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 # Manju Rani Vs. $ Mcd

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Court : Delhi

Decided On : Dec-15-2011

Appellant : # Manju Rani

Respondent : $ Mcd

Advocate for Def. : Ms. Saroj Bidawat

Advocate for Pet/Ap. : Mr. Anuj Aggarwal

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % W.P.(C) 8730/2011 + Date of Decision: 15th December, 2011 # MANJU RANI ....Petitioner ! Through: Mr. Anuj Aggarwal, Advocate Versus $ MCD .....Respondent Through: Ms. Saroj Bidawat, Advocate 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 dispute raised by her directly before the Labour Court regarding termination of her services by the respondent has been decided against her and it has been held that her services had not been illegally terminated..

2. The claim of the petitioner before the Labour Court was that she had got employment with the respondent on 19th June, 2002 and she was posted at Hindu Rao Hospital as a Kitchen Attendant vide office order No.748/AO(H)EC(E)/2002 dated 19.06.2002 and she had been working there continuously up to 30th April,

2006. However, with W.P. (C) 8730/2011 *Page 1 of 10* effect from 1st May, 2006 her services were terminated by the respondent on the allegation that she had obtained appointment fraudulently on the basis of fake documents. She then challenged the said decision of the respondent by filing a writ petition (being WP(C) No.5041/2008) in this Court and this Court had allowed that writ petition and directed her reinstatement in service, vide order dated 16.07.2008 relying upon an earlier decision dated 09.07.2007 of a 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 since even show cause notice was not given to them by MCD before terminating their services. The MCD was, however, given the liberty to hold enquiries and to 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 issued for the dismissed employees, as is the case of the present workman. The respondent then reinstated the petitioner herein and other workers on 12 th September, 2008. However, while reinstating her in service she was also simultaneously served with a notice to show cause as to why her services be not terminated because of her having obtained the job fraudulently by producing fake documents. The petitioner submitted her reply to that show cause notice in which she denied that she had submitted any forged or fake documents and claimed that she had not committed any fraud and she was in fact appointed lawfully. The respondent did not W.P. (C) 8730/2011 *Page 2 of 10* accept the explanation of the petitioner and vide its impugned office order dated 19th January, 2009 terminated the petitioner's services with immediate effect. Thereafter, the petitioner served upon the respondent a demand notice dated 20th February, 2009 claiming that her 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. She requested the respondent for taking her back on duty but since that demand was not accepted she approached the Labour Court directly with a claim petition under Section 10 (4A) of the Industrial Disputes Act in which also her grievance was that her services had been illegally terminated in 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. The Labour Court issued notice of the claim petition of the petitioner to the respondent which entered appearance and contested the petitioner's claim on the ground that the letter dated 19th June, 2002 based on which the petitioner had got herself posted at the Hindu Rao Hospital was a forged document and that forgery had come to light during audit proceedings..

3. The petitioner in her rejoinder reiterated her case which she had pleaded in the claim statement..

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

1. When the claimant joined MCD on 19.06.02 as per legal procedure and regulation for appointment? W.P. (C) 8730/2011 Page 3 of 10.

2. Whether the claimant joined MCD with forge and fabricated documents?.

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

5. Thereafter, the petitioner examined herself as her sole witness in support of her claim and from the side of the respondent- management also only one witness was examined and after 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 herself posted at Hindu Rao Hospital on the basis of forged posting order no employer- employee relationship comes into existence and there was no violation in complying with the provisions of Section 25-F, G and H of the Industrial Disputes Act, 1947 before getting rid of her..

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

7. The only submission advanced by the learned counsel for the petitioner relying upon two unreported judgments of this Court in 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 and contrary to the above referred two decisions of this Court as it was held by this Court that termination of the services of the workmen without holding any W.P. (C) 8730/2011 *Page 4 of 10* enquiry was illegal and it was also directed that in case their services were to be terminated once again enquiry should be held..

8. There is no doubt that the services of the petitioner had been terminated by the respondent without conducting any enquiry on the receipt of petitioner's reply to the show cause notice which had been given to her before the termination of her services but that fact itself is not sufficient to set aside the order of the termination her services vide office order dated 19th January, 2009. The submission of the learned counsel for the petitioner that since her services had been terminated without any enquiry and so on this ground alone she 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 the employer before terminating the services of an industrial workman and the dispute raised by the terminated 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 regard a useful reference can be made to a judgment of the Hon'ble Supreme Court in "Workman of M/s Firestone Tyre and Rubber Company of India (P.)Ltd. Vs. Management and Others", 1973 (3) S.C.R.

588. wherein the effect of an employer holding a defective departmental enquiry or not conducting any enquiry at all before terminating the services of a workman for some misconduct as also W.P. (C) 8730/2011 *Page 5 of 10* 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 was considered. The Court after noticing its various judgments on the point rendered earlier summarized the legal position with approval and the relevant paras are being reproduced below:- "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. (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. (8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the

Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct. (9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with the Tribunal except in cases where the punishment is so harsh as to suggest victimization. (10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate vs The Workmen, within the judicial decision of a Labour Court or Tribunal." Thus, in view of the observations made by the Supreme Court, which have been highlighted by me the argument of the learned W.P. (C) 8730/2011 *Page 7 of 10* counsel for the petitioner that she was entitled to be reinstated straightaway is rejected..

9. In the present case, as noticed already, the petitioner had approached the Labour Court directly under Section 10(4A) of the Industrial Disputes Act against the respondent's decision to terminate her without holding any enquiry. The respondent 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 document of posting dated 19.6.2002 there no relationship of the employer-employee between 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 respondent and also whether the petitioner had got herself posted at Hindu Rao Hospital on the basis of forged documents. 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 terminated 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 benefit of the judgment of this Court whereby her 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 learned Single Judge who had disposed of her earlier W.P. (C) 8730/2011 *Page 8 of 10* writ petition..

10. 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 19th June, 2002 relied upon by the petitioner herein was forged document as in that document it was written that the services of the petitioner were being regularized with effect from 1st April, 2000 while petitioner's own case was that she had got the appointment only with effect from 19th June, 2002 and so there was no question of her regularization from 1st April, 2000 and also because she had not produced any document to show that she was earlier posted at MCD's hospital in Lajpat Nagar also as was also written in that office order. That was not even her case that at any point of time she had worked in the MCD hospital in Lajpat Nagar nor it was claimed to be so before me by her counsel who in fact had no explanation to give regarding the officer order dated 19th June, 2002 showing that she was being regularized w.e.f. 1st April, 2000. The learned Labour Court thus, in my view, had rightly concluded that the office order dated 19th June, 2002 was a forged document. The petitioner had not led any evidence to show as to who had given her this office order dated 19 th June, 2002 which she was required to adduce in view of the fact that the respondent had categorically stated in the show cause notice given to her that she had not been given any appointment and the document produced by her was a forged one and management's witness had also claimed that she had never been given any appointment and the office W.P. (C) 8730/2011 *Page 9 of 10* order dated 19th June, 2002 was forged..

11. 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 and therefore, this writ petition is dismissed in limine. P.K. BHASIN, J DECEMBER 15, 2011/pg W.P. (C) 8730/2011 Page 10 of 10

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