Subhash Chander Vs Delhi Transport Corporation

Court: Delhi High Court

Date of Decision: Sept. 23, 2008

Acts Referred: Constitution of India, 1950 â€" Article 226

Hon'ble Judges: Siddharth Mridul, J

Bench: Single Bench

Advocate: Lalit Kumar, for the Appellant; Hanu Bhaskar, for the Respondent

Final Decision: Dismissed

Judgement

Siddharth Mridul, J.
The present petition invokes the writ jurisdiction of this Court under Article 226 of the Constitution of India praying

for a writ of mandamus thereby directing the respondents to reinstate the petitioner in service with all back wages and consequential benefits.

2. The brief facts necessary for the adjudication of the present writ petition are as follows:

a. The petitioner had been employed as Driver with the respondent-Delhi Transport Corporation (in short "DTC") and was lastly posted at

Wazirpur Depot-III.

b. According to the petitioner his conduct was satisfactory. However, the DTC terminated his services illegally and arbitrarily w.e.f. 13th

December, 1994.

c. The petitioner alleges that a false charge sheet dated 20th May, 1994 was issued to him for taking leave without pay for 114 days. The

petitioner submitted his reply to the charge sheet and furnished satisfactory explanation to the charges levelled against him.

d. It was also submitted on behalf of the petitioner that the inquiry conducted by the DTC was defunct inquiry and the same was conducted against

the principles of natural justice. It was, moreover, alleged on behalf of the petitioner that the Inquiry Officer was biased.

e. The Petitioner had purportedly stated that he had never admitted the charges and had in fact given explanation about the circumstances under

which he had to avail the leave without pay. Petitioner submitted that availing leave without pay is not a mis-conduct.

f. The DTC contested the claim of the petitioner by filing written statement alleging that the petitioner had committed misconduct during the course

of the employment.

g. The DTC contended that the petitioner had remained absent from duty from the 1st January, 1993 to the 31st December, 1993 amounting to

114 days in which four days were without any intimation and unauthorizedly and 110 days were after rejection of leave. The DTC urged that the

work of the Corporation had suffered as a consequence thereof and loss had been occasioned to the DTC.

h. On behalf of the DTC it was stated that the charge-sheet was issued to the petitioner to which the petitioner replied. Since the DTC was not

satisfied with the reply furnished on behalf of the petitioner, the matter was referred for inquiry into the case. On behalf of the DTC it was further

stated that an inquiry was conducted in accordance with the principles of natural justice wherein the petitioner admitted to the charges levelled

against him without force and/or pressure. Therefore, after the inquiry was so conducted, the Inquiry Officer furnished his report to the Depot

Manager who upon due consideration of the Inquiry Report as well as of the past record of the petitioner, issued a show cause notice for the

latters" removal. A reply was furnished on behalf of the petitioner, to the said show cause notice, but the same was not found satisfactory.

Consequently, the punishment for misconduct was confirmed.

i. Thereafter the reference was made by the appropriate Government to the Industrial Adjudicator with the following reference:

Whether the removal of Shri Subhash Chandar s/o Shri Kali Ram from the services of the Corporation is illegal and/or unjustified and if so to what

relief is he entitled and what directions are necessary in this respect?

j. On the averments made on behalf of the parties, the Industrial Adjudicator proceeded to frame the following issues:

(i) Whether the action of the Management is without holding valid and proper inquiry? OPW.

(ii) If Issue No. 1 is decided against the Management, whether the punishment awarded to the workman is illegal and unjustified? OPW.

(iii) In terms of reference.

k. Vide order dated 16th December, 2006, the Industrial Adjudicator came to a finding in relation to Issue No. 1, to the following effect:

(i) That the period of absence of the petitioner from January, 1993 to December, 1993 for 114 days had already been regularized as he was

granted leave without pay, by the DTC.

(ii) That in view of the circular dated 14th December, 1988, the petitioner has not committed any misconduct, since he was granted leave without

pay by the Competent Authority for the period of absence.

(iii) That a bare perusal of the proceedings showed that the inquiry was a sham and bogus inquiry. This is so because it must be kept in mind that at

the relevant time the circular dated 14th December, 1988 was in operation, and the petitioner alleged that he had applied for leave along with

medicals and his leaves had been sanctioned. Therefore, in these circumstances, the workman was aware that no action for misconduct could be

taken against him by the DTC and consequently, there was no occasion for the workman to admit his guilt before the Inquiry Officer.

