Mcd Vs. Maman Chand

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Court : Delhi

Decided On : Jun-02-2006

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Judge : Gita Mittal, J.

Acts : Industrial Disputes Act, 1947 - Sections 17 and 33C; Constitution of India - Articles 14 and 226

Appeal No. : Writ Petition (Civil) No. 4918/2003

Appellant : Mcd

Respondent : Maman Chand

Advocate for Def. : Sanjoy Ghose, ; Pragnya and ; Suhail Sehgal, Advs.

Advocate for Pet/Ap. : Amita Gupta, Adv

Disposition : Petition dismissed

Judgement :

Gita Mittal, J.

1. The present writ petition exhibits an unwarranted zeal on the part of the Municipal Corporation of Delhi to punish an employee for alleged misdemeanors which are not even provided under its rules. There is no dispute to the factual

matrix and to the extent necessary is noticed hereafter.

2. Shri Maman Chand, respondent herein was appointed as a safai karamchari in the pay scale of 196-232 with allowances vide an appointment letter dated 3rd October, 1970. He was a permanent employee of the Municipal Corporation of Delhi. After he had put in 17 years of unblemished and uninterrupted service, he was served with a chargesheet dated 6th August, 1983 wherein the following charge was leveled against him:

That the said Sh. Maman Chand while working as Safai Karamchari in the Hindu Rao Hospital during the year 1970 committed an act of grave mis-conduct and failed to maintain devotion to duty and absolute integrity inasmuch as he, did not inform his superiors of his conviction at the time he joined Municipal services on regular basis in the year 1970 as per details given in the statement of allegations.

3. The respondent rebutted the charges leveled against him. The petitioner conducted a disciplinary inquiry against the respondent. The inquiry officer in his report dated 28th August, 1985 held that the charge against the respondent stood proved. Punishment of dismissal of service was imposed by the disciplinary authority. On an appeal preferred by the respondent the Commissioner by the order dated 23rd October, 1987 and 28th October, 1987 converted the punishment of dismissal into stoppage of four increments with future effect and also ordered that the period from the date of dismissal to the date of reinstatement would be treated as dies non. The respondent assailed the punishment imposed on him by a demand notice dated 18th June, 1990. As the same did not result in any positive action, the workman filed a statement of claim before the conciliation officer on 5th July, 1990. On failure of the conciliation, the appropriate government referred the matter for adjudication to the industrial adjudicator by an order of reference dated 2nd May, 1991 whereby the following dispute was referred for adjudication:

Whether the punishment of stoppage of 4 increments with future effect to Sh. Maman Chand is illegal and or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?

4. It appears that the workman had also challenged the validity of the inquiry proceedings inter alias on the ground that the departmental inquiry was conducted by a fully trained law graduate while the workman, who was illiterate, was not allowed to be represented by any person. The issue relating to the fairness and propriety of the inquiry was treated as a preliminary issue. The industrial adjudicator answered this issue against the petitioner and held that the inquiry was vitiated and that the charge sheet was not tenable. Thereafter, the matter proceeded to adjudication on the validity of the punishment awarded to the respondent. By an award dated 2nd August, 2001, the industrial adjudicator held that the punishment of stoppage of four increments imposed upon the respondent was disproportionate to the charge and also improper being in violation of the government instructions and rules. The order dated 20th October, 1987 passed by the Deputy Director of inquiry was set aside and the petitioner was directed to treat the workman as if no such punishment was imposed and the workman was entitled to his increments as and when they were due and payment of arrears, if any. Aggrieved by the industrial award dated 2nd August, 2001, the petitioner has filed the present writ petition.

5. I have heard learned Counsel for the parties. It has been vehemently urged on behalf of the petitioner that the respondent was guilty of misconduct and suppression of a material facts at the time of his recruitment. It has been urged that it is for the MCD to opt as to who it wants to employ and that a prospective employee is required to disclose full facts of the antecedents of a prospective employee. Learned Counsel for the petitioner has vehemently urged that the respondent had furnished a character certificate of the Village Pardhan and the local authorities wherein also his prior conviction in a criminal trial had not been disclosed. For these reasons, Ms. Amita Gupta, learned Counsel for the petitioner, contends that the punishment awarded to the respondent is clearly justified.

