Mahesh Kumar Sharma Vs Sahara India Pariwar

Court: Delhi High Court

Date of Decision: Jan. 14, 2019

Acts Referred: Code of Civil Procedure, 1908 â€" Section 151
Industrial Disputes Act, 1947 â€" Section 11A
Constitution of India, 1950 â€" Article 226

Citation: (2019) 1 LLJ 744

Hon'ble Judges: Rekha Palli, J

Bench: Single Bench

Advocate: L.S. Chaudhary, Ajay Chaudhary, Parambir Singh, Vishesh Kumar, Viresh Chaudhary, Anurag Tomar, Neha Gupta

Final Decision: Allowed

Judgement

Rekha Palli, J

1. Vide the present petition under Article 226 of the Constitution of India, the petitioner seeks quashing of the orders dated 20th September, 2010 and

23rd September, 2010 as also the Award dated 27th September, 2010 passed by the learned Labour Court, Karkardooma Courts, Delhi in ID

No.225/05 (old) 432/08 (new).

2. The brief facts necessary for the adjudication of the present writ petition may be noted at the outset. The petitioner having been appointed as a

Clerk/Assistant Junior Worker (Cashier) with the respondent on 23rd November, 1985, was dismissed from service vide order dated 14th March,

2005, based on the findings of a domestic inquiry which, according to the petitioner, was conducted in a biased and pre-determined manner and

without following the principles of natural justice. The petitioner, after serving a legal notice to the respondent, raised an industrial dispute which was

referred to the learned Labour Court resulting in the aforesaid ID No.225/2005.

3. The petitioner then filed his affidavit of evidence before the learned Labour Court on 11th January, 2007, whereafter he was cross-examined on

various dates and his evidence was finally concluded on 12th April, 2010. The record further shows that on 2nd August, 2010, the respondentÃ¢â‚¬â„¢s

first witness/MW 1 had appeared before the Labour Court but his cross-examination had to be deferred as no authorised representative of the

petitioner was present to cross-examine the said witness. The matter was, therefore, adjourned to 20th September, 2010, on which date MW 2

appeared before the Court and tendered his examination-in-chief by way of an affidavit. However, he could not be cross-examined on the same date

as the authorised representative of the petitioner/workman was not present and at about 12:38 p.m., as recorded in the impugned order itself, the right

of the petitioner to cross-examine MW 2 was effectively closed. Vide the same order, the Court also declined to grant any further opportunity to the

respondent/management for producing MW 1 for his cross-examination on account of his failure to appear before the Court after his examination-in-

chief was recorded on 2nd August, 2010. The Court then directed that the matter to be listed on 22nd September, 2010, for arguments on the

preliminary issue regarding validity of the inquiry.

4. The record shows that on 20th September, 2010 itself at 1:00 p.m., the petitioner moved an application under Section 151 CPC read with Section 11

A of the Industrial Disputes Act, 1947 seeking recall of the impugned order passed earlier that day and requested that he be permitted to cross-

examine MW 2. This application was taken up for hearing at 1:10 p.m. by the learned Labour Court and was dismissed by holding that no justifiable

reasons had been given in the said application except for stating that the authorised representative of the workman was busy when the matter was

called out earlier.

5. After the dismissal of the petitionerÃ¢â‚¬â„¢s aforesaid application, the matter was taken up on 23rd September, 2010, on which date the learned

Labour Court, by relying on the unrebutted testimony of MW 2, passed an order deciding the issue of the validity of the inquiry against the petitioner.

Subsequently, vide the impugned Award dated 27th September, 2010, which was again based on the unrebutted evidence of MW 2, the learned

Labour Court rejected the claim of the petitioner. It is in these circumstances that the present petition has been filed impugning the order passed on

dated 20th September, 2010 as also the consequential order dated 23rd September, 2010 and Award dated 27th September, 2010.

6. The only short submission made by the learned counsel for the petitioner is that it being an admitted position that MW 2, on whose unrebutted

testimony the issue of the validity of the inquiry was held against the petitioner and the impugned orders were passed, had appeared before the learned

Labour Court for the first time only on 20th September, 2010, there was no reason for the Court not to accommodate a bona fide request of the

petitioner/workman for a passover so as to enable his authorised representative to cross-examine the said witness. I am of the view that even though

the impugned order dated 20th September, 2010 records that no cross-examination had been carried out despite an opportunity being granted, the very

fact that the said order had been passed at 12:38 p.m. as recorded in the order itself and an application for recall of the same was moved at 1:00 p.m.

on the very said date, which was also dismissed at 1:10 p.m. as recorded in the order itself, makes it evident that there is merit in the submission of

learned counsel for the petitioner, that he was always willing to cross-examine MW 2 and if he had been granted a short accommodation by way of a

passover, MW 2Ã¢â‚¬â„¢s cross-examination could have taken place on the same day.

7. Learned counsel for the respondent has tried to defend the impugned Award on merits but has not been able to dispute the aforesaid position that

the application for recall of the order passed at 12:38 pm on 20th September, 2010 was dismissed on the very same day at 1:10 p.m. She, however,

submits that even the respondent was denied an opportunity to produce MW 1 for cross-examination and, therefore, states that in case the petitioner is

granted an opportunity to cross-examine MW2, the respondent may also be granted liberty to produce MW 1 for cross-examination. In these

circumstances, I am unable to appreciate as to how the learned Labour Court has come to a conclusion that the cross-examination of MW 2 was not

carried out despite an opportunity or that there was such a pressing hurry to close the right of the petitioner/workman to cross-examine MW 2,

especially when it is an admitted position that MW 2 had appeared before the Court for the first time only on 20th September, 2010. Therefore, it

cannot be stated that the petitioner had deliberately avoided to cross-examine MW 2 or was taking unnecessary adjournments for the said purpose.

Although the learned Labour Court was fully justified in directing that the proceedings be expedited in view of the fact that it was an industrial dispute

relating to the year 2005, in my considered opinion there was no justification for the learned Labour Court to proceed with such a tearing hurry by

giving a go bye to the principles of natural justice. It must be borne in mind that the right of cross-examination is vital for a workman to defend himself

against the evidence tendered by the witnesses produced against him. The Court ought not to prejudice the workman by closing this right in undue

haste as it is an important tool to arrive at the truth.

8. Therefore, the order dated 20th September, 2010 as also the consequential order dated 23rd September, 2010 and impugned order dated 27th

September, 2010, cannot be sustained and are set aside. The matter is remanded back to the learned Labour Court to proceed with the matter from

the stage of cross-examination of MW 1 and MW 2. It is made clear that the petitioner will not be granted more than two opportunities for cross-

examining the aforesaid witnesses.

9. Keeping in view the fact that the matter pertains to the dismissal of the order passed in 2005, the learned Labour Court is requested to expedite the

hearing. The petitioner would be at liberty to move an appropriate application before the Court with an advance copy to the learned counsel for the

respondent appearing before this Court, for fixing a date for the appearance and cross-examination of MW 1 and MW 2.

10. The petition is allowed in the aforesaid terms with no orders as to costs.