

Dtc Vs. Mahinder Singh

Dtc Vs. Mahinder Singh

SooperKanoon Citation : sooperkanoon.com/955230

Court : Delhi

Decided On : Dec-10-2012

Judge : Mukta Gupta

Appellant : Dtc

Respondent : Mahinder Singh

Advocate for Pet/Ap. : Ms. Arati Mahajan Shedha, Mr. M. Taiyab Khan

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + WP(C) 2914/2001 Decided on:

10. h December, 2012 % DTC Petitioner Through: Ms. Arati Mahajan Shedha, Adv. Through: Respondent Mr. M. Taiyab Khan, Adv. versus MAHINDER SINGH Coram: HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

(ORAL) 1. Costs of Rs.5000/- has been paid to Respondent No.2 in Court today.

2. By the present petition, the Petitioner impugns the award dated 24 th May, 2000 passed by the learned Labour Court in ID-498/87 whereby the learned Labour Court held that the services of the workman/Respondent No.2 herein were terminated illegally and unjustifiably without proof of charges by the management and directed reinstatement with continuity of service. However, in view of the fact that the Respondent was equally responsible for prolonging the litigation since 1991, he was only awarded 50% of the back wages during the intervening period

of termination and till reinstatement.

3. Learned counsel for the Petitioner contends that the Respondent No.2 was appointed as a Driver on 4th February, 1980 and he was charge-sheeted on 26th September, 1984 for stopping the out shedding of the buses and preventing other drivers too from out shedding their buses along with three other persons namely Phool Kumar Conductor, Dalip Singh Driver and Rajbir Driver due to which the Petitioner suffered financial losses and inconvenience was caused to the commuters on account of holdup of buses. On an enquiry being conducted, the Respondent was dismissed from service vide order dated 18th November, 1986. On the Respondent No.2 raising an industrial dispute, a reference on the following terms was sent for adjudication: Whether the removal from service of Shri Mohinder Singh is illegal and/or unjustified, if so, to what relief is he entitled and what directions are necessary in this respect? 4. The claim of the Respondent before the Trial Court was that the enquiry conducted by the Petitioner was arbitrary, unjustified and illegal, which violated the principles of natural justice and findings of the Inquiry Officer were perverse. These averments were denied by the Petitioner in the written statement and it was stated that the show cause notice for removal with effect from 19th November, 1986 was given to the Respondent No.2 under Para No.15(2) of the D.R.T.A. Conditions of Appointment and Services Regulation, 1972. The enquiry was conducted fairly in accordance with the principles of natural justice. On the pleadings of the parties, the following issues were framed initially: 1. Whether Delhi Administration was not the appropriate Govt. to make reference? 2. As per terms of reference.

5. On 13th July, 1994, additional issue regarding fairness of the departmental enquiry was framed. This was treated as a preliminary issue. During the course of proceedings, the management proved the enquiry proceedings as well as the findings and the charge sheet. The Respondent claims that all the witnesses turned hostile during the enquiry proceedings except the incharge of the depot Puranmal, who had though named the Respondent/workman, however, the same was not supported by any other evidence on record. He named two drivers Umed Singh and Udai Singh, whose buses were stopped, however, these drivers also when appeared before the Inquiry Officer did not name the Respondent and other

delinquents. Hence this was a case of no evidence and findings were perverse. Learned Trial Court held that no reliance could be placed on the statement of Puranmal to prove the charges that on 18 th September, 1984 at about 4:45 hrs. the Respondent along with three others stopped the out shedding of the buses from the Okhla Depot-I of DTC and that the Respondent prevented other drivers of the depot from out shedding their buses. Learned Trial Court also came to the conclusion that the charges leveled against the Respondent were vague as no bus number nor the names of the drivers who were stopped from out shedding their buses were mentioned in the charge-sheet and thus, the claimant had been prejudiced by such vague charges.

6. The application of the management to lead evidence to prove charges was filed belatedly after hearing of the arguments on 22nd May, 2000, thus learned Trial Court held that the Petitioner could not be permitted to lead evidence at this belated stage as it did not claim its right as a vigilant litigant while filing its written statement. In view of the fact that the charges were not proved against the Respondent, the reference was answered in favour of the workman.