6. It is to be noted that there is no submission that the workman was facing a trial at the time that he was recruited. He was arraigned as an accused to stand trial in a criminal trial for which he was punished long before his recruitment in the Municipal Corporation of Delhi. This is evident from the charge sheet which was served on the respondent itself. It is also not disputed that the respondent was

duly punished for this offence. The MCD has also not disputed before this Court that there is no prohibition on employment of a person with the record of a past conviction. However, it is contended that the recruiting authority may consider such conduct while evaluating relative merit of candidate.

7. On the other side, learned Counsel for the respondent has vehemently urged that there was no column in the application which the respondent was required to submit which required him to state as to whether he had been implicated in any criminal offence or that he had been convicted or punished in respect thereof. I find force in the submission on behalf of the respondent that the workman cannot be punished for not doing something which he was never required to do.

8. In : (2005)2SCC746 Secretary, Department of Home Secretary, A.P. and Ors. v. B. Chinnam Naidu relied upon by the respondent the court held thus:

7. In Kendriya Vidyalaya Sangathan case the factual position can be ascertained from paras 8 and 9 which read as follows : (SCC p. 443)

8. the attestation form dated 26-6-1998 duly filled in by the respondent and attestation show that the respondent has taken BA degree from St. Aloysius College, JBP and BEd and Med degrees from R. Durgavati Vishwavidyalaya, JBP. Columns 12 and 13 as filled up read thus:

12. Have you ever been prosecuted/kept under detention or bound down/fined, convicted by a court of law of any offence?-No.

13. Is any case pending against you in any court of law at the time of filing up this attestation form-No.

9. The respondent has also certified the information given in the said attestation form as under:

I certify that the foregoing information is correct and complete to the best of my knowledge and belief. I am not aware of any circumstances which might impair my fitness for employment under Government. As is noted in Kendriya Vidyalaya Sangathan case the object of requiring information in various columns like column

12 of the attestation form and declaration thereafter by the candidate is to ascertain and verify the character and antecedents to judge his suitability to enter into or continue in service. When a candidate suppresses material information and/or gives false information, he cannot claim any right for appointment or continuance in service. There can be no dispute to this position in law. But on the facts of the case it cannot be said that the respondent had made false declaration or had suppressed material information.

8. xxxx

9. A bare perusal of the extracted portions shows that the candidate is required to indicate as to whether he has ever been convicted by a court of law or detained under any State/Central preventive detention laws for any offences whether such conviction is sustained or set aside by the appellate court, if appealed against. The candidate is not required to indicate as to whether he had been arrested in any case or as to whether any case was pending. Conviction by a court or detention under any State/Central preventive detention laws is different from arrest in any case or pendency of a case. By answering that the respondent had not been convicted or detained under preventive detention laws it cannot be said that he had suppressed any material fact or had furnished any false information or suppressed any information in the attestation form to incur disqualification. The State Government and the Tribunal appeared to have proceeded on the basis that the respondent ought to have indicated the fact of arrest or pendency of the case, though column 12 of the attestation form did not require such information being furnished. The learned Counsel for the appellants submitted that such a requirement has to be read into an attestation form. We find no reason to accept such contention. There was no specific requirement to mention as to whether any case is pending or whether the applicant had been arrested. In view of the specific language so far as column 12 is concerned the respondent cannot be found guilty of any suppression.

10. In Kendriya Vidyalaya Sangathan case the position was the reverse. There the candidate took the stand that as there was no conviction, his negative answers to columns 12 and 13 were not wrong. This Court did not accept the stand that

requirement was conviction and not prosecution in view of the information required under columns 12 and 13 as quoted above. The requirement was prosecution and not conviction. The logic has application here. The requirement in the present case is conviction and not prosecution.

9. Thus, it is apparent that the issue relating to suppression of fact or a mis-declaration has to be decided on the basis of what was required to be informed by the employee. In the instant case, it is an admitted position that the form did not contain any column requiring a person to disclose prior implication, prosecution or conviction. Consequently, it cannot at all be held that the respondent can be faulted for not giving such information, which was not sought, with regard to a conviction prior to his joining service.

10. The charge sheet dated 6th August, 1983 contains an inherent contradiction inasmuch as the charge sheet states that the workman was working as a safai karmachari. During the year 1970 he committed an act of grave misconduct and failed to maintain devotion to duty and absolute integrity, at the same time, the charge sheet levels the allegation that he committed such misconduct because he did not inform his superiors of his conviction at the time he joined Municipal service on a regular basis in the year 1970. From this it is apparent, that the allegation on which the misconduct is based, relates to something the petitioner did not do prior to his recruitment.

