

(2013) 01 DEL CK 0307

In the Delhi High Court

Case No : Writ Petition (C) 4019 of 2010

Shriram Institute for Industrial Research

APPELLANT

Vs

Rajesh Kumar Gandhi

RESPONDENT

Date of Decision : 23-01-2013

Acts Referred:

Citation : (2013) LabIC 858 : (2013) 3 LLJ 56 : (2013) LLR 515

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : B.K. Mishra, for the Appellant;

Judgement

Vipin Sanghi, J.—The petitioner employer has preferred the present writ petition to assail the award rendered by the Labour Court-XVI, Karkardooma Courts, Delhi in ID. No. 388/08/92 dated 04.09.2009, whereby the said Court has answered the reference received from the Appropriate Government bearing No. F-24(4207)/92/Lab./38532-37 dated 09.12.1992 in favour of the respondent workman. The reference made to the Labour Court reads as follows:

Whether the dismissal of Sh. Rajesh Kumar Gandhi from his service by the management is illegal and/or unjustified, and if so, to what relief is he entitled and what directions are necessary in this respect?

As per the respondent workman's claim, he joined the management on 01.08.1978 initially as a Junior Analyst Trainee. He was performing duties under the guidance, control and supervision of the management with designation of Junior Technical-Coordinator. The respondent claimed that the duties performed by him were of clerical and manual in nature in the office of Shri Ram Test House, known as Analytical Division. The last drawn wages of the respondent were Rs. 4050/- including employer's share of PF, conveyance reimbursement and medical reimbursement in the pay scale of 1400-40-1800-50-2300-EB-60-2600.

2. The respondent claimed that the management was annoyed with him on

account of various unjustified reasons, which led the issuance of illegal transfer order dated 30.04.1991 at a time when he was suffering ill-health. Since the respondent could not accept the transfer order for his own reasons, he was issued a charge-sheet and one Sh. R.P. Dutta was appointed as the Enquiry Officer. The Enquiry Officer found the respondent guilty of misconduct alleged against him and, on that basis, the respondent was dismissed from service w.e.f. 30.03.1992. The respondent was not even provided with the Enquiry Report at any stage prior to his being dismissed by the Disciplinary Authority.

3. The petitioner employer filed its written statement before the Labour Court. According to the petitioner when the respondent joined the service on 01.08.1978, he was designated as Junior Analyst Trainee. Thereafter he was transferred to Polymer Division w.e.f. 17.01.1980 and again transferred to Analytical Science Division w.e.f. 04.08.1980. He was designated Junior Analyst w.e.f. 01.08.1980 and worked up to February 1987. From March 1987, he was assigned to and started working in Techno Commercial Section. He was promoted to Junior Technical Coordinator w.e.f. 01.11.1988 and transferred from Techno Commercial Section to Analytical Science Division w.e.f. 04.05.1991. He was on leave from 25.04.1991 to 19.07.1991. He was transferred in the Analytical Science Division and designated as Analyst. He reported to the Petroleum Lab on 24.07.1991 after expiry of his leave but did not perform any job since 24.07.1991. He refused to do the work assigned to him. Consequently he was suspended from duty vide letter dated 05.09.1991 and was also charge-sheeted vide a charge-sheet dated 05.09.1991. The Enquiry proceedings were instituted against him on 01.10.1991. The respondent participated in the Enquiry, where he was provided full opportunity to defend himself and present his case. Since the charge against the respondent was established and he was found guilty of misconduct, the management had no option but to dismiss him w.e.f. 30.03.1992. The petitioner further stated that another charge-sheet dated 29.08.1991 had also been issued, in the meantime, on account of unauthorized absence w.e.f. 24.08.1991.

4. The Labour Court framed the issues on 02.02.1994, the first issue being whether a valid and proper enquiry, in accordance with the principles of natural justice, was held against the respondent workman, and the second issue being in terms of the reference, i.e., whether the respondent's dismissal from service was illegal and/or unjustified, and if so, to what relief the respondent was entitled to.

5. The parties led their respective evidence. The respondent workman examined himself, whereas the petitioner produced two witnesses, namely Sh. R.P. Dutta, MW-1, who was the Enquiry Officer and Sh. M.C. Gupta, MW-2, the then Deputy General Manager of the petitioner. The Industrial Adjudicator decided the first issue with regard to the validity of the enquiry by a detailed order dated 25.04.2009. The Industrial Adjudicator concluded that the enquiry was conducted in a fair & proper manner and in accordance with the principles of natural justice and that the findings of the Enquiry Officer were not perverse.

This finding of the Industrial Adjudicator has been accepted by the respondent and has not been assailed by him in any proceedings till date.

