

M.C.D. vs Praveen Kumar Jain And Ors. on 21 January, 1998

Equivalent citations: AIR1999SC1540, (1998)ILLJ674SC, (1998)9SCC468, AIR 1999 SUPREME COURT 1540, 1998 (9) SCC 468, 1998 AIR SCW 4012, 1999 LAB. I. C. 619, (1998) 2 LABLJ 674, (1999) 2 SCT 289, (1998) 7 SERVLR 784, 1998 SCC (L&S) 1222

Bench: S.B. Majmudar, M. Jagannadha Rao

ORDER

1. In this appeal the appellant MCD is between the devil and the deep sea. This situation is of its own creation. Respondent 1 at the relevant time was working as Non-Technical Staff (for short NTS) on muster-roll as daily-wager. He was appointed on 1-6-1978. At that time he was working under Delhi Development Authority (DDA) whose successor-in-interest is the present appellant, MCD. In the year 1981 he was alleged to have committed misconduct of persuading fellow workman Shri Mahender Kumar to interpolate the name of Respondent 1 along with Mahender Kumar's name in the list of recommended employees for regularisation in service. It appears that the appellants conducted a preliminary enquiry into this alleged misconduct of Respondent 1 and Mahender Kumar and thereafter in the light of the proceedings in the preliminary enquiry and presumably relying upon the statements recorded therein a discharge order was passed against Respondent 1, which requires to be noted in extenso.

"OFFICE OF THE SPECIAL ENGINEER (SLUMS) DELHI DEVELOPMENT AUTHORITY No. D/608/SE(S)/11/89 Dated 29-7-1981 Shri Parveen Kumar Jain, N.T.S., is hereby informed that his services are not required in this organisation w.e.f. 1-8-1981. sd/- (RAMESH KUMAR) Executive Engineer-I(S) 'A' 28-7-1981 Shri Parveen Kumar Jain M.T.S. Through A.E. II N.O.O. Copy to A.E. II (S) for information with a direction to instruct "his J.E. not to allow Shri Parveen Kumar Jain, N.T.S. to continue after 31-7-1981.

Copy to S.E. (S) for information with reference to his letter No. SE/5604/31/EI/953. sd/- Executive Engineer."

2. It is this order which was not interfered with in departmental appeal and consequently an industrial dispute was raised by Respondent 1. The said dispute came to be adjudicated upon by the Presiding Officer, Labour Court, Delhi. The terms of the reference were as under: "Whether the termination of services of Shri Parveen Kumar is legal/justified, if not what directions are necessary in this behalf."

3. A preliminary issue was framed by the then Presiding Officer as to whether the enquiry conducted by the Management was valid and proper and it was answered in favour of the appellant-Management. However, the successor-Presiding Officer came to the conclusion on the

merits of the controversy that there was no legal evidence to justify the order of termination as passed against Respondent 1. It was found that even the additional evidence which he permitted the appellant to produce before the Court by way of examination of Shri S.C. Mittal, Executive Engineer under whom Respondent 1 was working at the relevant time did not show any involvement of Respondent 1 in the alleged misconduct. It was also observed that there was nothing to show and in the cross-examination of Respondent 1 nothing was brought out to indicate that Respondent 1 was earning anything after his termination by the Management. Under these circumstances, the Presiding Officer of the Labour Court directed reinstatement of Respondent 1 in service with full back wages and continuity of service. The said award of the Labour Court was unsuccessfully challenged before the High Court in writ petition and that is how the appellant is before us in this appeal on grant of special leave to appeal.

4. We have heard learned counsel for the appellant as well as learned counsel for Respondent 1. In our view, an impossible situation has been created for the appellant. Learned counsel for the appellant was right when he contended that in the statement of Respondent 1 recorded in the preliminary enquiry he had clearly admitted that he had typed only seven names of persons eligible for being regularised and the additional two names of Mahender Kumar and himself were not typed by him. This showed that Mahender Kumar had got these two names inserted and if the benefit of the name of Respondent 1 was to accrue on account of such interpolation, on broad probabilities Respondent 1 could be said to have colluded with Mahender Kumar and got his name inserted through his agency at least and therefore for such misconduct he was required to be suitably dealt with. Unfortunately, for the appellant the impugned order of termination extracted above does not show that it was passed after a departmental enquiry wherein the disciplinary authority was satisfied about the said misconduct. On the contrary, it seeks to terminate the services of Respondent 1 by way of a simple discharge and not by way of any penalty. It is only during the proceedings before the Labour Court that a different stand was taken that it was by way of penalty. This stand was obviously taken by the appellant because the order of simpliciter termination would have remained stillborn as Section 25F of the Industrial Disputes Act was admittedly not complied with by the appellant. With this difficulty staring in the face, a stand was taken that it was by way of penalty. If it was by way of penalty then at least a regular departmental enquiry had to be conducted. It was also required to be followed by the enquiry officer's report resulting in adverse finding against Respondent 1 and its acceptance by the disciplinary authority. Nothing of this sort was done. There is neither the enquiry officer's report holding Respondent 1 guilty of charge which in fact was never framed against him nor is there any acceptance of such a finding of the enquiry officer by the disciplinary authority. In fact the disciplinary authority has never held Respondent 1 guilty of any charge of misconduct. It is also interesting to note that while challenging the award of the Labour Court in writ petition the appellant clearly stated in para 3 of the writ petition that since Respondent 1 and Shri Mahender Kumar were merely on casual engagement/muster-roll employees and were not regular employees of the petitioner-Corporation or that of DDA, they were not entitled to a departmental inquiry as is required for the regular employees of the petitioner-Corporation. As such a stand was taken, it is obvious that the termination order based on misconduct is not the result of any departmental enquiry against Respondent 1. Consequently, the impugned order of termination would fail even on that ground. If it is a simpliciter discharge order it is violative of Section 25F of the Industrial Disputes Act and if it is a penalty order, as contended by the appellant, it would fail on

merits as not having followed the procedure of departmental enquiry. In either view of the matter, the impugned order must be held to be rightly set aside by the Labour Court and the said decision was also rightly confirmed by the High Court.

5. However, as Respondent 1 was knowing typing at the relevant time and as the order under Section 17B of the Industrial Disputes Act has been passed by this Court while admitting this appeal, we deem it fit to direct that even though Respondent 1 will be entitled to continuity of service and reinstatement in service as directed by the Labour Court, the back wages deserve to be reduced to 50% instead of cent per cent as awarded by the Labour Court. This order is passed keeping in view the salient features of this case and especially keeping in view the fact that Respondent 1 succeeds on account of the bungling on the part of the appellant.

6. Consequently, the appeal is partly allowed. The award of reinstatement with continuity of service is confirmed subject to grant of 50% back wages from the date of termination till actual reinstatement. No order as to costs.

7. Respondent 1 shall be reinstated pursuant to the present order within six weeks from today and all other consequential monetary benefits including 50% back wages shall be paid over to him within eight weeks. It is made clear that the monetary benefits made payable to Respondent 1 pursuant to our present order shall be subject to adjustments of any payments made in the meantime to him as per the order of this Court under Section 17B of the Industrial Disputes Act.