

Vinod Kumar Vs. DDA

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Court : Delhi

Decided On : Dec-18-2015

Judge : The Honourable Ms. Justice Sunita Gupta

Appeal No. : W.P.(C) No. 2066 of 2011

Appellant : Vinod Kumar

Respondent : DDA

Judgement :

1. Challenge in this writ petition is to the award dated 10th February, 2009 passed by the learned Presiding Officer, Labour Court-IX in ID No. 09/1997 whereby it was held that the petitioner/claimant is not entitled to any relief.

2. An industrial dispute was referred by the appropriate Government vide letter dated 17th December, 1997 for adjudication to the Industrial Adjudicator with following terms of reference:-

Whether the services of Sh. Vinod 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 respect? ?

3. Case set up by the petitioner/workman in the statement of claim before the learned Labour Court was that he joined the employment of DDA w.e.f. 1st January, 1985 as a Mateon current duty charge. He was a regular and permanent

employee of the management/DDA and was drawing salary in proper pay scale with usual allowances admissible under the rules. He had an unblemished record of service to his credit. His services were terminated w.e.f. 30th October, 1991 without assigning any valid reason. The termination is ab initio illegal, bad, unjust and malafide, inter alia, on the ground that the order of termination contained various serious allegations of misconduct but no memo or charge-sheet was ever served upon him and no domestic enquiry was conducted into the matter and he was also not afforded any opportunity of being heard. Moreover, the workman had acquired the status of permanent employee from the initial date of his joining into the employment after completing 240 days of continuous employment. The job against which the workman was working is of regular and permanent nature. Even if the said termination is to be treated as a case of retrenchment, it is illegal because no seniority list was displayed, no notice was served, no notice pay or service compensation was either offered or paid to the workman at the time of termination of his service. The termination is violative of Section 25F, G and H of the Industrial Disputes Act, 1947. As such, it was prayed that the termination of service of the workman be held illegal and unjustified and he be reinstated in service with continuity of service and full back wages in proper pay scale and allowances with all consequential benefits.

4. The claim of the workman was contested by the management who in its reply before the Court alleged that the workman joined the management as Mateon work charge establishment and not on current duty charge w.e.f. 03.01.85 and not 01.01.85 as wrongly alleged in the statement of claim. He was neither a regular nor a permanent employee. Since he was on work charge establishment, his salary was chargeable only to works of division in DDA and his service record was not very satisfactory. He had gained entry into the management fraudulently by forging documents necessary for gaining employment with the management. His services were terminated vide order dated 1.11.1991 after his service record was scrutinized and investigated by DDA and his service book and personal file were taken and seized by CBI. It was discovered that the workman had gained entry by forging documents and vide letter dated 1.11.1991 issued by the Executive Engineer ED-4/DDA, the workman along with two other workmen was directed not to join the duty. When the workman came to know that the fraud committed by him

had been discovered, he stopped coming for work. His appointment was temporary. It was not the case of retrenchment. The workman was not eligible for gaining employment with the management. Since he was not eligible, the question of his seniority does not arise and he was also not entitled to any service compensation. There was no violation of any provision of law, as such, the statement of claim deserves to be dismissed.

5. The workman examined himself in order to substantiate his case whereas from the side of the management, two witnesses, namely, Sh.A.K.Goel, MW1 and Sh. R.L. Jain, MW2 were examined.

6. The learned Industrial Adjudicator passed the impugned award dated 10th February, 2009 wherein it was held that the claim of the workman to be regular and permanent employee of the management w.e.f. 1.1.85 as a Mateon current duty charge till the date of termination i.e. 30.10.1991 and is working continuously for a period of 240 days with the management was refuted by the management. Rather the case of the management was that after coming to know of the fraud committed by the workman in gaining employment of the management on the basis of certain forged documents, he himself started absenting from the work place. As such, the burden of proving regular employment of the management as well as completion of 240 days of his continuous service with the management was primarily upon the workman. The workman admitted in his cross-examination that he came to know that there was some vacancy in DDA and on that basis he moved an application for employment but he could not produce the copy of the said application nor he remembered the name of the officer to whom he gave that application. He also admitted that he did not receive any letter granting him status of regular employee. Although he denied having received any letter from CBI or from DDA informing him that he had forged certain documents and on that basis, his services were terminated but he did not add anything further as to on what basis he denied this suggestion. The workman failed to establish either by oral or by way of documentary evidence that he was employed by the management on regular basis or that he has completed 240 days of continuous service with the management.