6. Thereafter the Labour Court passed the impugned award on 04.09.2009, thereby holding that the dismissal of the respondent was in breach of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). He also held that the punishment imposed upon the respondent was disproportionate and has no reference to the gravity of the charges. It was held that the respondent remains in the same position as he was before his dismissal. The Labour Court also directed that the respondent shall be paid all legal dues considering as if there is no dismissal against him. Consequently, the reference was answered in favour of the respondent workman.

7. The first submission of learned counsel for the petitioner management is that the admitted position was that the Enquiry Report was not supplied to the respondent workman at any stage prior to his being dismissed from service. Learned counsel candidly admits that the non-supply of the Enquiry Report was improper. However, his submission is that the said failure on the part of the petitioner could not, per se, lead to reinstatement of the respondent with full back wages, seniority, etc., as done by the Industrial Adjudicator while passing the impugned award.

8. He places reliance on the Constitution Bench judgment of the Supreme Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , wherein this issue was squarely considered and dealt with by the Supreme Court. The Supreme Court laid down the procedure to be adopted in all such cases so that the rights of the parties are balanced. The submission of learned counsel for the petitioner is that the respondent cannot seek to derive any undue advantage of the lapse on the part of the petitioner in not supplying the Enquiry Report. In particular, he has placed reliance on the following passage from the judgment in B. Karunakar (supra):

30. x x x

[v] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact,

prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.

9. Learned counsel for the petitioner submits that the Enquiry Report came to be

supplied to the respondent during the course of the proceedings before the Labour Court. At that stage, the Industrial Adjudicator should have required the respondent workman to point out, on the basis of the Enquiry Report, as to what prejudice he has suffered on account of non-supply of the said report to him. Consequently, the respondent should have been asked to point out the infirmities, if any, found by him in the Enquiry Report, which he could have placed before the Disciplinary Authority to convince the Disciplinary Authority not to pass an order of penalty of dismissal or any other lesser punishment.

10. Learned counsel submits that the Industrial Adjudicator has, however, failed to carry out the exercise, as aforesaid. He submits that only in the event of the workman establishing the fact that he had suffered a prejudice on account of non-supply of the Enquiry Report, the Labour Court could have interfered with the order of punishment, as the enquiry had been held to have been validly conducted by the petitioner. Even in that case, the Labour Court could not have set aside the punishment altogether and directed reinstatement with full back wages, as done by the Labour Court. The Labour Court should have granted liberty to the petitioner to proceed with the enquiry by placing the respondent under suspension and conducting the enquiry from the stage of furnishing him with the Enquiry Report. The question whether the respondent would be entitled to the back wages or other benefits from the date of his dismissal to the date of his reinstatement, if ultimately ordered, should have been left to be decided by the petitioner according to law after the termination of the proceedings and depending upon the final outcome. If the respondent succeeds upon such an exercise being undertaken and is directed to be reinstated, the petitioner would have the liberty to decide according to law as to how it will treat the period from the date of dismissal till the date of reinstatement and what benefits, if any and the extent of the benefits, the respondent would be entitled to.

11. Learned counsel for the petitioner submits that the Labour Court erred in invoking Section 25-F of the Act in the present case. He submits that Section 25-F would be applicable in the case of retrenchment of the workman. The expression "retrenchment" is defined in Section 2(oo) to mean termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action ... (emphasis supplied). Learned counsel submits that since, in the present case, the termination as a punishment was inflicted by way of disciplinary action it could not be classified as retrenchment and, consequently, Section 25-F have no application.

12. In support of his submission learned counsel for the petitioner has placed reliance on the decision of the Supreme Court in Maharashtra State Seeds Corporation Limited Vs. Vilas, (2005) 12 SCC 422. In this case, the respondent workman had been dismissed from service on the basis of an enquiry conducted against him. The Labour Court came to the conclusion that the enquiry against the respondent workman was vague and that he was deprived of an opportunity

to make his case. Consequently, the Labour Court set aside the workman's dismissal from service. Before the Supreme Court the submission of the petitioner management was that the termination of the respondent workman could not be called in question also for the reason that he was engaged as a casual labourer who had not put in 240 days of continuous work in a given year and, therefore, his service could be terminated. This alternative submission of the management was rejected by the Supreme Court in the following words:

5. In our opinion, this alternative issue or question does not arise on the facts of this case at all. It is the case of the management that the respondent was dismissed after a departmental inquiry held against the respondent for an alleged misconduct and based on the finding in the said inquiry he was dismissed from service and it is not the case of the management that his services were not required and he being a casual employee his services were discharged simpliciter. Since the management has taken a specific stand in regard to the dismissal of the respondent, it was not open to the management to raise before the Labour Court alternative stand that the respondent was a temporary employee. In our opinion, that question does not arise for consideration on the facts of this case.

x x x

8. It may be relevant to mention herein that u/s 2(oo) of the Industrial Disputes Act retrenchment as defined means:

2. (oo) ... the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

9. In the instant case, as noticed, it is not the case of the management that the services of the respondent were retrenched, on the contrary the specific case of the management is that the dismissal of the respondent is a punitive measure after a departmental inquiry. That case having been rejected, the question of discharge simpliciter does not arise.

