

D.T.C. Vs. Changga Mal

D.T.C. Vs. Changga Mal

SooperKanoon Citation : sooperkanoon.com/948870

Court : Delhi

Decided On : Mar-12-2012

Reported in : 2012(3)LLN262

Judge : P.K. Bhasin

Appeal No. : W.P.(C) 9340 OF 2004

Appellant : D.T.C.

Respondent : Changga Mal

Judgement :

P.K.BHASIN, J: (ORAL)

1. The petitioner-management had sought from the Industrial Tribunal approval of its decision to remove the respondent from its service for some serious act of misconduct. Approval of the said action taken was sought under Section 33(2)(b) of the Industrial Disputes Act, 1947 ('the Act') because of the pendency of some industrial dispute before the Industrial Tribunal between petitioner-management and its workmen in which the respondent-workman was also interested though his alleged misconduct had nothing to do with the industrial dispute pending adjudication there.

2. In the approval application it was claimed that the respondent had been removed from service after holding proper inquiry against him and also that one

month's wages, as required under the proviso to Section 33(2)(b) of the Act had been remitted to respondent by money order.

3. The respondent-workman in his reply had pleaded violation of principles of natural justice in the conduct of the departmental inquiry and another plea taken was that full month's wages, as required under the proviso to Section 33(2)(b) of the Act were not remitted to him and some unauthorized deductions were made from his salary.

4. Learned Industrial Tribunal treated and decided the issue of validity of the departmental enquiry as a preliminary issue and it was held vide order dated 06.08.2002 that a fair and proper inquiry was not held. Then opportunity was given to the management to adduce evidence before the Tribunal for establishing the alleged misconduct of the respondent. However, no evidence was adduced thereafter by the management.

5. In the final order dated 20-01-2003 the Industrial Tribunal also decided the issue of remittance of one month's wages to the respondent against the management as no evidence was adduced by the petitioner- management on that aspect of the matter also and consequently the appeal application was dismissed.

6. Feeling aggrieved, the petitioner-management filed the present writ petition.

7. I have heard the counsel for the parties and also perused the record.

8. Learned counsel for the petitioner -management argued that the learned Industrial Tribunal had gone beyond its jurisdiction while dealing with the application under Section 33(2) (b) of the Act by going too deep into question of the validity of inquiry as well as the allegation of misconduct. Learned counsel relied upon a Single Judge Bench decision of this Court in W.P.(C) No. 3633/2004 decided on: 01.07.2010 “ **Delhi Transport Corporation Vs Shyam Lal**” that all that the Industrial Tribunal was required to examine while dealing with the application under Section 33(2)(b) 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 Court in the said judgment:-

“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 deciding such application cannot possibly be the same as while dealing with and deciding an industrial dispute.....

15. In my view, the Industrial Adjudicators should insist on the complete record/report of domestic inquiry and the disciplinary authority to be produced along with an application under Section 33(2)(b). Thereafter, 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 therefrom. 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”.

9. Learned counsel for the respondent-workman while opposing this writ petition did not seriously dispute the proposition that the scope of the consideration by industrial adjudicator while dealing with an application under Section 33 (2) (b) of the Act is quite limited as has been held by this Court in the judgment relied upon by the counsel for the petitioner - management but half heartedly contended that in the enquiry the charge levelled against the respondent - workman had not been established. I have perused the order of the learned Industrial Tribunal on the issue of enquiry and find that it had held the enquiry to be vitiated on no solid grounds and even the learned counsel for the respondent was not able to highlight any deficiency in the conduct of the enquiry or in the enquiry report which could bring this case in the category of cases of victimization. I, therefore, hold that the findings of the Industrial Tribunal on the issue of enquiry are unsustainable since it was not held that it was a case of victimization of the respondent - workman. In fact, the respondent's counsel had fairly admitted that in the statement of claim

filed before the Tribunal victimization was not even pleaded.

10. It was, however, strongly submitted by the learned counsel for the respondent - workman that approval could not have been granted to the petitioner-management and had been rightly declined because of the fact that there was non-compliance of the mandatory requirement under Section 33 (2) (b) of the Act regarding payment of one month's wages to the workman while serving him with the order of removal from service. It was contended that respondent-workman had pleaded in his written statement that the petitioner-management had made unauthorized deductions from the salary remitted to the respondent-workman and since no evidence was led by management to show that deductions were permissible deductions the Industrial Tribunal was justified in conducting that there was non compliance of Section 33 (2) (b) of the Industrial Disputes Act in this regard. In support of the submission that if wages paid to a workman at the time of termination of his service are less even by one rupee the same would amount to non compliance of the mandatory requirement under Section 33 (2) (b) of the Act and also that the burden is always on the employer to prove strict compliance of Section 33 (2) (b), one judgment of the Supreme Court in "**S. Ganapathy vs. Air India**", **AIR 1993 SC 2430** was also cited.

11. However, I find no merit in the submission made by the learned counsel for the management because of the fact that a perusal of the written submission filed by the workman in the Tribunal shows that there was no specific plea taken by him as to how he was claiming that there were unauthorized deductions from his salary. The petitioner management was not to lead evidence in the negative to show that it had not made any deductions from one month's wages remitted to the workman. In the absence of any such particulars in the written statement, the Industrial Tribunal could not have rejected the approval sought for on the ground that the petitioner management had not adduced evidence regarding remittance of full month's wages to the workman.

12. I am, therefore, of the view that the impugned order of the Tribunal dismissing petitioner's application under Section 33 (2) (b) of the Act cannot be sustained. This writ petition is therefore allowed and the impugned order is set aside. It is

however, made clear that since the respondent workman had raised an industrial dispute regarding his removal from service and that industrial dispute is pending, the same shall be adjudicated on its own merits uninfluenced by any observation made in the present order by this Court.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com