

(2010) 02 DEL CK 0277

In the Delhi High Court

Case No : Writ Petition (C) No. 5649 of 2008

The Management of Ashok Hotel (ITDC)

APPELLANT

Vs

Shri. R.B. Bansal

RESPONDENT

Date of Decision : 23-02-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 02 DEL CK 0277

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : V.K. Rao, with Mr. Saket Sikri, for the Appellant; S. Kumar, for the Respondent

Final Decision : Disposed Off

Judgement

Kailash Gambhir, J.—By this petition filed under Article 226 of the Constitution of India the petitioner seeks directions for quashing of award dated 21.2.2008 passed by the Labour Court, Karkardooma Courts, Delhi in I.D. No. 128/2003.

2. Mr. Rao, learned Senior Advocate appearing for the petitioner, with a view to cut short the controversy, submits that the matter may be remanded back to the labour court so as to give an opportunity to the petitioner to prove alleged misconduct on the part of the respondent workman by leading additional evidence after placing some additional documents.

3. Mr. Rao has placed reliance on the judgment of the Apex Court in Divyash Pandit Vs. Management, N.C.C.B.M., to support his argument that even in the absence of any plea taken by the management in the written statement to seek leave of the court to prove misconduct on the part of the workman in the event of the enquiry being held to be vitiated, then the Labour Court suo moto should have given an opportunity to the management to prove misconduct on the part of the respondent workman. Counsel thus submits that since no such opportunity was afforded to the petitioner, therefore, the petitioner could not prove the

misconduct on the part of the respondent workman before the Labour Court.

4. Opposing the present petition, Mr. S. Kumar, counsel for the respondent submits that the petitioner management never sought any opportunity to lead any additional evidence before the Labour Court on the alleged misconduct of the respondent nor any such plea was taken by the petitioner in the present petition. Counsel thus submits that the judgment of the Apex Court as cited by the counsel for the petitioner would not be of any help to the petitioner. Another contention raised by the counsel for the respondent is that once the appointment of the enquiry officer itself was held to be illegal in violation of the standing order, therefore, the entire proceedings held before the enquiry officer became void-ab-initio and nonest. The counsel further submitted that the Labour Court could not have held enquiry in place of the enquiry officer to conduct proceedings against the respondent for his alleged misconduct. Counsel for the respondent further submits that the respondent has been superannuated on 30.4.2003, and therefore, if the matter is remanded back, he would have to again suffer the ordeal of fresh trial.

5. I have heard learned counsel for the parties at considerable length and have perused the records.

6. In the judgment of Divyash Pandit (Supra), the court was confronted with such a similar situation as in the facts of the said case also, no plea was raised by the management to lead evidence to prove misconduct on the part of the employee and in the facts of the said case the Court after placing reliance on the earlier decision of the Constitutional Bench of the Apex court in Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another, took a view that no fetters can be placed on the powers of the Tribunal to permit the parties to lead additional evidence including production of documents at any stage of proceedings before the conclusion. Indisputably, in the facts of the present case also the petitioner neither made any specific averment in their written statement to lead additional evidence in the event of the enquiry proceedings held to be vitiated nor any separate request was made by the petitioner either orally or by moving an application to lead additional evidence. Even in the present writ petition no such plea has been taken by the petitioner, yet considering the fact that the enquiry was held to be vitiated by the learned labour court vide order dated 21.2.2008, therefore, so far the charges leveled by the petitioner against the respondent with regard to his alleged misconduct are concerned could not be decided by the labour court. Perusal of the said award also shows that even no specific issue was framed by the learned labour court on the misconduct of the respondent workman and the only issue framed by the labour court was with regard to the validity of the appointment of the enquiry officer and as to whether the enquiry was conducted fairly and properly in accordance with the principles of natural justice. In all the cases of misconduct necessarily the labour courts have to frame the issue on the misconduct but since no such issue was framed by the labour court, therefore, no independent finding could be given by the

labour court on the alleged misconduct of the respondent workman.

Taking into consideration the aforesaid position and also the judgment of the Apex Court in Divyash Pandit's case (Supra), I am of the view that interest of justice would be better served if the matter is remanded back to the labour court to decide the said issue with regard to the alleged misconduct of the respondent workman. Since the matter is quite old, therefore, it is directed that the learned Labour Court after framing fresh issue on the misconduct shall decide the same within a maximum period of four months from the date of this order.

7. Both the parties are directed to appear before the Labour Court on 8.3.2010. Both the parties shall make every possible endeavor to complete their evidence and pleadings before the said deadline of four months period. It is made clear that if any of the parties feel aggrieved with the order of the labour court then they will be at liberty to challenge the same before this court.

8. The amount which is lying deposited before this court shall remain deposited here only and necessary directions for the release of the same shall be passed after having known the final decision of the labour court.

9. In the light of the above position the impugned award is set aside.

The present petition stands disposed of.