13. Learned counsel for the petitioner points out that the Industrial Adjudicator in the impugned award in para 11(vii) has gone off on a tangent inasmuch, as, it was nobody's case that the Disciplinary Authority had sought to place reliance on the respondent's past record against him, while ordering his dismissal from service. Consequently, there was no question of the past record being put to the respondent workman. It is submitted that non-disclosure of the past record to the respondent workman did not amount to breach of principles of natural justice & fairplay.

14. Learned counsel for the petitioner has lastly argued that the finding that the punishment of dismissal from service was disproportionate in the face of the gravity of the charges established against the respondent, is also contrary to law. He submits that the respondent had been found guilty of not performing the

assigned duties. This has been held by a Division Bench of this Court to be a ground good enough to dismiss the employee from service.

15. He places reliance on the Division Bench judgment of this Court in DCM Shriram Consolidated Ltd. Vs. O.P. Gupta and Another, . This Court has held that it is the duty of the workman to carry out lawful orders of management and not for workman to prescribe for himself the kind of work he will do. If the pleas of the workman are accepted, then every workman will become law-unto-himself and decide himself what are his duties. The Division Bench set aside the judgment of the learned Single Judge and restored the punishment of termination from service imposed upon the workman.

16. Learned counsel submits that in the present case the Enquiry Officer in his report had only observed as follows:

Thus it would be seen from the above discussions that Sh. R.K. Gandhi miserably failed to justify as to why he failed to carry out the justified and lawful orders of his superiors as mentioned in the charge sheets under enquiry.

x x x

From the above discussions it is crystal clear that Sh. R.K. Gandhi could not produce any evidence contrary to the evidence produced by the management through their witnesses and the documents on record regarding the allegations made against Sh. R.K. Gandhi in the charge sheets under enquiry dated 29.8.1991 and 5.9.1991 issued to Sh. R.K. Gandhi. From the above-mentioned discussions, the following charges against Sh. R.K. Gandhi stand conclusively proved.

1) That on 25th July 1991, Sh. R.K. Gandhi was allotted a sample of Bitumen for analysis by his officer-in-charge, Mr. V.K. Gupta but he deliberately and contemptuously did not do the analysis of the said sample till 30th July 1991.

Thereafter an advisory note dated 31st July 1991 from his divisional head, Mr. K.M. Thomas, Chief (Analytical Services) was also handed over to him on 3rd Aug., 1991 at 10.00 a.m. in the presence of Mr. S.K. Checker, again instructing him to analyse the samples allotted to him which he did not do.

2) Further on 3rd Aug., two samples of thermic fluid were allotted to him for testing by his officer in charge, Mr. V.K. Gupta, but like the earlier occasions as mentioned above, he did not do the analysis of the samples given to him in spite of repeated persuasions and instructions given to him by his officer in charge, divisional head from 25th July 1991 onwards till the date of his suspension. He simple either sat idle or roamed about in the institute or whiled away the time in utter disregard to the orders of his superiors since 25th July 1991 even on those days when he remained present in the Institute till his suspension on 5th Sept., 1991.

3) He remained absent unauthorisedly from 24.8.1991 to 30.8.1991 and also on

3.9.1991, which is evident from the attendance card produced by MW2 and exhibited as MW2/1 to MW2/3 and also the statement of details of absenteeism of Sh. R.K. Gandhi from 25th April 1991 to 5.9.1991 which is already discussed in the enquiry proceedings held on 4.12.1991 on page 2. In view of this I do not accept the contention of Sh. R.K. Gandhi having applied for leave for one week from 24.8.91 vide alleged Exb. WW1/30 as he did not throw any light by way of cross-examination of the management witnesses regarding this application.

17. Learned counsel submits that since the enquiry proceedings have been held to be fairly conducted and also that the findings of the Enquiry Officer have been found to be justified, in the light of the aforesaid position in DCM Shriram (supra), it cannot be said that the punishment imposed upon the respondent was disproportionate.

