2025:DHC:886

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on: 10.02.2025*
Judgment pronounced on: 13.02.2025

\+ **W.P.(C) 12960/2019 & CM APPL. 52840/2019**

M/S MOHAN BROTHERS .....Petitioner

Through: Mr. Ashutosh Rana, Advocates.

versus

MR. MITHILESH PANDEY .....Respondent

Through: Mr. Basab Sengupta and Mr. R.S. Kaushik, Advocates.

CORAM:
HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T

GIRISH KATHPALIA, J.:

1. This writ action, brought under Article 226 of the Constitution of India assails Labour Court Award dated 25.05.2019 whereby, holding that services of the respondent workman were illegally terminated, the petitioner management was directed to pay him a compensation of Rs.5,00,000/-. On service of notice of the petition, the respondent entered appearance through counsel before the predecessor bench. I have heard learned counsel for both sides and perused the records.

2. Succinctly stated, circumstances leading to the present petition are as follows.

2.1 The Deputy Labour Commissioner, Government of NCT of Delhi sent a Reference to the Labour Court as to whether the present respondent had received full and final payment on his own volition from the present petitioner or his services were terminated by the present petitioner illegally or unjustifiably and if so, the relief to which he is entitled.

2.2 On service of notice from Labour Court, the present respondent filed Statement of Claim pleading that he was employed with the present petitioner since 05.03.2002 on the post of Bus Driver at a monthly salary of Rs.9200/-, but when he demanded the facilities like appointment letter, weekly and yearly leave, overtime, bonus etc., the present petitioner terminated his services on 09.09.2012 without any notice and without payment of salary for the period from 01.08.2012 to 08.09.2012; that despite his demand letter to the petitioner and a written complaint to the Labour Commissioner, the petitioner management refused to reinstate his service; and that since the date of termination of service, he is unemployed.

2.3 The present petitioner filed Reply to the Statement of Claim, pleading that the respondent was employed with the petitioner from 01.11.2005 to 31.05.2011, after which he left the job and joined again with effect from 01.11.2011 at a reduced salary of Rs.8,550/- per month but worked only till 24.08.2012 and thereafter never reported for duty; that on 25.08.2012 the

respondent workman requested for advance payment regarding which he was assured that his request would be considered on 27.08.2012, but he stopped reporting for duty from 27.08.2012; that on 08.09.2012 the respondent again visited office of the petitioner to collect salary for the month of August 2012 and the same was paid to him; that on 08.09.2012 itself, the respondent also informed the petitioner that he had joined job elsewhere, so his account be settled in full and final; that at his request, the petitioner management prepared a voucher towards due amount, but the respondent refused to accept the same, stating that he would come on some other date; that in the last week of September 2012, the respondent again visited office of the petitioner and collected his full and final settlement amount in cash.

2.4 On the basis of above pleadings, the Labour Court framed two issues as to whether the present respondent had absented himself from duty with effect from 27.08.2012, onus whereof was placed on the petitioner management and the issue on the terms of Reference. Both sides examined one witness each and after hearing both sides, the Labour Court passed the impugned award.

2.5 In the impugned award, the Labour Court after analyzing the evidence on record held that the present petitioner had failed to prove its pleadings that the present respondent had voluntarily absented himself from duty with effect from 27.08.2012 and that the voucher of full and final settlement is a forged document. The Labour Court, further taking note of the evidence on

record that the present respondent had obtained a job elsewhere held that it is not a fit case to direct reinstatement of service and that for illegal termination of his service, the present respondent is entitled to compensation of Rs.5,00,000/- from the present petitioner.

3. Hence, the present petition.

4. During arguments, learned counsel for both sides took me through record in support of their rival contentions.

4.1 Learned counsel for petitioner argued that in their Written Statement, the petitioner offered the respondent to join back the service but he did not do so, therefore, it is a clear case of voluntary abandonment of service and consequently, the present respondent is not entitled to any compensation in lieu of reinstatement. Learned counsel for petitioner also laid heavy emphasis that the respondent workman had falsely pleaded in his Statement of Claim that he is unemployed; and in this regard, learned counsel for petitioner took me through cross examination of the present respondent where he admitted about his current employment. On behalf of petitioner, it was also argued that vide voucher dated 08.09.2012, the respondent workman was paid a sum of Rs.30,000/- which he accepted towards full and final settlement, so no compensation was called for. In support of his arguments, learned counsel for petitioner placed reliance on judicial precedent in the case of ***Sonal Garments vs. Trimbak Shankar Karve,*** 2003 (1) LLN 91, in which the learned Single Judge of Bombay High Court held

that where offer of the management for reinstatement was not accepted by the workman, he would not be entitled to relief of reinstatement and back wages at all.