11. The workman has rendered 17 years of blemishless service with the Municipal Corporation of Delhi. There is no complaint whatsoever against him. The inquiry held against the workman was vitiated by the industrial adjudicator. The order vitiating the inquiry has not been challenged or assailed by the MCD in any proceedings. The same is not the subject matter of challenge even in the present writ petition. The charge sheet was issued to the workman as back as on 6th August, 1983 and despite the passage of 23 years, he is still in court.

12. It is well settled that unexplained delay and laches would defeat the remedy available to a litigant under Article 226 of the Constitution of India. The award in favor of the workman was passed as back as on 2nd August, 2001. It was published on 1st March, 2002. thereforee, in accordance with the provisions of

Section 17 of the Industrial Disputes Act, 1947, the award became enforceable with effect from 31st March, 2002. The respondent/workman has stated on record that after waiting for a reasonable time, he served a demand notice dated 8th June, 2002 to the workman for implementation of the award. Even this did not move the MCD and the workman filed an application under Section 33C(i) of the Industrial Disputes Act, 1947 claiming the differential of salary. On 9th April, 2002, the workman had recovered a sum of Rs.69, 160/- for the period from 1st October, 1988 to 30th June, 2003. Thereafter on 14th October, 2003, recovery of Rs.14, 306/- for the period between 1st July, 2002 to 31st May, 2003 was effected. The present writ petition has been filed by the Municipal Corporation of Delhi only on 30th May, 2003. The Municipal Corporation of Delhi did not care to even inform the recovery officer or the respondent/workman of the orders of stay dated 5th August, 2003 passed in the present matter. This writ petition has been filed only as late on 30th May, 2003. There is no Explanationn for the delay in impugning the award dated 2nd August, 2001. The writ petition suffers from unexplained delay and laches.

13. In the instant case, no issue of law was involved. The industrial adjudicator has relied on Government orders based on the CCS Rules. The award dated 2nd August, 2001 has not been assailed on any legally tenable grounds before this Court.

14. The jurisdiction of this Court under Article 226 of the Constitution of India to examine detailed questions of fact on which a challenge is laid to an industrial award are narrow. The principles in this behalf are well settled and the parameters within which this Court would exercise discretion while entertaining a petition calling upon a judicial review of an adjudication by the industrial adjudicator are well settled. In this behalf reference can be appropriately made to AIR 2000 SC 1508 entitled Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Anr. in which it was held thus:

The learned single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware

fully, that he is not exercising any appellate jurisdiction over the awards passed by a Tribunal, presided over by a Judicial Officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can b reasonably and possibly one taken. The Division Bench was not only justified but well merited in its criticism of the order of the learned single Judge and in ordering restoration of the Award of the Tribunal. On being taken through the findings of the Industrial Tribunal as well as the order of the learned single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and sufficient basis for recording its findings, as it did, and the manner of consideration undertaken, the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, thereforee, open to the writ Judge was the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of re-assessing the evidence and arriving at findings of ones own, altogether giving a complete go-bye even to the facts specifically found by the Tribunal below.

15. In this context the law laid down by the Apex Court in Sadhu Ram v. Delhi Transport Corporation AIR 1984 SC 1967 observed:

Para 5... nor do we think that it was right for the High Court to interfere with the Award of the Industrial Tribunal under Article 226 on a mere technicality. Article 226 is a device to secure and advance justice and not otherwise. In the result, we allow the appeal, set-aside the judgment of the High Court and restore the Award of the Presiding Officer.

16. In Harbans Lal v. Jag Mohan : AIR 1986 SC302 the court ruled:

Para 5 ... The limitations on the jurisdiction of the High Court under Article 226 of the Constitution are well settled. The Writ Petition before the High Court prayed for

a Writ in the nature of certiorari, and it is well known that a Writ in the nature of certiorari may be issued only if the order of the inferior tribunal of 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. There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach finding of fact contrary to those rendered by an inferior court or subordinate court. When a High Court proceeds to do so, it acts plainly in excess of its power.