On the basis of the above Issue No. 1 was decided against the DTC.

1. However, with regard to Issue No. 2, the Industrial Adjudicator found that MW3, Ms. Shashi Dhingra who had reported the case against the

petitioner, produced the record of rejected leave applications, whereby it was proved that the leave applications of the workman for 110 days

were rejected by the DTC and that the petitioner had failed to submit applications for the remaining 4 days. Therefore, it was held that the

petitioner had committed a misconduct as alleged.

In arriving at this finding, the Industrial Adjudicator relied upon the decision of the Supreme Court in Delhi Transport Corporation Vs. Sardar

Singh, , where it has been held that:

When an employee absents himself from duty, even without sanctioned leave for very long period, it prima facie shows lack of interest in work.

Para 19(h) of the Standing Order as quoted above relates to habitual negligence of duties and lack of interest in the Authority''s work. When an

employee absents himself, from duty without sanctioned leave the Authority can, on the basis of the record, come to a conclusion about the

employee being habitaully negligent in duties and an exhibited lack of interest in the employer''s work. Ample material was produced before the

Tribunal in each case to show as to how the concerned employees were remaining absent for long periods which affect the work of the employer

and the concerned employee was required at least to bring some material on record to show as to how his absence was on the basis of sanctioned

leave and as to how there was no negligence. Habitual absence is a factor which establishes lack of interest in work. There can not be any

sweeping generalization. But at the same time, some telltale features can be noticed and pressed into service to arrive at conclusions in the

departmental proceedings.

Great emphasis was laid by learned Counsel for the respondent-employee on the absence being treated as leave without pay. As was observed by

this Court in State of Madhya Pradesh v. Harihar Gopal (1969) (3) SLR 274) by a three judge Bench of this Court, even when an order is passed

for treating absence as leave without pay after passing an order of termination that is for the purpose of maintaining correct record of service. The

charge in that case was, as in the present case, absence without obtaining leave in advance. The conduct of the employee in the case is nothing but

irresponsible in extreme and can hardly be justified. The charge in this case was misconduct by absence. In view of the Governing Standing Orders

unauthorized leave can be treated as misconduct.

Conclusions regarding negligence as lack of interest can be arrived at by looking into the period of absence, more particularly, when same is

unauthorized. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant material.

Clause (11) of Para 4 of the Standing Order shows the seriousness attached to habitual absence. In Clause (1) therefore, there is requirement of

prior permission. Only exception made is in case of sudden illness. There also conditions are stipulated, non-observance of which renders the

absence unauthorized.

Consequently, based on the decision abovementioned, the Industrial Adjudicator returned a finding that the mere fact that the leave was sanctioned

without pay does not mean that the unauthorised absence was condoned.

m. With regard to Issue No. 3, the Industrial Adjudicator, came to the following finding:

(a) That Shri K.C. Gupta, MW2, had deposed that the then Depot Manager, Shri R.S. Tyagi, issued a show cause notice for removal of the

petitioner. The reply given by the petitioner was considered by the said Deputy Manager, who confirmed the punishment after considering the

Inquiry Report and the past record.

(b) That the past record of the petitioner clearly showed that the petitioner had been censured twice for unauthorised absence in the year 1992.

The petitioner had been given the punishment of lowering of two stages in the pay scale for unauthorised absence for 52 days in the year 1992.

(c) That the petitioner was again given a warning for unauthorised absence on 20th January, 1993.

Resultantly, the Industrial Adjudicator found that the punishment imposed against the petitioner is legal and justified.

n. In view of the findings arrived at by the Industrial Adjudicator, it was held that the removal of the petitioner from the services of the Corporation

was legal and justified and that the petitioner was not entitled to any relief.

o. Aggrieved by the impugned award dated 14th February, 2007, the petitioner filed the present writ petition as aforesaid.