18. On the other hand, the submission of the respondent, who appears in person, is that the non-supply of the Enquiry Report rendered the enquiry proceedings bad in law. In this regard, he places reliance on the decision of the High Court of Gauhati in State Bank of India and Others Vs. Ralkapzawna, . He also submits that u/s 11-A of the Act, the Industrial Court/Tribunal is empowered to set aside the order of discharge or dismissal and is also empowered not only to direct reinstatement of the workman on terms & conditions but also to give other relief including the award of lesser punishment in lieu of discharge or dismissal. For this proposition, he placed reliance on the judgment of the Bombay High Court in Oriental Containers Ltd. Bombay Vs. Engineering Workers Association and Others, . He also submits that if the matter is remanded back at this stage before the Disciplinary Authority, it would cause prejudice to the respondent.

19. The order on the first issue with regard to the validity and legality of the enquiry proceeding passed by the Industrial Adjudicator on 25.04.2009 has been accepted by the respondent. This order categorically holds "that enquiry was conducted in a fair and proper manner and according to principles of natural justice and findings of Enquiry Officer were not perverse."

20. This being the position, the issue arises whether the non-supply of the Enquiry Report by the petitioner to the respondent before the imposition of the punishment of dismissal from service would vitiate the entire disciplinary proceedings and entitle the respondent workman to reinstatement with full back wages and seniority, etc. As observed by the Supreme Court in B. Karunakar (supra), such a lapse on the part of the management cannot result in a windfall for the workman. Once the copy of the Enquiry Report came into the hands of the respondent workman before the Labour Court, it was for the Labour Court to require the respondent to satisfy it as to what prejudice, if any, the non-supply of Enquiry Report, has resulted into. Unfortunately, the Labour Court has not undertaken the said exercise. Even if it were to come to the conclusion that the respondent did suffer prejudice on account of non-supply of the Enquiry Report, while setting aside the dismissal order, the Labour Court would be required to

grant liberty to the petitioner management to proceed with the enquiry by placing respondent employee under suspension and continuing the enquiry from the stage of furnishing him with the Report. In that event, the reinstatement that may be ordered as a result of setting aside of the order of punishment for failure to furnish the Enquiry Report would be treated as reinstatement for the purpose of holding a fresh enquiry from the stage of furnishing the report and no more, where such fresh enquiry is held. Unfortunately, the Labour Court has not adopted the aforesaid approach while passing the impugned award dated 04.09.2009, though the judgment of the Constitution Bench has held sway since 1993. On this short ground, the impugned award dated 04.09.2009 deserves to be set aside and the matter remanded back to the Labour Court for consideration of the aforesaid aspect and for proceeding further in terms of the decision of the Supreme Court in B. Karunakar (supra).

21. I find merit in the petitioner's submission that there was no question of the past record of the respondent being put to him. A perusal of the order of dismissal dated 30.03.1992 shows that the management did not hold the respondent's past record against him for dismissing him from service. All that was observed was that no extenuating circumstances were found in the past record in favour of the respondent. Punishment order does not say that there are any other circumstances found in the past record, which have aggravated the respondent's misconduct and led the petitioner management to meet out the punishment of dismissal from service.

22. I also find merit in the petitioner's submission that the misconduct, if taken as proved against the respondent, was sufficient to warrant his dismissal from service in the light of the judgment of the Division Bench of this Court in DCM Shriram (supra).

23. There is also merit in the petitioner's submission that Section 25-F of the act had no application in the facts of the respondent's case since his dismissal from service was by way of punishment and this species of termination is excluded from the definition of retrenchment. I fail to appreciate how the Industrial Adjudicator could have observed that in view of Section 25-F, dismissal without any notice is in violation of principles of natural justice.

24. The Industrial Adjudicator, while directing the respondent's reinstatement with full back wages, allowances, seniority, etc. has not even applied its mind to the fact that the Enquiry Report had found the respondent guilty of misconduct. It is not that in all cases the Labour Court is bound to reinstate the workman with full back wages. There is no application of mind by the Labour Court to this aspect. The particular facts of this case have not received the attention of the Industrial Adjudicator. There is no quarrel with the propositions laid down in the decisions relied upon by the respondent. However, they do not meet the submissions of the petitioner or advance the respondent's case.

25. For all the aforesaid reasons, the present petition succeeds and the

impugned award is quashed & set aside. The matter is remanded back to the Labour Court concerned in terms of the observations made above. The Labour Court shall proceed in the matter strictly in compliance with the decision of the Supreme Court in B. Karunakar (supra). The parties are left to bear their respective Costs.

26. The amount deposited by the petitioner in this Court be released to the petitioner along with interest accrued thereon. The parties should appear before the Labour Court on 13.02.2013.