17. In Calcutta Port Shramik Union v. Calcutta River Transport Association and Ors. : (1989)ILLJ223SC , the court further observed that:

Para 10. The object of enacting the enacting the Industrial Disputes Act, 1947 and of making provision therein to refer disputes to Tribunals for settlement is to bring about industrial peace. Whenever a reference is made by the Government to the Industrial Tribunal, it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases, an attempt should be made by Courts exercising powers of judicial review to sustain as far as possible the Awards made by the Industrial Tribunal instead of picking holes here and there in the Awards on rival points and ultimately frustrating the entire adjudication process before the Tribunals by striking down the Awards in hyper technical grounds. Unfortunately, the orders of the Single Judge and of the Division Bench have resulted in such frustration and have made the Award fruitless on an untenable basis.

18. In Sudhoo v. Haji Lal Mohd. Biri Works and Ors. 1990 L.I.C. 1538 it was held that the High Court should not have interfered with the findings of the fact reached by the prescribed authority on appreciation of evidence.

19. The instant case is squarely covered by the observations of the Apex Court in the afore noticed pronouncements. The challenge in the instant case is on pure question of facts which have no basis on the record maintained by the Municipal Corporation of Delhi. Such challenge in view of the parameters laid down in the binding legal precedents is clearly impermissible.

20. So far as filing of cases at the instance of public authorities is concerned, the courts have repeatedly expressed their ire as to the manner in which casual decisions are taken to initiate litigation which results in jeopardising rights of private persons.

21. It is well settled that if there is a right under the law there must be a remedy for its violation as law commands nothing in vain. Statutory duty imposes a negative obligation on the states not to encroach upon he rights of the individual or to frustrate what is granted under the law to a citizen. Declaration of rights would be meaningless unless there is an effective machinery for enforcement of the rights. Thus the remedy provided would really be the essence of the right which becomes effective and meaningful only when its enforceability is accepted by the procedure of law.

22. Another facet of the effectiveness of a legal remedy is sourced in timely and informed action in administrative functioning. Unreasonable delay in questioning correctness of adjudication or petitions seeking judicial review of the adjudication despite legal correctness thereof, would tilt equity in favor of the other party. The ensuing delay would only exacerbate the injustice worked on such party which is thereby deprived of the fruits of a long drawn adjudication.

23. Concept of public accountability has been applied to the decision making process in the government by the courts for a considerable time. This concept takes in its ambit imposition of costs and its recovery from the officer concerned for their negligence or acts of prolonged, unexplained delays running into years. In the case of State of Andhra Pradesh v. Food Corporation of India 2004 (13) Scc 53, the Court directed as under:

We are shocked as to the manner in which the State Government is filing petitions in this Court resulting not only in wasting the time of this Court and all others concerned but in total waste of public money. The impugned orders have been challenged after more than eight years with almost no Explanationn, as is evident from the paragraph reproduced above.

In this view, while dismissing the applications seeking condensation of delay, we direct that enquiry be made forthwith by the State Government as to the person responsible for this state of affairs, recover from such person the costs involved in filing these petitions and submit the report to this Court within a period of four weeks.

24. Administrative or executive actions are subject matter of judicial review. Noticing the significance of scope of judicial review in this regard and bureaucracy accountability, the Supreme Court in the case of State of Bihar v. Subhash Singh : [1997]1SCR850 held as under:

In our democracy governed by the rule of law, the judiciary has expressly been entrusted with the power of judicial review as sentinal in qui vive. Basically judicial review of administrative actions as also of legislation is exercised against the actions of the State. Since the State or public authorities act in exercise of their executive or legislative power, they are amenable to the judicial review.... The normal principle that the permanent bureaucracy is accountable to the political executive is subject to judicial review. The doctrine of full faith and credit applied to the acts done by the officers and presumptive evidence of regularity of official acts done or performed, is apposite in faithful discharge of duties to elongate public purpose and to be in accordance with the procedure prescribed. It is now settled legal position that the bureaucracy is also accountable for the acts done in accordance with the rules when judicial review is called to be exercised by the Courts. The hierarchical responsibility for the decision is their in-built discipline. But the Head of the Department/designated officer is ultimately responsible and accountable to the Court for the result of the action done or decision taken. Despite this, if there is any special circumstance absolving him of the accountability or if someone else is responsible for the action, he needs to bring them to the notice of the Court so that appropriate procedure is adopted and action taken. The controlling officer holds each of them responsible at the pain of disciplinary action. The object thereby is to ensure compliance of the rule of law.... A member of the permanent executive, is enjoined to comply with the orders of the Court passed in exercise of the judicial review. When a Court issues certain directions to the executive authorities it is expected that the authorities would

