

D.T.C. Vs. Raj Pal

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Court : Delhi

Decided On : May-09-2012

Judge : P.K. Bhasin

Appeal No. : W.P. (C) 11191 of 2005

Appellant : D.T.C.

Respondent : Raj Pal

Judgement :

ORDER P.K. BHASIN, J.

1. This writ petition has been preferred by the petitioner (DTC) challenging the Award dated 1st October, 2004 of the Labour Court whereby the removal of the respondent, who was employed with it as a driver, from its service had been held to be illegal, unjustified and his re-instatement with full back wages was ordered subject to his being found medically fit for the post of driver otherwise he was to be given some other light duty.

2. An industrial dispute was raised by the workman (respondent herein) against the termination of his services by the management of DTC which was referred vide order dated 11-12-1992, by the appropriate Government to the Labour Court for adjudication with the following term of reference:

“Whether the services of Sh. Raj Pal have been terminated illegally and/or justifiably by the management, and if so, to what relief is he entitled and what directions are necessary in this in respect?”

3. The statement of claim was filed on behalf of the workman on 01-02-1993 wherein it was claimed that he was appointed as a Driver-cum-Filter on 9-9-1975 and was confirmed on 27-12-76. He met with an accident on 03-12-1990 and so he became unfit to be a driver and he was given light duty from 16-4-91 to 18-2-92. On 19-2-92 he was orally told by the Depot Manager that his services were no more required and in that way he claimed that his services stood terminated abruptly, illegally and unjustifiably.

4. The management of DTC filed its written statement admitting that he was a confirmed employee of the DTC and was appointed as a driver on 23-5-77 and that he had met with an accident and so he was given light duty which he did till 18-2-92 and when he was asked to go for his fresh medical examination he failed to do that nor did he report for duty thereafter. It was further pleaded that he was not stopped from resuming his duties by the Depot Manager as was being claimed by him.

5. From the pleadings of the parties the following issues were framed by the Labour Court:-

(i) Whether the reference is not proper and valid as alleged in preliminary objection?

(ii) As per terms of reference.

6. After examining the evidence adduced and hearing both the parties, the Labour Court answered the reference in favour of the respondent-workman observing as follows in paras no. 9 and 10 of its award:-

“9. The crux of the case is that after 18-2-92 whether it is the workman who did not join duty or it is the fault of the management that neither he was given any type of duty nor he was given any letter for his medical check-up. The management has not placed any record to show that workman was ever been given any letter after

18-2-92 that he should report for medical check-up. Document MW1/7 does not bear any signatures of the claimant and nothing has been placed on record that it was being served upon the claimant by the management. Even otherwise if any offer was given by the management to the claimant to go for medical check-up and the claimant did not report for the same. When the management has not taken any action immediately within a short period. The management has himself filed a document i.e. ex.MW1/6 which is an application given by the claimant that his light duty period of 16 weeks has expired on 18-2-92, so he should be sent for medical check-up before DTC Medical Board so further action be taken. It seems that either because of personal vendetta of some DTC staff against the claimant or it is the lapse on their part that after 18-2-92 he was not sent for medical examination nor given any light duty.

10. Even otherwise the alleged termination in this case is Ex. MW1/A which is dated 19-11-99. As per this letter a show cause notice was given to him dated 15-9-99, reminder dated 30-9-99 and 21-10-99 and no reply was given by the claimant and so he was penalized for termination w.e.f. 20-1-99 under Clause 15(2)(VI) of D.R.T.A. (Condition of Appointment and Services), Regulation, 1952. The settled law is that if any I.D. is pending before any Court and Conciliation Officer and if any penalty is imposed on any workman such penalty has to be with the approval of such authority or the Court, it is required as per the Section 33 of the I.D. Act. The management has not taken any approval from this Court whereas this I.D. was pending since 1992. The law does not permit to penalize a workman and that to the penalty of termination without approval when I.D. is pending. Hence the termination of the workman by the management in this case is illegal and unjustified. Accordingly, the reference is answered in favour of the workman and against the management.”