7. Learned counsel for the Petitioner has taken me through the evidence before the Inquiry Officer, which was considered by the learned Trial Court and it came to the conclusion that findings of the Inquiry Officer were perverse. I have read the statement of Puranmal, Traffic Inspector, who was the duty officer of the Okhla Depot at the relevant time. He has stated that on 17th September, 1984 from 21:00 hrs to 5.00 AM in the morning he was working as duty officer. At about 4.45 AM he came at the gate and four persons namely the Respondent, Rajbir Singh Driver, Dalip Singh Driver and Phool Kumar Conductor were stopping the buses. On enquiry as to why they were stopping the buses, they stated that the day before they had an altercation with the Assistant Engineer and they will not let the buses to go out. He told the security guard Roop Chand that these drivers were not allowing the buses to go out, who told him to telephone to senior officers. Since there was no out shedding, Puran Chand boarded a bus from Kalkaji Depot and reached Pragati Maidan and reported the matter there. In the cross-examination of this witness, the workman has asked him the time when he saw the Respondent and three others stopping the buses. This witness categorically stated

that it was 4.45 AM. The other question asked to this witness was that did the Respondent ask any driver to stop the buses. This witness took the name of two drivers. Those drivers Umed Singh and Udai Singh have also entered the witness box. They have stated that their buses were stopped, however, they did not name the Respondent. Merely because they did not name the Respondent, the testimony of Puranmal is not washed out, who was the duty officer at the relevant time. It cannot be said that the findings of the Inquiry Officer were based on no evidence. In *Employers of Firestone Tyre and Rubber Co. (Private) Ltd. v. the Workmen*, AIR 196.SC 236.it was held that the Tribunal does not exercise appellate powers on the enquiry proceedings. It cannot go into the sufficiency of evidence. Further in *State of Haryana & Anr. v. Rattan Singh*, (1977) 2 SCC 49.it was held that the essence of judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny by court, while absence of any evidence in support of the finding is an error of law apparent on the record and the court can interfere in the finding. It can set aside the finding of the enquiry officer only if it is based on no evidence or if the enquiry is not fair or contrary to the principles of natural justice. Thus, I am of the considered opinion that the learned Labour Court committed a serious error in re-appreciating the entire evidence. The present is not a case of no evidence. The testimony of Puranmal could not have been discarded merely because the two bus drivers though supported the entire incident but did not name the Respondent. Thus, the findings of the learned Labour Court that the findings of the Inquiry Officer are perverse are set aside.

8. As regards the finding of vagueness of charges is concerned, I disagree with the learned Trial Court. The workmen had stopped a number of buses from out shedding and thus the bus numbers or the name of the driver of each bus was not required to be incorporated in the charge.

9. The next issue that arises for consideration is that on the enquiry being held to be valid, whether the punishment of dismissal was proportionate or not. Learned counsel for the Petitioner contends that past record of the Respondent is not proper which should be taken into account whereas learned counsel for the

Respondent contends that for the past conduct, the Respondent has already been penalized and appropriate penalties in regard to the past conduct have already been awarded to him. The allegations against the Respondent were that he along with three others was not permitting the buses to go out. No doubt the same would have caused loss to the Petitioner management, however, the said misconduct was not so serious as to entail the punishment of removal from service. Demonstrations/dharnas often lead to obstruction of movement of vehicles. Learned Trial Court while holding that the Respondent is entitled to reinstatement has awarded him 50% back wages only. I think this is sufficient penalty for the misconduct of the Respondent.

10. As regards the contention of learned counsel for the Respondent that industrial dispute raised by other three co-delinquents was answered in their favour, learned counsel for the Petitioner points out that in the said industrial disputes, the Petitioner had led no evidence and even enquiry proceedings were not placed on record. Thus, the Respondent cannot claim parity with the cases of co-delinquents.

11. The petition is disposed of accordingly. (MUKTA GUPTA) JUDGE
DECEMBER 10 2012 VKM

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