

Yogender Vs. \$ Mcd

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Court : Delhi

Decided On : Jan-11-2012

Appellant : # Yogender

Respondent : \$ Mcd

Advocate for Def. : Ms. Saroj Bidawat, Mr. A.S. Tuisem Shimray

Advocate for Pet/Ap. : Mr. Anuj Aggarwal

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % W.P.(C) 211/2012 + Date of Decision: 11th January, 2012 # YOGENDERPetitioner ! Through: Mr. Anuj Aggarwal, Advocate Versus \$ MCD ...Respondent Through: Ms. Saroj Bidawat and Mr. A.S. Tuisem Shimray, Advocates CORAM: * HON'BLE MR. JUSTICE P.K.BHASIN JUDGMENT P.K.BHASIN, J: (ORAL) The petitioner challenges the award dated 2nd May, 2011 rendered by the Labour Court whereby the industrial dispute raised by him directly before the Labour Court regarding termination of his services by the respondent has been decided against him and it has been held that his services had not been illegally terminated and, in fact, he had got entry into the Health Department of Municipal Corporation of Delhi ('MCD' in short), respondent herein, as a Ward Boy on the basis of forged documents..

2. The claim of the petitioner before the Labour Court was that he W.P. (C) 211/2012 *Page 1 of 9* had got employment with the MCD on 4th July, 2005 and he

was posted at Chest Clinic and T.B. Hospital, Nehru Nagar as a Ward Boy vide office order No.4746/AO(H)/RCS/2005 dated 04.07.2005 and he had been working there continuously up to 3rd May, 2006. However, with effect from 4th May, 2006 services of the petitioner and many other workers were terminated by the MCD on the allegation that they had obtained appointment fraudulently on the basis of fake documents. The petitioner and other workmen then challenged the said decision of the MCD by filing a writ petition (being WP(C) No.3345/2008) and a Single Judge Bench of this Court had allowed that writ petition and directed his reinstatement in service, vide order dated 28.05.2008 (Annexure A-3) relying upon an earlier decision dated 09.07.2007 of another Single Judge Bench in WP(C) No. 8268-85/2006 whereby many workmen whose services had been terminated by MCD because of their also having procured entry in MCD on the basis of fake documents were ordered to be reinstated in service with half of back wages. Those petitions were allowed since even show cause notice was not given to the workmen by MCD before terminating their services. The MCD was, however, given the liberty that it could hold enquiries and pass fresh orders in accordance with law. The MCD had challenged that order before the Division Bench and the Division Bench dismissed the LPAs in those cases where no show cause notices were given to the dismissed employees, as is the case of the present workman. The MCD then reinstated the petitioner herein on 12th September, 2008. However, after reinstating him in service he was served with a notice dated 12.09.08 to show cause as to why his name W.P. (C) 211/2012 *Page 2 of 9* be not struck off from the pay roll because of his having obtained the job fraudulently by producing fake posting order. The petitioner submitted his reply dated 17-09-08 to that show cause notice in which he denied that he had submitted any forged or fake documents and claimed that he had not committed any fraud and he was in fact appointed lawfully. The MCD did not accept the explanation of the petitioner and vide its impugned office order dated 14th January, 2009 terminated the petitioner's fraudulent appointment with immediate effect. Thereafter, the petitioner served upon the respondent a demand notice dated 19th March, 2009 through his union claiming that his services had been terminated in violation of the provisions of Section 25-F, G and H of the Industrial Disputes Act, 1947 and without holding an enquiry. He requested the MCD for taking him back on duty but since that

demand was not accepted he approached the Labour Court directly with a claim petition under Section 10 (4A) of the Industrial Disputes Act in which also his grievance was that his services had been illegally terminated without any enquiry and in complete violation of the provisions of Section 25-F, G and H of the Industrial Disputes Act, 1947 read with Rules 76, 77 and 78 of the Industrial Dispute (Central) Rules, 1957..

3. The Labour Court issued notice of the claim petition of the petitioner to the MCD which entered appearance and contested the petitioner's claim primarily on the ground that the office order dated 4th July, 2005 based on which the petitioner had got himself posted at the Chest Clinic and T.B. Hospital, Nehru Nagar was a forged document and that forgery had come to light during audit proceedings. W.P. (C) 211/2012 Page 3 of 9.

4. The petitioner in his rejoinder reiterated his case which he had pleaded in the claim statement..

5. The learned Labour Court had then framed the following issues for trial:-.

1. When the claimant joined the management?.

2. Whether claimant joined the management on 04.07.05 on the basis of forged and fabricated documents?.

3. Whether the claimant is entitled to relief as claimed in the claim petition?.

6. Thereafter, the petitioner examined himself as his sole witness in support of his claim and from the side of the respondent-MCD also only one witness was examined and after examining considering the evidence adduced from both the sides the learned Labour Court rejected the petitioner's claim and came to the conclusion that since the petitioner had got himself posted at Chest Clinic and T.B. Hospital, Nehru Nagar on the basis of forged posting order no employer-employee relationship had come into existence and there was no occasion for the management to comply with the provisions of Section 25-F, G and H of the Industrial Disputes Act, 1947 before getting rid of him..

