
(2011) 05 DEL CK 0501

In the Delhi High Court

Case No : Writ Petition (C) 12391 of 2006

The Management of Ashok Hotel

APPELLANT

Vs

Mohinder Singh

RESPONDENT

Date of Decision : 10-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 05 DEL CK 0501

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : V.K. Rao and Vaibhav Kalra, for the Appellant; J.S. Bhasin, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The Petitioner employer by this writ petition impugns the award dated 25th October, 2005 of the Industrial Adjudicator on the following reference:

Whether the punishment of stoppage of three annual increments with cumulative effect imposed on Sh. Mohinder Singh is illegal and/or unjustified and if so, to what relief is he entitled and what direction are necessary in this respect?

2. Though during the proceedings before the Industrial Adjudicator a preliminary issue was framed as to the legality and validity of the departmental enquiry held by the Petitioner employer prior to meeting out the punishment to the Respondent workman but the Petitioner employer on 25th September, 2004 consented to the issue as to the legality and validity of the departmental enquiry being decided against it and opted to prove before the Industrial Adjudicator misconduct leading to punishment.

3. The Petitioner employer examined two witnesses before the Industrial Adjudicator. One of them viz. Smt. G.R. Ranglani merely produced the record of the inquiry proceedings. It is inexplicable as to why the same was done when the

Petitioner employer had already consented to the issue as to the department inquiry being decided against it.

4. The relevant portion of the deposition of only other witness, namely Sh. Ashok Lamba by way of examination in chief is set out in the award. The Industrial Adjudicator on the basis thereof has held that the misconduct of the Respondent workman is not proved and the evidence of Sh. Ashok Lamba to be hearsay and the concerned person viz. Sh. H.S. Bhatia having not been examined by the Petitioner employer. In the circumstances, the Industrial Adjudicator held that the Petitioner employer had failed to lead any evidence to prove the charge against the Respondent workman and thus the basis of the punishment imparted to the Respondent workman became illegal. Accordingly, the reference was decided against the Petitioner employer and in favour of the Respondent workman and the Petitioner employer was directed to make payment of all financial benefits to the Respondent workman within three months.

5. This Court while issuing notice of the petition stayed the operation of the award and which has continued till now.

6. The Respondent workman was charged with while posted as a Security Guard, having facilitated the theft from the Hotel of the Petitioner of two empty gas cylinders in excess and of 26 filled gas cylinders on 19th March, 1988. The Industrial Adjudicator on appreciation of the evidence of Mr. Ashok Lamba aforesaid held the same to be hearsay.

7. I have perused the affidavit of Sh. Ashok Lamba. The same nowhere deposes about the role of the Respondent workman. The only statement with respect to the Respondent workman is that he was not present at the supply gate when the cylinders were being taken out. The senior counsel for the Petitioner has invited attention to the affidavit by way of examination in chief of the Respondent workman where he has deposed that on the relevant date, he was on duty on supply gate and was also looking after the car parking area. In my opinion, the same does not advance the case of the Petitioner employer. It was for the Petitioner employer to examine witnesses to depose as to how the Respondent workman was responsible for segregating the filled up and empty cylinders and for loading of the filled up instead of empty gas cylinders in the truck. Without any such evidence having been shown, the finding of fact arrived at by the Industrial Adjudicator of the Petitioner employer having failed to prove the misconduct cannot be the subject of judicial review.

8. It is even otherwise the settled position in law that a finding of fact even if erroneous cannot be interfered with under Article 226 of the Constitution of India. In this regard, reference can be made to *Kirloskar Brothers Ltd. v. The Presiding Officer, Labour Court* ILR (1976) I Del. 565, *Jawahar Singh and Others Vs. Financial Commissioner and Others*, and *Kishan Chand Bhatia (thr. LRs.) Vs. Union of India (UOI) and Others*, . It is further the settled position as laid down by the Apex Court and this Court in *Govt. of A.P. and Others Vs. Mohd. Narsullah*

Khan, B.C. Chaturvedi Vs. Union of India and others, Suresh Kumar Vs. The Management of Monsanto Enterprise Pvt. Ltd. Municipal Corporation of Delhi Vs. Satish Kumar, & Sh. Poorna Singh Kain Vs. Union of India (UOI) and Others that this Court is not entitled to while exercising the power of judicial review re-appreciate the evidence. The only test to be satisfied is that the findings should not be perverse and / or based on no evidence at all or unreasonable. In the present case, a perusal of the deposition of the sole witness examined by the Petitioner employer to prove the misconduct does not show any misconduct of the Respondent workman to have been proved and no error is found in the findings arrived at by the Industrial Adjudicator.

9. There is no merit in the petition. The same is dismissed.

10. The Supreme Court in *Abhimanyoo Ram v. State of U.P.* (2008) 17 SCC 73 and in *Ramesh Chandra Sankla Etc. Vs. Vikram Cement Etc.*, has held that the Court while finally disposing of the matter has to balance the equity emanating from the interim order and to ensure that the same does not cause prejudice to the party against whom it was granted. In the present case, owing to the order in the present petition of stay of the operation of the award, the dues which the Respondent workman was entitled to in terms of the award have not been paid for the last nearly five years. Accordingly, the Petitioner employer is now directed to pay the said dues within six weeks of today together with interest thereon at the rate of 8% per annum from the date of the award till the date of payment.

Costs of litigation have already been paid.