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Sunil Kumar Vs. Delhi Development Authority

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Court : Delhi

Decided On : May-04-2009

Reported in : (2010)ILLJ534Del

Judge : V.K. Shali, J.

Appeal No. : W.P.(C) No. 19629/2005

Appellant : Sunil Kumar

Respondent : Delhi Development Authority

Advocate for Def. : Nemo

Advocate for Pet/Ap. : Monika Kappor, Adv

Disposition : Petition dismissed

Judgement :

V.K. Shali, J.

1. The petitioner in the instant writ petition has challenged two orders dated 20th July, 2004 and 29th October, 2004 passed in ID No. 144/2003 in case titled Sunil Kumar v. Delhi Development Authority by learned Labour Court No. VII. By virtue of the first order, the learned Labour Court has held that the inquiry which was held against the petitioner was fair, proper and in accordance with principles of

natural justice.

2. So far as the award dated 29th October, 2004 is concerned, the learned Labour Court upheld the imposition of punishment of dismissal on the petitioner.

3. Briefly stated the facts leading to the filing the present writ are that the petitioner/workman was employed as a Sweeper with the respondent/management since January 1980. He worked till 22nd August, 1990. On 22nd August, 1990 it was alleged against the petitioner/workman that he tried to molest one lady officer Ms. Nivedita Pandey who was standing near the window. The petitioner had come to the window purportedly trying to close the same on the pretext there being heavy rain and touched her. Ms. Nivedita Pandey raised an alarm on account of which the petitioner was apprehended. The defence of the petitioner/workman was, since the window was jammed, therefore, the touching of Ms. Nivedita Pandey was totally accidental and unintentional. The petitioner was put under suspension and chargesheet was given and an inquiry was held and the Inquiry Officer came to a conclusion that the charge of molestation is not established against the petitioner while as the other three charges against him were proved. The petitioner challenged the finding of the Inquiry Officer before the learned Labour Court by getting a reference made before the appropriate government. The learned Labour Court framed an issue whether a fair and a proper inquiry was conducted in accordance with the principles of natural justice against the petitioner and it handed down a finding against the petitioner. The learned Labour Court recorded four charges in the inquiry report on the basis of which the inquiry was conducted were as under:

(i) Molestation of lady officer named Mrs. Nivedita Pandey by Sh. Sunil during his duty hours at 3rd Floor, Vikas Minar, near the window in the hall.

(ii) The screaming shouts of Mrs. Pandey were heard by some staff members who came running to the palce of incident.

(iii) In the presence of these staff members Sh. Sunil begged for forgiveness for his misbehavior, misconduct and misdeed.

(iv) Sh. Sunil violated the conduct Rules by this act and later on absconded from the official duty immediately after this incident.

4. The learned Labour Court after examining the entire gamut of facts came to the conclusion that there is no perversity in the report of the Inquiry Officer or any violation of principle of natural justice, accordingly, the issue was decided in favour of the management. By the second order the question of quantum of compensation was also decided by the learned Labour Court on 29th October, 2004 and it was held that keeping in view the conduct of the petitioner the imposition of punishment of dismissal against the petitioner was not disproportionate. The learned Labour Court also referred the authorities of the Apex Court in order to take the support that the Courts should generally not interfere with the quantum of punishment once the charge is proved. Reliance in this regard was placed in case titled Devender Swami v. Karnataka State Road Transport Corporation AIR 2002 SC 2545 and Union of India v. Narain Singh 2002 (4) SCC 207.

5. I have heard the learned Counsel for the parties. The contention of the learned Counsel for the petitioner has been two fold, firstly that the petitioner had been employed with the respondent/management since 1980 and had unblemished service record. The incident in question was a mere misunderstanding in as much as it was raining outside and the petitioner who tried to close the window accidently touched the lady officer which was construed as an attempt to molestation. It was contended that a Sweeper who is a Class-IV employee could hardly make an attempt or think of molesting a superior officer working in the same organization. Keeping in view these facts, it was urged that the punishment of dismissal which was imposed on the petitioner was grossly disproportionate.

6. It was also contended that if one sees the report of the Inquiry Officer the charge of molestation is not established, and therefore, even on that score also a lenient view ought to be taken and punishment commensurate with the misconduct ought to have been imposed.

7. This was contested by the learned Counsel for the respondent who placed reliance on Apparel Export Promotion Council v. A.K. Chopra : (1999)ILLJ962SC

wherein the Court dealt with a case of sexual harassment of a female employee of the Council. It was held that while dealing with the case of a sexual harassment at the work place the Court does not have to consider the sexual assault or molestation in the manner as if it is dealing with a criminal matter. The case must be dealt with sensitivity and sympathy. The Court had also upheld the order of removal of the petitioner from service on the charges of sexual harassment.

8. The learned Counsel for the petitioner tried to distinguish the facts of the said case on the ground by urging that in the case reported the offender who was alleged to have indulged in sexual harassment was a superior officer and against the victim who was only a typist cum clerk. While as in the instant case the victim was a superior officer and the petitioner was only a Class-IV employee, and therefore, the Class-IV employee could hardly dream of molesting or attempting to molest the victim, who is far superior in position.

9. I have considered the respective submissions of the Counsel for the parties and perused the record. The contention of the learned Counsel for the petitioner that merely on account of the fact that he had an unblemished service record for more than a decade did not give him a license to indulge in acts of molestation or conducting himself in a manner which is obviously to create a scare in the minds of female official be that of junior or senior that the offender is trying to outrage her modesty or is making sexual advances. In the instant case, this is precisely what the petitioner has done despite being a Class-IV employee he seemed to have lost his mental balance on account of the factum of rain and the advantageous position of the female official being alone in the hall he took liberty of touching under the false pretext closing the window. It could not be said that the status of the victim or that of the offender should make any distinction in the imposition of punishment in case of this nature. The offender must dealt with a stern hand so that female officials feel safe at work place to discharge their duties.

10. I, accordingly, feel that the submissions made by the learned Counsel for the petitioner that this was not a case of molestation and the imposition of punishment of dismissal does not hold any water. The petitioner has shown a criminal bent of mind which deserves to be dealt with strongly and has been actually dealt with

firmly and decisively by imposing a punishment of dismissal on him. It cannot be said by no stretch of imagination that the punishment of dismissal which has been imposed on petitioner is disproportionate or highly excessive as a matter of fact imposition of punishment other than dismissal will only show misplaced sympathy with the petitioner and will give impetus to persons with such proclivities to indulge in acts of outraging the modesty of female employees.

11. In Apparel Export Promotion Council v. A.K. Chopra : (1999)ILLJ962SC the Hon'ble Supreme Court has laid down the scope of judicial review in following words:

Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the Rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority.

12. Therefore, there is no infirmity, illegality, perversity in the impugned orders, and accordingly, the writ petition of the petitioner is without any merit and the same is dismissed.

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