7. It was further held that the management is a government department and the ratio of Secretary, State of Karnataka and Ors. vs. Uma Devi (3) and Ors., (2006) 4 SCC 1 was fully applicable to the facts and circumstances of this case. As such, he has no right to be regularized against any permanent vacancy. Accordingly, he was not entitled to any relief.

8. Feeling aggrieved, present writ petition has been filed by the workman challenging the impugned award.

9. Learned counsel for the petitioner submitted that the learned Industrial Adjudicator erred in relying upon Uma Devi's case because the present dispute pertains to termination of service of the petitioner/workman whereas Uma Devi's case pertains to regularization of service.

10. Further, before terminating the services of the workman, neither was he served with any show cause notice or charge sheet nor afforded any opportunity of being heard. As such, termination was against the principle of natural justice.

11. Moreover, the termination of service was in violation of various provisions of Section 25 of the Industrial Disputes Act. As such, matter be remanded back to the Trial Court for fresh decision.

12. Reliance in this regard has been placed on two judgments passed by this Court in WP(C) No. 213/2011 titled as Mohd. Shakeel Akhtar vs. MCD and WP(C) No. 2665/2011 titled as Rajender Kumar and Ors. vs. Govt. of NCT of Delhi where the Industrial Tribunal passed the award relying upon Uma Devi's case and the matter was remanded back to the Industrial Tribunal for fresh decision. Reliance was also placed on Mohan Lal vs. Management of Bharat Electronics Ltd., AIR 1981 SC 1253 for submitting that before termination, compliance of Section 25F of the Industrial Disputes Act was mandatory. Reliance has also been placed on a judgment rendered by the Division Bench of this Court in LPA 2099/2006, Soran Singh vs. UOI and Ors., 2008(106) DRJ 295 for submitting that the allegation in that case was that the workman had obtained employment on the basis of a fake casual labour card. It was held that before terminating the services, the workman was required to be given an opportunity to explain his case.

13. Learned counsel for the respondent, on the other hand, submitted that since the workman obtained employment on the basis of forged documents, as such, the appointment was void ab initio. That being so, there was no requirement of compliance of provision of Section 25F of the Act. Moreover, it was for the workman to prove before the Labour Court that he got employment with the department on the basis of a valid appointment order and the same was not forged and fabricated which he failed to prove. Counsel further submits that the workman alleged that he was appointed on work charge basis which is against the CPWD manual according to which in case of work charge employee, it is essential that a workman has to work on muster roll basis and only after that he is converted into work charge. As soon as the fraud came to the knowledge of the department, action was taken and FIR was lodged with the police. The services of the workman were terminated after his service record was scrutinized and investigated by DDA. The witness examined by the management denied his signatures on the service record which clearly proves that the workman joined the management on the basis of forged documents. Copy of letter was also placed on record for showing that although as per the letter dated 10th March, 1985, the petitioner was appointed on purely temporary post of Mateon work charge establishment, however, this document is a forged and fabricated document which is reflective from the fact that although by virtue of this letter, the workman was to report for duty on or before 17th March, 1985, however, as per Clause 14 of the appointment letter, the order was to take effect from 3rd January, 1985. Copy of the undertaking given by the workman was also placed on record for showing that he admitted that he was employed on purely temporary basis and his services can be terminated at any time without notice. Lastly, it was submitted that there is gross delay in filing the writ petition as the Award is dated 10th February, 2009 while the writ petition has been filed only on 25th March, 2011. As such, the writ petition is also liable to be dismissed on this account.