3. Counsel for the petitioner submitted that the petitioner had submitted medical certificates along with the application for leave on numerous

occasions and that, therefore, in this behalf, the present petition could be distinguished as being an exception to the decision of the Supreme Court

in DTC v. Sardar Singh (supra). However, the petitioner has not been able to produce any relevant record in this behalf. Further, no such record is

demonstrated by the petitioner as having been filed as is evident from a reading of the impugned award passed by the Industrial Adjudicator. In the

circumstances, I find that this submission on behalf of the petitioner is of no avail.

4. From a conspectus of DTC v. Sardar Singh (supra), the following legal position is clearly discernable:

A) Habitual or continuous absence from duty without sanctioned leave for long time, prima facie amounts to ""Habitual negligence of duties and lack

of interest in .....work"" which constitutes the misconduct under relevant standing order of the DTC.

B) Burden lies on the petitioner concerned to prove otherwise by placing relevant material on record.

C) The Industrial Adjudicator is justified in coming to a finding that the claimant is guilty of misconduct based on the sufficient material produced

before the Industrial Adjudicator.

D) The treatment of absence as leave without pay for maintaining correct record of service cannot be treated as the same as sanctioned or

approved leave.

E) The absence without sanctioned or approved and leave on rejection of application for leave is to be treated as unauthorized leave.

5. In the present case, it is seen that it is an admitted position that the petitioner had taken leave without pay for 114 days. It is also seen that

although he had applied for leave of 110 days, the said applications for leave had been rejected by DTC. The petitioner had not applied for leave

for the remaining four days. On behalf of DTC it was urged that the work of the Corporation had suffered as a consequence of unauthorized leave

availed by the petitioner. The DTC after holding an inquiry, wherein the petitioner had admitted his guilt, came to a conclusion that the present was

a case fit for taking action for misconduct against the petitioner. The DTC had thereafter issued a show cause notice to the petitioner who replied

thereto. Thereafter, since the explanation was not found satisfactory, keeping in mind the past record of the petitioner, the DTC came to the

conclusion that punishment for misconduct ought to be confirmed. It is also seen that on behalf of the DTC it was clearly deposed by producing

record in this behalf that the leave applications of the workman had been rejected by the DTC. Further, it was also established by production of

the relevant record that the petitioner had been censured twice for absence in the year 1992 and had been given punishment by lowering two

stages in the pay scale for unauthorized absence of 52 days during the year 1992. Furthermore, it was estabilised that the petitioner had been given

warning for unauthorized absence on 20th January, 1993. It may be observed that, it was an admitted position that the petitioner had remained

absent from duty w.e.f. 1st January, 1993 to 31st December, 1993, a period of 114 days in which four days was without any intimation and

unauthorizedly and the remaining 110 days due to rejection of leave.

6. The scope of judicial review in a proceeding under Article 226 of the Constitution of India is no longer res integra. This Court under the

provisions of Article 226 of the Constitution of India cannot undertake the exercise of liberally reappreciating the evidence and drawing

conclusions of its own on pure questions of fact. The findings of fact recorded by a fact-finding authority duly constituted for the purpose cannot be

interfered with as long as they are based upon some material relevant for the purpose or even on the ground that there is yet another view which

can reasonably and possibly be taken.

7. In the present case the findings of the Industrial Adjudicator are based on the appreciation of evidence produced before it. I am of the view that

the findings cannot be said to be based on no evidence at all, so as to, warrant re-appreciation of evidence, by this Court. The limitations on the

jurisdiction of this Court are well settled. A writ in the nature of certiorari may be issued only if the finding of the Industrial Adjudicator suffers from

an error or jurisdiction or from a breach of principles of natural justice or is vitiated by a manifest or apparent error of law. No such issue has been

urged or established in the instant case on behalf of the petitioner. The Court will not countenance the picking of holes here and there in the award

on trivial points and attempting thereby to frustrate the entire adjudication process before the Industrial Adjudicator on hypertechnical grounds as is

being sought to be done by the petitioner in the present case.

8. This Court under the provision of Article 226 of the Constitution of India does not interfere with the finding of fact arrived at by the Industrial

Adjudicator unless the same is based on no evidence or is perverse. In my view impugned order of the Industrial Adjudicator does not suffer from

any infirmity in this behalf so as to warrant interference under the provision of Article 226 of the Constitution of India, which even otherwise is a

discretionary relief.

9. In the circumstances, the writ petition is devoid of merits and is hereby dismissed as such.