

Chander Singh Vs. General Manager, Dtc

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Court : Delhi

Decided On : Apr-18-2007

Reported in : 140(2007)DLT32

Judge : Hima Kohli, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 10(1), 11A and 33(2); [Constitution of India](#) - Article 226; D.R.T.A. (Conditions of Appointment and Service) Regulations, 1952

Appeal No. : Writ Petition (C) No. 3404/1996

Appellant : Chander Singh

Respondent : General Manager, Dtc

Advocate for Def. : Vibhu Shankar, Adv.

Advocate for Pet/Ap. : B.K. Sinha, Adv

Disposition : Petition dismissed

Judgement :

Hima Kohli, J.

1 The present writ petition has been filed by the petitioner praying inter alias for a writ of certiorari quashing the orders dated 9th February and 19th July, 1996

passed by the respondent removing the petitioner from service and for a writ of mandamus directing the respondent to reinstate the petitioner to the post of Driver with full back wages.

2. The facts of the case are that the petitioner was employed with the respondent as a Driver. It is claimed by him that on 16th September, 1995 due to certain emergency, he left for his village in District Rohtak in Haryana and could send his application for leave through UPC only on 17th September, 1995. He joined back in service on 3rd November, 1995. The respondent served the petitioner with a charge sheet dated 6th November, 1995 calling upon him to explain as to why disciplinary action should not be taken against him for remaining absent from duty unauthorizedly from 17th September to 2nd November, 1995, without prior permission. The petitioner filed a reply to the notice to show cause. Thereafter, a domestic enquiry was held. The petitioner appeared in the enquiry proceedings and participated therein. Pursuant to the enquiry, the Disciplinary Authority, vide orders dated 9th February, 1996, imposed a major punishment on the petitioner whereby he was removed from the service of the respondent with immediate effect. As against the aforesaid order of removal from service, the petitioner filed an appeal before the Chairman of the respondent which was rejected vide order dated 19th July, 1996. Aggrieved by the aforesaid action of the respondent the petitioner filed the present writ petition.

3. Counsel for the petitioner submitted that the impugned orders were required to be passed under the Standing Orders in terms of Section 10(1)(d) read with Schedule 2 and 3 of the [Industrial Disputes Act, 1947](#) (for short 'the Act') and not under the D.R.T.A.(Conditions of Appointment and Service) Regulations 1952, as was done by the respondent. He argued that the punishment imposed on the petitioner was disproportionate to the misconduct alleged against him and that the quantum of punishment was not commensurate with the guilt of the petitioner. Counsel for the petitioner also contended that the entire enquiry proceedings were vitiated by mala fides because the enquiry proceedings were being influenced by the Depot Manager who was the Disciplinary Authority of the petitioner and against whom the petitioner was to depose as a witness in certain pending cases. He contended that despite an affidavit filed by the petitioner in the enquiry

proceedings specifically stating inter alias that the petitioner was threatened by the Depot Manager with dire consequences, the impugned order of removal from service was passed against the petitioner, which is therefore arbitrary and smacks of mala fides.

4. In reply, counsel for the respondent submitted that the present writ petition filed by the petitioner is not maintainable in view of the existence of alternate efficacious remedy available under the Act and that in case the petitioner had any grievance, he ought to have approached the Industrial Tribunal against the order of removal from service. In this regard, counsel for the respondent placed reliance on the provision of Section 10(1)(d) read with Schedules 2 and 3, as also Section 11A of the Act to contend that 'adjudication' was necessary in this case and that the petitioner ought not to have directly approached the writ court for seeking his remedy in law. It was further contended that the writ petition has raised disputed questions of fact which cannot be gone into in the present proceedings. Specific reference has been made by the counsel for the respondent to the averments of the petitioner with regard to charges of mala fides leveled against the Depot Manager as also against the Inquiry Officer as contained in paras 6,7,10 and 11 of the writ petition which allegations have been categorically denied by the respondent in the corresponding paras of the counter affidavit. Counsel for the respondent submitted that it is a well settled law that once the statute itself provides an adequate machinery for redressal, then the High Court should not deviate from the general rule and should not interfere under Article 226 of the [Constitution of India](#) except in very exceptional cases. Reliance has been placed by the counsel for the respondent on the following judgments:

(i) Sunil Kumar v. UOI (2000) 1 LLJ.