14. As regards the delay in filing the writ petition, counsel for the petitioner submits that after the termination, the petitioner remained unemployed. Due to poverty, he could not engage the services of an advocate and approach the Court by filing writ petition. As such, delay, if any, is liable to be condoned. Reliance was placed on *Ajaib Singh vs. The Sirhind Co-operative Marketing cum-Processing Service*

Society Ltd. and Anr., AIR 1999 SC 1351.

15. I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and have perused the record.

16. At the outset, it may be made clear that the case of the respondent/management is that the petitioner secured appointment on the strength of forged or fabricated document. As such, the burden of proof is on the petitioner to prove that he secured his appointment on the basis of genuine documents. Although no charge sheet was served upon the petitioner but when the matter was before the Labour Court, the basic controversy was the genuineness of the appointment order. Securing an appointment on the basis of forged and fabricated document was indeed a serious matter. The learned Labour Court by relying upon the judgment given by Hon'ble Supreme Court of India in *Workmen of Neelgiri Co-operative Marketing Society Ltd. vs. State of Tamil Nadu and Ors.*, 1004 LLR 351 (SC) and *R.M. Yellati vs. Assistant Executive Engineer*, 2005 IXAD (SC) 261 rightly observed that the burden of proof was on the workman to establish employer and employee relationship and that he had worked for 240 days in a given year. The workman was very much aware of the fact that his services have been terminated on the ground that he secured employment on the basis of forged documents yet in the claim petition, there was no averment to the effect that his employment in DDA was on the basis of genuine documents. When he was examined before the learned Labour Court, he stated that he came to know about some vacancy in DDA, thereupon, he moved an application for his employment. However, neither could he furnish the copy of the application nor could he give the name of the officer to whom he gave that application nor any proof that he had received any letter granting him employment.

17. On the other hand, Sh. R.L. Jain, the then Executive Engineer examined as MW2 deposed that the service book of the workman Ex.MW2/1 purporting to appear the signatures of the Executive Engineer, Housing Division-XXXI are not his signatures. The copy of the offer of appointment dated 10th March, 1985 placed on record by the respondent goes to show that on the face of it, genuineness of this appointment letter is doubtful as the same is dated 10th

March, 1985 and according to this letter, the workman was to report for duty on or before 17th March, 1985. However, the order was to take effect from 3rd January, 1985. Moreover, as per CPWD manual, a person could not have been employed directly on work charge basis. First of all, he has to work on muster roll basis and only thereafter he is converted into work charge. The plea of the workman that he was a regular and permanent employee is also belied by the undertaking given by the workman wherein he admitted that he is being employed on purely temporary capacity and his services can be terminated at any time without notice. In view of the allegations of the department, it was incumbent upon the workman to have proved the genuineness of his appointment order. Object of principle of natural justice is only to ensure that the person who is going to be affected by the proposed action gets a fair hearing but applicability of these principles would always depend upon the context and the facts and circumstances of each case. Compliance with the principles of natural justice is intended to achieve the ends of justice and they cannot be perverted to achieve the very opposite end. The Supreme Court in *State Bank of Patiala and Ors. vs. S.K. Sharma*, (1996) II LLJ 296 SC observed as under:-

32. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise. ?

18. The facts involved in the present writ petition are substantially the same as in *State of Rajasthan through Chief Engineer and Anr. vs. State of Rajasthan and Ors.* 2007(112) FLR 1230. In that case also, the case set up by the workman was that he was appointed in the department in August, 1984. Thereafter, he was granted regular pay-scale on the post of Beldar. Suddenly he was removed from service vide order dated 16.10.1987. It was later discovered that the workman had secured such appointment on the basis of forged and vague appointment order. According to the workman if it was so, the management was required to serve chargesheet upon him and hold an enquiry. If there was any shred of truth in the

allegation, the management would have certainly lodged a criminal case. His removal was made in violation of Section 25-F of the Industrial Disputes Act because he had already completed more than 240 days in a calendar year immediately preceding the date of his removal. He, therefore, prayed that removal order be quashed and set aside and he was entitled to reinstatement with full backwages and continuity of service.