7. Feeling aggrieved, this writ petition was filed by the petitioner - management.

8. From the aforesaid two paras extracted from the impugned award passed by the learned Labour Court it is quite clear that the Labour Court has not returned any finding at all as to whether the respondent-workman's services were actually terminated by the petitioner-management by refusing him duty w.e.f. 19-02-1992,

as was his case and as also was the term of reference made to it in the year 1992. The learned Labour Court had simply noticed the rival pleas. The respondent-workman was claiming that he had reported for duty on 19-02-1992 but was not allowed to resume his duties while the petitioner-management was claiming that he himself did not report for duty on 19.02.1992 nor did he appear for his medical examination. The labour Court was thus required to give its decision, one way or the other, in this regard. The question now is that should be done in this situation. Since the litigation between the parties started in the year 1992 this Court does not deem it appropriate and to be in the interest of justice to invite the findings from the Labour Court now by remanding the case as in that process the respondent-workman only would continue to suffer for many more years. So, I have decided to undertake that exercise myself since only one witness each is there from both the sides.

9. In support of his claim the respondent-workman had examined himself only and had deposed whatever he had pleaded in his statement of claim. In his cross-examination on behalf of the petitioner-management it was though put to him that he was not refused duty on 19th February, 1992, which suggestion of course he denied, it was not put to him that in fact he had started remaining absent from 19th February, 1992 onwards.

10. From the side of the management also one witness was examined who in his affidavit filed by way of his examination-in-chief had stated that the workman was never refused duty and that the Deputy Manager had also not told the workman that his services were no longer required, as was being claimed by the workman. In his cross-examination also a suggestion was put to him on behalf of the workman that he was denied duty with effect from 19th February, 1992 and he also denied that suggestion.

11. Now this Court is to decide as to whose statement on oath should be accepted. In my view, the statement of the respondent-workman to the effect that he was not allowed to come on duty with effect from 19th February, 1992 deserves to be accepted. If actually the petitioner-management had not refused duty to the respondent-workman and he had been absenting himself from duty, as was

argued by the learned counsel for the petitioner-management, steps would have been taken by the management either to tell him to report for duty or to initiate disciplinary proceedings against him for unauthorized absence from duty within a reasonable period. Petitioner-management, however, did not do that.

12. As has been noticed already, the Labour Court in the impugned Award had noticed that the management had passed an order of removal of the respondent-workman from service on 19th November, 1999, Ex. MW-1/8 and held that order to be illegal as it was passed in violation of the provisions of Section 33 of the Industrial Disputes Act.. Since, it was not the case of the petitioner-management before the Labour Court that it had passed the order of the removal of the respondent from its service in November, 1999 the Labour Court need not have proceeded to determine its validity. That could not be done since the validity of that action was not before the Labour Court. In the present writ petition it has been claimed by the petitioner that the respondent-workman was served with a charge-sheet dated 5th August, 1998 for his unauthorized absence from duty for 212 days from November, 1997 to May, 1998 and thereafter an enquiry was also held in which the respondent-workman did not participate and the enquiry officer had given the report against the workman and consequently the penalty of removal from service was imposed on him. It appears that the management had issued the charge-sheet and had held the enquiry only to frustrate the legal battle which the respondent-workman was already fighting before the Labour Court and where he was claiming that his services had already been terminated w.e.f. 19th February, 1992. That is evident from the fact that since the petitioner-management itself was claiming that the respondent-workman had not reported for duty from 19th February, 1992 onwards there was no justification for issuing him a charge-sheet in the year 1998 on the ground that he had remained absent from duty from November, 1997 to May, 1998 for a period of 212 days. That initiation of disciplinary proceedings against the respondent-workman belies its own stand that he was not reporting for duty from 19th February, 1992 onwards and it also shows that only a paper formality was being completed to show that his services had actually been terminated in the year 1999 and not in the year 1992. So, this circumstance could be used by the Labour Court while examining the petitioner's case that his services had actually been terminated in 1992 and the initiation of

disciplinary proceedings in 1998 was an eye-wash and not beyond that.

13. This Court is, therefore, of the view that the respondent-workman had succeeded in establishing his case that his services had actually been terminated in the year 1992 and that too illegally and unjustifiably by the petitioner-management by refusing duty to him without any cause. So, this Court maintains the relief given to the respondent-workman by the Labour Court, though for reasons other than what have been given by the Labour Court. Consequently, this writ petition is dismissed.

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