(ii) U.P. State Bridge Corpn.Ltd. v. U.P.Rajya Setu Nigam S.Karamchari Sangh : (2004)IILLJ9SC .

(iii) Hindustan Steel Works Construction Ltd. and Anr. v. Hindustan Steel Works Construction Ltd. Employees Union : (2005)IILLJ512SC .

5. Counsel for the respondent has also placed reliance on the judgment rendered by the Supreme Court in the case of Delhi Transport Corporation v. Sardar Singh reported as : (2004)IIILLJ543SC , wherein the Supreme Court dealt with a number of cases which came to it by way of appeals against the orders of a Division Bench of this Court where the issue hinged on the manner in which the period during which an employee absents himself from duty even without sanction of leave ought to be treated. While referring to the standing orders and the DRTA (Conditions of Appointment and Service) Regulations 1952 and their applicability to the employees of DTC, the Supreme Court arrived at a conclusion that habitual absence is a factor which establishes lack of interest in work. However, there cannot be any sweeping generalisation and that at the same time certain tell tale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings and that the burden is on the employee who claims that there was no negligence and/or lack of interest, to establish it by placing relevant materials on record. Holding so, the order of the Tribunal refusing to accord approval to the applications filed by the DTC under Section 33(2)(b) of the Act was held to be unjustified and in certain cases where opportunity was not given to the DTC to lead evidence, matters were remitted back to the Tribunal to consider them afresh, after granting due opportunity to the concerned parties.

6. I have heard the counsels for the parties. In the present petition, the petitioner has raised disputed questions of facts and instead of invoking the provisions of the Industrial Disputes Act, has directly approached this Court by filing the present petition. In the opinion of this Court, it is not appropriate to adjudicate upon the said disputes by exercising powers of judicial review under Article 226 of the [Constitution of India](#). The issues raised by the petitioner, particularly the allegations of mala fides leveled by the petitioner against the Depot Manager and the Inquiry Officer to the effect that a sum of Rs.10,000/- was demanded from the petitioner as illegal gratification for reinstatement and for brushing aside of the charge sheet and subsequent disciplinary proceeding initiated against the petitioner, which have been categorically denied by the respondent in its counter affidavit, the proper remedy for the petitioner is to raise an industrial dispute under the Act and obtain a finding on merits from the Industrial Adjudicator.

7. There is force in the submission of counsel for the respondent that in such circumstances where factual disputes are involved between the parties and when disputes relate to enforcement of a right and/or obligation provided under the statute and a specific remedy is provided under the statute, interference under Article 226 of the [Constitution of India](#) is uncalled for except in very exceptional cases where departure can be made. The law in this respect is settled that when an equally efficacious alternate remedy is available under a statute, normally a High Court should not entertain the writ petition. Reliance can be placed on a recent judgment rendered by the Supreme Court in the case of Uttaranchal Forest Development Corpn. and Anr. v. Jabar Singh and Ors. reported as : (2007)IILLJ95SC , the relevant part of which is being reproduced as under :

44. In the instant case, the workmen have not made out any exceptional circumstances to knock the door of the High Court straightaway without availing the effective alternative remedy available under the Industrial Disputes Act. But the dispute relates to enforcement of a right or obligation under the statute and a specific remedy is, therefore, provided under the statute. The High Court should not deviate from the general view and interfere under Article 226 of the Constitution except when a very strong case is made out for making a departure. There are several decisions to the same effect. The respondents have not made out any strong case for making a departure. Accordingly, the conclusion is inevitable that the High Court was not justified in entertaining the writ petition.

8. In the present case, the petitioner ought to have exercised his legal remedy as available under the Act and ought to have sought a reference to the Industrial Tribunal Labour Court for assailing the impugned orders dated 9th February and 19th July, 1996. Having held so, the petitioner is given liberty to take recourse to the appropriate remedy under the Act. In case the petitioner approaches the appropriate forum under the said Act within a reasonable time, the concerned court shall consider the request of the petitioner for condoning the delay in raising the dispute.

9. The writ petition is dismissed in the above terms and parties are left to bear their own costs.