The case of the workman was contested by the management on the ground that the workman had given joining on the strength of appointment order issued by Superintending Engineer (Admn.), office of Chief Engineer, IGNP, Bikaner. This was a forged and fabricated document. When the Chief Engineer directed an enquiry into the matter the personnel officer in the office of Chief Engineer, IGNP, Bikaner conveyed that no such appointment order was, however, issued in the name of the workman. It was established that the appointment of respondent workman was as a result of forgery, therefore, he was removed from service. Realising this, when the enquiry was being made, the respondent workman on his own stopped attending the office. The office directed for lodging a criminal case. It was also alleged that Section 25-F of the Act was applicable only in the case where the workman was appointed lawfully and not on the strength of a forged order. The Labour Court on the basis of evidence before it concluded that even if removal of the workman was made on the basis of allegation that he secured appointment on the strength of forged document, the management ought to have held an enquiry as this amounted to removal on charge of misconduct. The Labour Court, therefore, held removal of the workman as illegal and further held him entitled to reinstatement in service with 25% backwages.

Feeling aggrieved, the State of Rajasthan filed a writ petition challenging the award passed by the Labour Court. The Court held that even in a departmental enquiry on the charge of securing appointment on the strength of forged or fabricated document such as degree or certificate of eligibility qualification, the burden to prove would always be on the person who has secured the appointment on the basis of such document. The department may have initiated the action by serving chargesheet on the delinquent, but when the matter is before the learned Labour Court, the core of the controversy was the genuineness of the appointment

order. The Labour Court, however, treated the termination from service just like retrenchment in an ordinary industrial dispute, even though the management had categorically come out with the plea that the appointment was secured on the strength of a forged and fabricated document. It was further held that when the parties were already before the Labour Court, it should have required the workman to prove the genuineness of the appointment order when the management had categorically alleged that in their department no such appointment order was found to have been issued. Compliance of Section 25-F in the facts of the case could not be insisted upon because one of the requisite condition of compliance of this provision is the genuine appointment with the employer. The Court placed reliance on U.P. Junior Doctors' Action Committee vs. Dr. B. Sheetal Nandwani and ors., (1990) 4 SCC 633 where certain students had secured admission to post graduate courses on the basis of fake orders passed in a non-existent writ petition. In those facts, Hon'ble Supreme Court held that when their admissions were cancelled, no opportunity of hearing was required to be given to such candidate. The circumstances in which such candidates have taken the benefit do not justify attraction of the application of rules of natural justice and providing opportunity of hearing. Relying upon this judgment, it was held that the impugned award suffered from the error apparent on the face of record as it had failed to correctly apply the law while making adjudication of the industrial dispute. In that case, the workman was acquitted by giving him the benefit of doubt and it was observed that in a criminal prosecution, charges are required to be proved beyond reasonable doubt. However, on the basis of evidence adduced before it, the Court had given a categorical finding that the appointment order was forged one. It was held by the High Court that when the matter was before the Labour Court, the Court should have enquired into the proof of genuineness of its order rather than finding fault with the action of the management in dispensing with his services on alleged infraction of principles of natural justice. As such, the writ petition was allowed.