4.2 On the other hand, learned counsel for respondent workman supported the impugned award and contended that the voucher in question is clearly a fabricated document. Learned counsel for respondent emphasized that no full and final amount was paid to the respondent by the petitioner. On behalf of respondent, I was also taken through report dated 04.12.2012 of the Labour Inspector, according to which the present petitioner had refused to take the present respondent back in job. Further, learned counsel for respondent also took me through evidence on record to show that even after termination of his services, the present respondent is not regularly employed anywhere though he is working and being paid on the basis of distance driven. Learned counsel for respondent also pressed that no evidence *qua* the alleged abandonment of service was led by the petitioner management.

4.3 As regards the legal position, there is no dispute between the parties. However, both sides placed on record copies of various judicial precedents, many of which are not even relevant. That is why, only one judicial precedent of ***Sonal Garments*** (supra) was referred during arguments. The entire dispute revolves around the questions of facts and appreciation of evidence.

5. To begin with, it would be apposite to briefly traverse through the scope of interference by this court under Article 226 of the Constitution of India while dealing with disputes of the present nature. The jurisdiction available to the High Court under Article 226 of the Constitution of India is not in the nature of appellate or revisional jurisdiction. It is an extraordinary jurisdiction in which the discretion can be exercised within the limited parameters, delineated by the Supreme Court.

5.1 Most recently, in the case of ***State of Rajasthan & Ors. vs. Bhupendra Singh,*** 2024 SCC OnLine SC 1908, the Supreme Court recapitulated the legal position on the scope of Article 226 of the Constitution of India thus:

> *"23. The scope of examination and interference under Article 226 of the Constitution of India (hereinafter referred to as the 'Constitution') in a case of the present nature, is no longer res integra. In* ***State of Andhra Pradesh v. S Sree Rama Rao****, AIR 1963 SC 1723, a 3-Judge Bench stated:*
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> > *'7. … The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the*

departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.' (emphasis supplied)

24. The above was reiterated by a Bench of equal strength in ***State Bank of India v. Ram Lal Bhaskar****, (2011) 10 SCC 249. Three learned Judges of this Court stated as under in* ***State of Andhra Pradesh v. Chitra Venkata Rao****, (1975) 2 SCC 557:*

'21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723 : (1964) 3 SCR 25 : (1964) 2 LLJ 150]. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in

that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

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23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that

the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K.S. Radhakrishnan [AIR 1964 SC 477 : (1964) 5 SCR 64].

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do.

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26. For these reasons we are of opinion that the High Court was wrong in setting aside the dismissal order by reviewing and reassessing the evidence. The appeal is accepted. The judgment of the High Court is set aside. Parties will pay and bear their own costs.'

*25. In **State Bank of India v. S.K. Sharma**, (1996) 3 SCC 364, two learned Judges of this Court held:*

'28. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk [[1949] 1 All ER 109 : 65 TLR 225] way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder Singh Gill v. Chief Election Commr. [(1978) 1 SCC 405 : (1978) 2 SCR 272]) The objective is to ensure a fair hearing, a fair deal,

to the person whose rights are going to be affected. (See A.K. Roy v. Union of India [(1982) 1 SCC 271 : 1982 SCC (Cri) 152] and Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664].) As pointed out by this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262], the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable — a fact also emphasised by House of Lords in Council of Civil Service Unions v. Minister for the Civil Service [[1984] 3 All ER 935 : [1984] 3 WLR 1174 : [1985] A.C. 374, HL] where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing — applying the test of prejudice, as it may be called — that any and every complaint of violation of the rule of audi alteram partem should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding — which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., Liberty Oil Mills v. Union of India [(1984) 3 SCC 465]. There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of audi alteram partem altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries : a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate — take a case where the person is dismissed from service without hearing him altogether (as in Ridge v. Baldwin [[1964] A.C. 40 :

[1963] 2 All ER 66 : [1963] 2 WLR 935]). It would be a case falling under the first category and the order of dismissal would be invalid — or void, if one chooses to use that expression (Calvin v. Carr [[1980] A.C. 574 : [1979] 2 All ER 440 : [1979] 2 WLR 755, PC]). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704]) or without affording him a due opportunity of cross-examining a witness (K.L. Tripathi [(1984) 1 SCC 43 : 1984 SCC (L&S) 62]) it would be a case falling in the latter category — violation of a facet of the said rule of natural justice — in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct — in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.'

26. In ***Union of India v. K.G. Soni****, (2006) 6 SCC 794, it was opined:*

'14. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., [1948] 1 K.B. 223 : [1947] 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open

to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision.

15. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.'

27. The legal position was restated by two learned Judges in ***State of Uttar Pradesh v. Man Mohan Nath Sinha****, (2009) 8 SCC 310:*

'15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to reappreciate and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions. In the instant case, the High Court fell into grave error in scanning the evidence as if it was a court of appeal. The approach of the High Court in consideration of the matter suffers from manifest error and, in our thoughtful consideration, the matter requires fresh consideration by the High Court in accordance with law. On this short ground, we send the matter back to the High Court.'

