was given proper opportunity to defend his case.

9. It may be seen from the above extracted portion contained in the impugned order on inquiry issue that the petitioner has admitted his unauthorized absence for 102 days before the Inquiry Officer. The Court below has also taken note of the fact that the workman was given an offer by the Inquiry Officer to take assistance of a co-worker to defend him in the inquiry proceedings but he refused to take the said assistance. The workman was also given an opportunity to cross-examine the witness examined by the management before the Inquiry Officer and for that reason, it cannot be said that the domestic inquiry held against the petitioner was vitiated. What is important to notice is the admission of the petitioner himself that he remained unauthorizedly absent for a period of 102 days during the period from 01.01.1991 to 31.12.1991.

10. The Hon"ble Supreme Court in Delhi Transport Corporation Vs. Sardar Singh, has held that the unauthorized absence of a driver or a conductor in DTC amounts to a grave misconduct and has justified their removal from the service of DTC on proof of such misconduct against them.

11. In the present case, the petitioner admits his unauthorized absence for 102 days for which he was charged vide charge sheet dated 15.01.1992. In view of the said admission of the petitioner, I fail to understand how he was prejudiced by the inquiry held against him by the respondent Corporation. It may be seen from the impugned order on inquiry issue and also the impugned award dated 01.04.2009 that the petitioner had only tried to justify his unauthorized absence for 102 days during the period from 01.01.1991 to 31.12.1991. It is not his case that he had applied for leave or that his leave was sanctioned. The misconduct on the part of the petitioner of his remaining absent unauthorizedly for a period of 102 days is squarely covered by the judgment of the Hon"ble Supreme Court in Sardar Singh's case (supra).

12. For the foregoing reasons, I do not find any infirmity or illegality or perversity in the impugned award that may call for an interference by this Court in exercise of its extra-ordinary discretionary writ jurisdiction under Article 226 of the

Constitution of India. This writ petition, therefore, fails and is hereby dismissed in limine.