Dtc Vs. Ranbir Singh

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Court : Delhi

Decided On : Mar-07-2012

Judge : P.K. Bhasin

Appeal No. : W.P.(C) 18467 OF 2004

Appellant : Dtc

Respondent : Ranbir Singh

Judgement :

P.K.BHASIN, J.

(ORAL)

1. By way of this writ petition the petitioner-management challenged the decision of the Industrial Tribunal-II in O.P.No. 331/94 whereby its application under Section 33(2) (b) of the Industrial Disputes Act('the ID Act') seeking approval of its action taken for the removal of the respondent-workman from its service because of his having committed a serious act of misconduct had been rejected and approval of its said action taken was declined. The approval from the Industrial Tribunal was sought by the petitioner-management because of the pendency of some industrial dispute between the petitioner-management and its workmen in which the respondent-workman was also interested.

2. The petitioner's case before the Industrial Tribunal was that it had ordered the removal of the respondent because of his having committed serious act of misconduct of which was found guilty also in the departmental enquiry which had been ordered by the management.

3. The respondent-workman had opposed the approval application on the grounds that one month's wages had not been paid to him as required under Section 33(2)(b) of the ID Act along with the removal order and that the disciplinary proceedings conducted against him were not in accordance with the principles of natural justice inasmuch as neither the list of witnesses nor the list of documents were supplied to him. It was also claimed that even the charge levelled against him did not amount to any misconduct on his part as defined in the Standing Orders governing the DTC employees inasmuch as the alleged incident of his having beaten his co-employee had taken place not within the depot of DTC where the respondent-workman was posted at the relevant time but outside that depot. Another ground raised was that the inquiry officer had taken into consideration certain material, including the past record of the respondent, at his back without his having been given any opportunity to cross-examine the officials connected with that material.

4. The learned Industrial Tribunal decided the controversy regarding the validity of the inquiry as a preliminary issue and decided the same against the petitioner-management vide its order dated 23rd October,2002. Thereafter, opportunity was given to the petitioner-management to adduce evidence before the Tribunal itself for establishing the alleged misconduct of the respondent-workman. It is not in dispute that the petitioner-management had not led any evidence thereafter and consequently the approval application came to be rejected vide order dated 1st July,2003.

5. Feeling aggrieved, the petitioner-management filed the present writ petition in which it had sought quashing of not only the final order dated July 1, 2003 passed by the Industrial Tribunal whereby its approval application was rejected but also the earlier order dated 23rd October, 2002 whereby the issue of inquiry was decided against it.

6. Learned counsel for the petitioner-management had argued, relying upon a Single Judge Bench decision of this Court in W.P.(C) No. 3633/2004 decided on 01.07.2010 "**Delhi Transport CorporationVs Shyam Lal"** that all that the Industrial Tribunal was required to examine while dealing with the application under Section 33(2)(b) was whether the action taken by the management was bona fide and did not smack of victimization of the concerned workman. My special attention was drawn to the following observations of the learned Single Judge:-

"11. The scope of jurisdiction of the Industrial Adjudicator under Section 33(2)(b), is only to oversee the dismissal to ensure that no unfair labour practice or victimization has been practiced. If the procedure of fair hearing has been observed and a prima-facie case for dismissal is made out; approval has to be granted. The jurisdiction of the Industrial Adjudicator under Section 33(2)(b) cannot be wider than this.....

13. If the object of Section 33(2)(b) is only to prevent victimization of an employee in dispute with the management/employer, the scope of inquiry by the Industrial Adjudicator while dealing with and decidingsuch application cannot possibly be the same as while dealing with and deciding an industrial dispute.....

15. …….. the pleadings should be perused minutely to see whether any case of victimization is made out. If the workman has not pleaded a case of victimization owing to pendency of an earlier dispute or has not made out a case of action of which approval is sought having been taken against him to settle scores with him in the earlier dispute or to derive unfair advantage in the earlier dispute, or if the pleadings in this respect are vague and without particulars, no further inquiry by the Industrial Adjudicators is needed and the application under Section 33(2)(b) should be allowed immediately…….

16. If the workman in his reply to Section 33(2)(b) application or otherwise does make out a case of victimization, the industrial adjudicator should then proceed to see by examination of domestic inquiry proceedings whether the same is borne out thereform. However, such examination should again be limited…….