28. Turning our gaze back to the facts herein, we find that the learned Single Judge and the Division Bench acted as Courts of Appeal and went on to re-appreciate the evidence, which the above-enumerated authorities caution against. The present coram, in Bharti Airtel Limited v. A.S. Raghavendra, (2024) 6 SCC 418, has laid down:

'29. As regards the power of the High Court to reappraise the facts, it cannot be said that the same is completely impermissible under Articles 226 and 227 of the

Constitution. However, there must be a level of infirmity greater than ordinary in a tribunal's order, which is facing judicial scrutiny before the High Court, to justify interference. We do not think such a situation prevailed in the present facts. Further, the ratio of the judgments relied upon by the respondent in support of his contentions, would not apply in the facts at hand."

6. Falling back to the present case, as mentioned above, according to the respondent workman, his services were illegally terminated by the petitioner management on 09.09.2012 without giving him any notice or even salary for 01.08.2012 to 08.09.2012; on the other hand, according to the petitioner management, it is the respondent workman who voluntarily abandoned the job after accepting full and final settlement amount of Rs.30,000/- through voucher dated 08.09.2012, though the said amount was received by him in the last month of September 2012.

7. At the outset, it would be apposite to note that the compensation awarded to the respondent workman in the impugned award was not in lieu of reinstatement of his services. As categorically observed in the impugned award, the compensation was for illegal termination of services of the respondent workman.

8. In view of the rival pleadings and evidence, I am unable to accept the argument of learned counsel for petitioner management that the respondent workman falsely pleaded having been unemployed and that since despite offer of reinstatement through its reply, the respondent workman did not report back for duty, so the petitioner management is not liable to grant any

compensation. It is correct that in his cross examination, the respondent workman admitted having obtained an employment as a driver. But there was no cross examination to ascertain as to when he obtained that job, so it cannot be ruled out that he obtained the job subsequent to filing his Statement of Claim and prior to recording of his testimony. Even otherwise, the said subsequent job acquired by the respondent workman was, strictly speaking, not a regular job insofar as the respondent workman got to work and be paid on hourly based driving. Most significantly, according to the report dated 04.12.2012 Ex.WW1/4 of the Labour Inspector, on 28.09.2012, the Labour Inspector visited the premises of the petitioner management in connection with the complaint of the respondent workman but the petitioner management neither reinstated services of the respondent workman nor paid his earned wages.

9. Going a step deeper, keeping in mind the time taken by such disputes to get resolved, one cannot expect a workman to keep sitting idle and starve only to ensure that he should not take up some other employment; where workman on being thrown out of job takes up another job, his rights protected under the Industrial Disputes Act and other labour legislations cannot be trashed in the backdrop of systemic inability to resolve the dispute within reasonable time.

10. Then comes the question as to whether the respondent workman had voluntarily left his job after accepting full and final settlement. According to the petitioner management, on 08.09.2012, the respondent workman signed

the full and settlement voucher Ex.MW1/B. According to the respondent workman, the alleged voucher is a fabricated document. In this regard, the document Ex.MW1/M1, reply of the petitioner management to the legal notice of the respondent workman is a vital document. The reply Ex.MW1/M1 is dated 18.09.2012 but does not make even a whisper that on 08.09.2012, the respondent workman had accepted full and final settlement amount.

11. Apparently, in order to cover this loophole, the petitioner management pleaded that although the voucher Ex.MW1/B was signed on 08.09.2012 but the full and final settlement amount was received by the respondent workman in the last week of September 2012. This afterthought plea also fails to convince because there was no reason for the respondent workman not to accept the full and final settlement amount on the same day when he signed the voucher and there was no reason for the petitioner management to get signed fresh voucher or receipt or any other written document on the day when the full and final settlement amount was actually paid.

12. Rather, the petitioner management has not even disclosed the specific date of last week of September 2012 when the full and final settlement was received by the respondent workman.

13. Further, if in the last week of September 2012, the respondent workman had accepted the full and final settlement amount in terms of voucher dated 08.09.2012, the petitioner management would certainly have

disclosed this fact and would have delivered copy of the voucher dated 08.09.2012 to the Labour Inspector, who visited the premises of the petitioner management on 28.09.2012, but the Labour Inspector report Ex.WW1/4 is totally silent on this aspect.

14. Therefore, I am in absolute agreement with the findings of the learned Labour Court that the voucher Ex.MW1/B is a fabricated document.

15. In view of above discussion based on scrutiny of the rival pleadings and evidence, I find no infirmity in the impugned award, so the same is upheld. The petition and the pending application are dismissed with costs of Rs.25,000/- to be paid by the petitioner management to respondent workman by way of demand draft in his name within one week towards his litigation expenses of this petition, estimated on conservative side.

GIRISH KATHPALIA

Digitally signed by GIRISH KATHPALIA
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GIRISH KATHPALIA
(JUDGE)

FEBRUARY 13, 2025/*ry*