discharge their duties expeditiously as enjoined under the rules and as per the directions. If they do not discharge the duty, necessarily, they are required to give Explanationn to the Court as to the circumstances in which they could not comply with the direction issued by the Court or if there was any unavoidable delay, they should seek further time for compliance. When, neither of the steps have been taken by the officer in that regard the Court can impose the costs personally against him for non-compliance of the order....It is known fact that in transaction of the Government business, none would own personal responsibility and decisions are leisurely taken at various levels. It is not uncommon that delay would be deliberately caused in filing appeal or revision by Government to confer advantage to the opposite litigant; more so when stakes involved are high or persons are well connected/influential or due to obvious considerations. The Courts, thereforee, do not adopt strict standard of proof of every day's delay. The imposition of costs on officers for filing appeals causes public injustice and gives the manipulators an opportunity to compound the camouflage. Secondly, the imposition of costs personally against the officers would desist to pursue genuine cases of public benefit or importance or of far-reaching effect on public administration or exchequer deflecting course of justice.

25. Despite adjudication and decisions being based on binding and well settled judicial principles and in clear consonance with the applicable law, delayed decisions are taken to assail the same in higher courts and forum, generating thereby clearly avoidable litigation on which public money and precious court time is expended.

26. thereforee, in the case of ABL International Ltd. and Anr. v. Export Credit Guarantee Corporation of India Ltd. and Ors. : (2004)3SCC553 , the Supreme Court held as under:

It is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution. thereforee, once the State or an instrumentality of the State is a party, it has an obligation in law to act fairly, justly and reasonably to

a contract which is the requirement of Article 14 of the Constitution.

Unless the action challenged in the writ petition pertains to the discharge of a public function or public duty by an authority, the courts will not entertain a writ petition which does not involve the performance of the said public function or public duty.

27. State actions causing loss are actionable under public law and this is as a result of innovation of a new tool with the courts, which are the protectors of civil liberty of the citizens and which would ensure protection against devastating results of State Action. The principles of public accountability and transparency in State action, which essentially must not lack bonafide was enforced by the Supreme Court even in cases of appointment in the case of Centre for public interest litigation and Anr. v. Union of India and Anr. : AIR 2005 SC4413 .

28. The afore noticed principles were recognised and elaborated by a decision of the Division Bench of this Court in its judgment dated 11th of May, 2006 in W.P.(C) No. 22895/2005 Sukhbir Singh Tyagi and Ors. v. Lt. Governor and Ors.

29. These principles unfortunately do not guide decision making by the authorities. While burdening courts with wholly unnecessary litigation, the rights of the public are impinged upon. There appears to be a reluctance to take responsibility and to take a decision against the employer by the persons at the helm of decision making on the ground that the same may be a hard decision or may require concurrence with an adjudication in favor of the workman and against the employer. For this, judicial review is advised or recommended in routine without any consideration of binding judicial precedent and well settled legal principles. Thereby responsibility for decision making is abdicated to judicial adjudication and judicial review. It is well settled that even an erroneous administrative decision taken bonafide and honestly is not a dishonest decision. thereforee, a serious effort should be made in following settled legal principles and applying judicial precedents before advising filing of writ petitions and appeals in a routine manner. Thereby the cause of public interest would be furthered and wastage of public time and money prevented.

30. In these circumstances, I find no merit in the writ petition which is hereby dismissed. In the facts and circumstances of the case, the Municipal Corporation of Delhi should be required to pay punitive costs to the respondent who has been harassed for a long period of 23 years without any justification. Accordingly, Municipal Corporation of Delhi shall be liable to pay punitive costs to the respondent which are quantified at Rs.25,000/- The costs awarded to the respondent shall be paid within a period of four weeks from today.

31. Appropriate orders with regard to computation of the differential of the salary payable to the respondent/workman in terms of the award dated 2nd August, 2001 shall be passed within a period of four weeks from today. The petitioner shall furnish a copy of the computation to the respondent. The petitioner shall also make payment of the arrears, if any, which may be payable to the respondent after adjustment of amounts which may have been recovered after the passing of the award dated 2nd August, 2001 within a further period of four weeks thereafter.