19. Again Harpal vs. The Presiding Officer, Labour Court, VI, Delhi and Anr. W.P.(C) No.6327/1999 was a case where the petitioner was employed by the respondent as a Beldar on daily wages as muster roll employee. He had given a school leaving certificate at the time of his employment that he was a fifth class pass and his date of birth is 27th July, 1965. At the time of considering

regularisation/absorption of the petitioner, the certificate submitted by the workman was verified from the school. On verification, the respondent learnt that the petitioner had submitted a forged certificate about his qualifications and his date of birth at the time of his appointment. His actual date of birth was 2nd July, 1969 and he has studied upto third standard when he left the school. After making enquiry, a show cause notice was served upon him to which the workman submitted a reply and thereafter his services were terminated. The workman raised an industrial dispute which was referred for adjudication to the Industrial Tribunal. Before the Tribunal, the workman contended that no domestic enquiry was held for the charges levelled against him and he was terminated without holding a domestic enquiry and his termination was bad. The Tribunal, however, held that the petitioner was a daily wager and termination of a daily wager could not be said to be in violation of Section 25-F of the Industrial Disputes Act. The Tribunal upheld the termination. Feeling aggrieved, the workman filed a writ petition. A single judge of this Court observed that the petitioner had obtained employment by playing fraud about his age and qualification. The Court relied upon *Union of India vs. M.Bhaskaran* 1996 SC 686 and *R.Vishwanatha Pillai vs. State of Kerala and Ors.* 2004 (2) SCC 105 and held that the petitioner was rightly terminated by the respondent. As such, writ petition was dismissed.

20. In *M.Bhaskaran* (supra) Supreme Court held that such orders of removal (after detection of fraud) would amount to recalling of fraudulently obtained erroneous appointment orders. Supreme Court further observed that even independently of rule 3(1)(i) and (iii) of the rules, such fraudulent appointment orders could be legitimately treated as avoidable at the option of employer and could be recalled by the employer and in such cases, the factum of employees having continued in service for a number of years on the basis of such fraudulently obtained employment orders, cannot create any equity in their favour or any estoppel against the employer. Supreme Court observed that no Court should be a party to the perpetuation of the fraudulent practice. By such fraud or intended fraud on the employer or on the appointing authority the aggrieved are all those who had similar or even better qualifications than the appointee or appointees, but who could not apply for the post because of fraud played by those who obtained appointment by fraud. It amounts to fraud on public. If by doing fraud an

appointment is obtained, such fraudulent practice cannot be permitted to be continued by a court of law in directing reinstatement of respondent workman with all consequential benefits.

21. R.Vishwanatha Pillai (supra), pertained to termination of services of the petitioner on the ground that he got appointment on the basis of a false caste certificate. Supreme Court observed that the right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment to the post meant for Scheduled Caste, thus depriving the genuine Scheduled Caste of appointment to that post, does not deserve any sympathy or indulgence of the Court. A person who seeks equity must come with clean hands. He, who comes to the Court with false claims, cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. No sympathy and equitable consideration can come to his rescue. In Ram Saran vs. I.G. of Police, CRPF “ 2006(2) SCC 541 “ Supreme Court held that no leniency can be shown to a person who has obtained appointment on the basis of forged documents, otherwise it shall amount to giving premium to a person who committed forgery.

22. In the instant case also, the allegations against the workman were of securing employment on the basis of forged document which could not be disproved by the workman rather, as stated above, in the entire statement of claim there was not even a whisper that the allegations of the management regarding securing employment on the basis of forged document was wrong. It is evident that the workman cheated the management and obtained the job fraudulently thereby failing to maintain integrity. Since the workman secured employment on the basis of forged document, the appointment was void ab initio. That being so, there was no requirement of compliance of provisions of Section 25 of the Industrial Disputes Act. A person who seeks equity must act in a fair and equitable manner.

23. In *A.P.State Financial Corporation vs. Gar Re Rolling Mills* (1994) 2 SCC 647, it was observed:

A court of equity, when exercising its equitable jurisdiction under Article 226 of the Constitution must so act as to prevent perpetration of a legal fraud and the courts are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law. ?

24. Again it was held in *Ashok Kapil vs. Sana Ullah (Dead and Ors)*. (1996) 6 SCC 392, the maxim *Nullus Commodum Capere potest de injuria sua propria* (No one can take advantage of his own wrongs) is one of the salient tenets of equity. The respondent cannot secure the assistance of a court of law for enjoying the fruits of his own wrong.