7. Feeling aggrieved the petitioner once again approached this Court by filing the present writ petition..

8. The only submission advanced by the learned counsel for the petitioner, relying upon two unreported judgments of this Court in W.P. (C) 211/2012 *Page 4 of 9* W.P.(C) Nos. 8268-85, 8379-99, decided on 9th July, 2007 "Satish Chand Gupta and Ors. Vs. MCD" and W.P.(C) 5041/2008, "Surender th Kumar and Ors. Vs. MCD" decided on 16 July, 2008, was that the termination of petitioner's services by the respondent without conducting any enquiry was illegal..

9. Learned counsel for the MCD, on the other hand, reiterated the reasons given by the Labour Court while rejecting the claim petition of the petitioner - workman..

10. There is no doubt that the petitioner had been thrown out by the MCD without conducting any enquiry on receipt of petitioner's reply to the show cause notice which had been given to him but that fact itself is not sufficient to order his re-instatement. The submission of the learned counsel for the petitioner that since his services had been terminated without any enquiry and so on this ground alone he is entitled to be reinstated is not the correct position in law. It is now well settled that even if no enquiry is held by any employer before terminating the services of an industrial workman and the dispute raised by the dismissed workman comes to the Labour Court or Industrial Tribunal for adjudication either under the provisions of Section 10 of the Industrial Disputes Act, 1947, as is the case here, or under Section 33, the entire controversy between the parties becomes open for adjudication by the Labour Court/Industrial Tribunal and both the parties then get an opportunity to substantiate their rival stands. In this reference can be made to one judgment of the Hon'ble Supreme Court in "Workman of M/s Firestone Tyre and Rubber W.P. (C) 211/2012 *Page 5 of 9* Company of India (P.)Ltd. Vs. Management and Others", 1973 (3) S.C.R.

588. wherein the consequences of an employer holding a defective departmental enquiry or not conducting any enquiry at all before the services of a workman for some misconduct as also the powers of the Industrial Adjudicator in the matter of grant of appropriate relief to the workman concerned in the event of it being concluded that his/her services had been illegally terminated were was

considered. The Court after noticing its various judgments on the point rendered earlier had summarized the legal position as under:- "From those decisions, the following principles broadly emerge:- (1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified. (2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality. (3) When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide. (4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action; and it is open to the employee to adduce evidence contra. W.P. (C) 211/2012 *Page 6 of 9* (5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry. (6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective. (7) It has never been recognized that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective."(emphasis laid).

11. Thus, in view of these observations of the Supreme Court, particularly which have been highlighted by me, the argument of the learned counsel for the petitioner that he was entitled to a direction for his reinstatement straightaway because of the respondent having not conducted any enquiry before throwing him out is rejected..

12. In the present case, the petitioner had approached the Labour Court directly under Section 10(4A) of the Industrial Disputes Act against the respondent's decision to terminate his fraudulent employment without holding any enquiry. The MCD after entering appearance before the Labour Court had taken a stand that since the very entry of the petitioner into the respondent's hospital was void ab initio having been obtained on the basis of forged order of posting dated 04.07.2005 no relationship of the employer-employee between W.P. (C) 211/2012 *Page 7 of 9* the parties had come into existence and consequently it was not obliged to conduct any enquiry. Thus, the Labour Court was required to decide whether there existed any employer-employee relationship between the petitioner and the MCD and also whether the petitioner had got himself posted at Chest Clinic and T.B. Hospital, Nehru Nagar on the basis of forged posting order. Both the parties had adduced evidence before the Labour Court in support of their rival stands. In these circumstances, the absence of any departmental enquiry before the passing of the impugned termination order by the respondent pales into insignificance in view of the already quoted observations of the Hon'ble Supreme Court in Firestone's case (supra) and, therefore, the petitioner also cannot have any benefit of the judgments of this Court whereby his earlier termination order was quashed since this judgment of the Hon'ble Supreme Court does not appear to have been brought to the notice of the Single Judge Benches which had disposed of earlier writ petitions filed by the workmen, including the petitioner herein..

13. As far as the merits of the case are concerned, the learned Labour Court had examined the evidence adduced from both the sides and then it had come to the conclusion that the office order dated 4th July, 2005 relied upon by the petitioner herein as his appointment letter was forged document as in that document it was written that the services of the petitioner were being regularized with effect from

1st April, 2004 while petitioner's own case has been that he had got the appointment only on 4th July, 2005 and he had joined his duty w.e.f. 6th July, 2005 and so there was no question of his regularization from 1st April, 2004 as was mentioned in that office order. Even during the W.P. (C) 211/2012 *Page 8 of 9* course of hearing before this Court also the learned counsel for the petitioner did not claim that he was employed w.e.f. 01.04.2004. The learned Labour Court, thus, in my view, had rightly concluded that the office order dated 4th July, 2005 was a forged document. The petitioner had not led any evidence to show as to who had given him that office order dated 4th July, 2005. That evidence he was required to adduce in view of the fact that the MCD had categorically stated in its show cause notice given to him that he had not been given any appointment and the document produced by him was a forged one and management's witness had also claimed that the petitioner had never been given any appointment and the office order dated 4th July, 2005 was forged. This evidence could not be demolished in cross- examination. Thus, I am also of the view that no employer-employee relationship even came into existence between the petitioner and the respondent-MCD..

14. In these circumstances, I do not find any illegality in the impugned award of the Labour Court justifying any interference by this Court in exercise of its writ jurisdiction. Therefore, this writ petition is dismissed. P.K. BHASIN, J JANUARY 11, 2012/pg W.P. (C) 211/2012 *Page 9 of 9*

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