17. Once (in a Section 33(2)(b) proceeding) the domestic inquiry is held to be vitiated for the reason of victimization, the Industrial Adjudicator should weigh, if victimization is quite evident, need may not arise to give opportunity to the management/employer to prove misconduct before the Industrial Adjudicator; however if evidence of victimization in domestic inquiry is not so strong, the Industrial Adjudicator may proceed to determine whether charge of misconduct is false by way of victimization or not. If the workman is prima facie found guilty of misconduct, approval should still be granted by allowing the application under Section 33(2)(b)…….

20. I have perused the reply of the respondent workman to the application under Section 33(2)(b) in the file of the Industrial Tribunal requisitioned before this Court. It does not contain even a plea of victimization…….

21. The ingredient of fair hearing and opportunity also, as aforesaid has to be construed in a proceeding under Section 33(2)(b) in the context of victimization only. The scope of examination thereof under Section 33(2)(b) is much more limited than under Section 10 of the ID Act. Thus the element of fair play and compliance of the principles of natural justice in a proceeding under Section 33(2)(b) are also to be examined only to see that the same have not been breached to victimize the workman. In the absence of any plea of victimization, ordinarily there should be no case of the inquiry being bad.

22. ……The all pervasive element to be examined in a Section 33(2)(b) proceeding is of victimization and in which respect there is no *plea also in the present case".*

7. In the present case also, counsel contended, the respondent-workman had not even pleaded that he had been ordered to be removed from service as an act of victimization by the petitioner-management and consequently there was no occasion for the Industrial Tribunal to have gone quite deep into the entire matter, as has been done while rejecting the approval application and that two without even returning a finding that the respondent was a victim of victimization at the hands of the management.

8. Learned counsel for the respondent, on the other hand, submitted that though it had not been specifically or clearly pleaded in his reply to the approval application that this was a case of victimization of workman at the hands of the petitioner-management but since it had been pleaded categorically that there was violation of principles of natural justice by the petitioner-management by not supplying him material documents and denying him the opportunity to cross-examine the concerned witnesses in the inquiry and the inquiry officer examining certain documents without the authors of those documents being produced in the inquiry and opportunity having been given to the respondent-workman to cross-examine them it is clear that what the respondent-workman was trying to convey in its reply was actually that he had been victimized and consequently there was no illegality committed by the Industrial Tribunal in rejecting the approval application of the petitioner-management.

9. After having heard learned counsel for the parties and going through the judgment of this Court(supra), relied upon by the counsel for the petitioner, I am of the view that this writ petition deserves to be allowed for the reason that the respondent-workman had not even pleaded in his reply to the approval application that he had been removed from service by the petitioner only to victimize him. As far as the respondent's grievance to the effect that there was violation of principles of natural justice in the conduct of inquiry and that amounts to an act of victimization is concerned, I do not find any merit in that plea also. In any event, I do not find, prima facie, any violation of the principles of natural justice in the conduct of inquiry witnesses were examined in the evidence. The main grievance of the respondent-workman was that he had not been given a copy of the statement of the complainant of the incident and his complaint had been accepted by the inquiry officer as his statement in inquiry which could not be read as a part of the management's evidence in the absence of supply of its copy to the respondent. In support of this submission, counsel for the respondent placed reliance on a decision of the Supreme Court in ***"State of Mysore and Ors. Vs. Shivabasappa Shivappa Makapur", AIR 1963 SC 375.*** This judgment is, however, of no help to the respondent-workman inasmuch as it has been the case of the management that the complainant's statement had been furnished to him as was demanded by him and further that when the complainant was examined

during the inquiry he was cross-examined by the respondent-workman without raising any objection or protest before the inquiry officer that he should not be called upon to cross-examine the complainant for the reason that his compliant, which was sought to be relied upon by him as his statement before the inquiry officer, had not been furnished to him and in the absence of that he would not cross-examine the witnesses. On the other hand, the complainant was duly cross-examined.

10. In view of the aforesaid, I allow this writ petition and set aside the impugned order of the Industrial Tribunal. Consequently, petitioner-management's application under Section 33(2)(b) ID Act stands allowed. Respondent-workman would, however, not be rendered remediless because of the petitioner-management's action having been approved as he would still have the remedy of raising an industrial dispute and if at all it is raised by him, the appropriate Government shall deal with that in accordance with law uninfluenced by the acceptance of the present writ petition of the management and the fact that long period has elapsed in this litigation would not come in his way in getting a reference made to the Labour Court which also, in turn, shall deal with that uninfluenced by anything said in the present order.