25. The two judgments *Mohd. Shakeel Akhtar (supra)* and *Rajender Kumar (supra)* relied upon by the petitioner does not help him because the entire factual scenario appearing in those petitions is not before the Court. Moreover, even if Industrial Adjudicator observed that in view of *Uma Devi's* case, it was not a case of regularization, this finding simpliciter does not warrant remand of the case because the terms of reference was confined to termination only and not of regularization. As regards the termination is concerned, specific finding was given that the petitioner had failed to prove that his termination was illegal or unjustifiable.

26. *Mohan Lal (supra)* has also no application as in that case, the termination of the service of the workman was under challenge and it was alleged that the same was in violation of Section 25F of the Industrial Disputes Act. In that case, there was no challenge regarding the regular employment of the workman. That being so, this case does not help the workman.

27. The facts appearing in *Soran Singh (supra)* are distinguishable. In that case, large number of casual labourers (monthly rated) joined the Railways under the scheme of regularization. A racket was detected by the Vigilance Branch of the Railways and it was revealed that some persons had been employed on the basis

of bogus or forged casual labour cards. After serving a show cause notice, the workman was terminated from services. As such, industrial dispute was raised. The Tribunal found that no opportunity was given to the workman to give an explanation or to produce his defence. His removal from service was in violation of principle of natural justice. The Tribunal also noted that pursuant to an award of the Central Government Industrial Tribunal, Kanpur, 47 employees whose services had been terminated in similar circumstances were reinstated and were still working. Although the Railway claimed that their case was on a different footing but it failed to distinguish the case of the appellant/workman from the case of 47 reinstated workmen, therefore, the Tribunal concluded that termination of the services of the workman was illegal and he was directed to be reinstated in service with 50% back wages and other consequential benefits. The Railway filed the writ petition. The learned Single Judge set aside the award of the Tribunal. Thereupon, the appeal was filed. On factual matrix of the case, it was noted that the Railway had failed to lead any evidence to show that the workman's entry into service was on the basis of a fake or forged casual labour card. Under the circumstances, the findings of the Single Judge were set aside.

28. Things are different in the instant case. The factum of seeking employment on the basis of forged documents by the petitioner is not even seriously contested by the workman. Merely alleging that he joined the management w.e.f. 19th January, 1985 as a Mateon current duty charge does not ipso facto prove that he got any employment letter from the respondent/management on the basis of which he gained employment. Moreover, the witness examined by the management proved that the service book of the workman allegedly bearing the signatures of the Executive Engineer, Housing Division are not his signatures. That being so, none of the authorities relied upon by the counsel for the petitioner helps him. Therefore, without going into the aspect of filing the writ petition belatedly, since the impugned award does not suffer from any infirmity which warrants interference, the writ petition deserves to be dismissed.

29. Moreover, the limitations on the jurisdiction of the High Court under Article 226 of the Constitution are well settled. It is well known that a writ in the nature of certiorari may be issued only if the order of the inferior tribunal or subordinate

court suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law as held in *New Age Advertising and Printers vs. Rajinder Kumar* 2015 SCC Online Del 6678, *Municipal Corporation of Delhi vs. Asha Ram and Anr.* 117(2005) DLT 63, *M/s Atlas Cycle (Haryana) Ltd. vs. Kitab Singh* (2013) 12 SCC 573, *Surya Dev Rai vs. Ram Chander and Ors.* (2003) 6 SCC 675, *Syed Yakoob vs. K.S.Radhakrishnan* AIR 1964 SC 477, *Iswarlal Mohanlal Thakkar vs. Paschim Gujarat Vij Co. Ltd. and Anr.*(2004) 6 SCC 434 which is not so in the instant case. That being so, there is no warrant for interference with the impugned award.

30. In view of the foregoing, the writ petition is dismissed with no order as to costs.

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