



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 30th May, 2024**
+ **W.P.(C) 866/2012**

KEWAL KISHORE ARORA Petitioner

Through: Appearance not given.

versus

RAJIV MOTORS PVT LTD Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“It is, therefore, most respectfully prayed that this Hon’ble Court may kindly be pleased to issue Writ(s), Direction(s), Order(s) more in the nature of Writ of Mandamus or certiorari or any other appropriate Writ/Order/Directions thereby set – aside the order dated 03.12.2011 passed by Dr. Shahabuddin, POLC NO. IX in I.D. No. 20/87 (Old) and 504/11(New) titled as Sh. Kewal Kishore Arora Vs. M/s Rajiv Motors Pvt. Ltd.” and thereby directing the respondent no. 1 to pay full back wages from the date of termination of his service till he attained the age of superannuation and on superannuation all the benefits thereof may kindly also be directed to be given to the petitioner.



Any other relief which this Hon'ble Court deem fit and proper under the circumstances of the case may also be awarded in favour of the petitioner and against the respondents herein in the interest of justice”

2. The petitioner was employed on 6th April, 1981 by the respondent at the post of an Account Supervisor.
3. The respondent management provided *ex-gratia* payments and increments including other facilities to various staff members during the period of January and February 1985. The petitioner on 12th February, 1985, sent a letter to the respondent management, thereby, asserting that the facilities provided to other staff members were not extended to the petitioner hence, the said practice is discriminatory and sought extension of the said benefits to the petitioners as well.
4. Subsequently, the petitioner submitted an application before the respondent seeking a Medical Leave for the period of 13th February, 1985 to 09th March, 1985 stating that he fell ill in the month of February 1985.
5. Thereafter, the petitioner on 11th March, 1985, joined back at his duty and alleged to have marked his attendance on the registered place at the gate however, he was denied entry into the premises.
6. Furthermore, the petitioner alleged that on 12th March, 1985, upon arriving for duty, the two directors of the respondent Company refused to him to commence his work and they forcibly took the attendance register from his hand as well as subjected him to verbal abuse.



7. The petitioner on 13th March, 1985, served a demand notice to the respondent management, seeking reinstatement with full back wages.

8. Thereafter, the respondent management levied allegations of theft against the petitioner thereby, alleging that certain personal files were stolen and issued chargesheets dated 25th March, 1985, and 27th March, 1985, accusing the petitioner of misconduct and misbehavior with the Directors of the respondent management thereby, he was suspended from his services.

9. Subsequently, the petitioner filed a reply to both the chargesheet thereafter, an enquiry was conducted against the petitioner and accordingly, the enquiry report was prepared.

10. On the basis of the aforesaid enquiry report, the petitioner was found guilty of misconduct and was dismissed from service by the respondent management *vide* dismissal order dated 6th June, 1985.

11. Aggrieved by the aforesaid dismissal order, the petitioner raised an industrial dispute. The aforesaid industrial dispute was referred to the learned Labour Court *vide* order dated 9th January, 1987 on following terms of reference:

“Whether the termination of service of Shri Kewal Krishan Arora is illegal and / or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

12. The learned Labour Court framed certain issues as well as additional issues and the same is reproduced herein below:

“(i) Whether there is no industrial dispute between the parties



- (ii) *Whether the applicant is not a workman within the definition of Section 2(s) of the I.D Act?*
- (iii) *As per terms of reference*
- (iv) *Whether a valid and proper enquiry was held in accordance with the principles of natural justice?*
- (v) *Whether the reference is bad for the reasons as stated in para 2 of the preliminary objection?"*

13. Aggrieved by the aforesaid order, the petitioner filed a writ petition bearing W.P. (C) no. 12281/2009, wherein, the Coordinate Bench of this Court *vide* judgment dated 16th August, 2011, disposed of the writ petition with the direction to the learned Labour Court to set aside the award dated 4th October, 2008.

14. Consequently, the respondent management filed a Letter Patent Appeal (“L.P.A” hereinafter) bearing 923/2011 against the order passed by this Court challenging the said order and the said L.P.A *vide* judgment dated 11th November 2011 was dismissed by the Division Bench of this Court.

15. The respondent after dismissal of his L.P.A took part in the proceeding before the learned Labour Court.

16. The learned Labour Court *vide* award 3rd December, 2011 (“impugned Award” hereinafter) decided issue no. i, ii and v in the favour of the petitioner and against the respondent and *vide* award dated 23rd May, 2002 the issue no. iv was decided in favour of the petitioner.

17. Aggrieved by the impugned Award dated 3rd December, 2011, the petitioner has filed the instant petition seeking quashing of the same.



18. Learned counsel appearing on behalf of the petitioner submitted that the impugned Award is bad in law as the same has been passed without taking into consideration the entire facts and circumstances of the case in hand.

19. It is further submitted that the impugned Award has been passed without taking consideration the fact that the Coordinate Bench of this Court *vide* its judgment dated 16th August, 2011 had directed the learned Labour Court to adjudicate upon the matter afresh.

20. It is submitted that the chargesheet presented by the respondent management alleged that the petitioner mishandled a confidential file of Mr. Raj Gopal and the same went missing or was handed over to somebody without ever being returned back to the respondent management, however, no criminal complaint was filed by the respondent regarding the same. It is further submitted that the respondent did not adduce any material on record to establish that the aforesaid allegation levied on the petitioner.

21. It is submitted that the learned Labour Court failed to appreciate the fact that the evidence of MW-1 lacks credibility and is not trustworthy since, he did not have any first-hand information of the alleged charges.

22. It is contended that the allegations pertaining to insubordination and indiscipline towards the officers of the respondent management are merely an afterthought and have been levelled after the petitioner sought increments, to which he is duly entitled to. It is further submitted that there is no independent witness to substantiate the said allegations of insubordination and indiscipline.



23. It is submitted that learned Labour Court failed to appreciate the fact that the allegations made by the respondent management regarding the petitioner's failure to return the income-tax files to the company's directors are unfounded since, the petitioner, being a clerk, did not have control over the file alleged to have been misplaced.

24. It is submitted that the aforesaid files were assigned to the petitioner for work and subsequently were handed back to the In-charge of the office i.e. Accounts Officer, after completion of the work. It is further submitted that the petitioner's duty was to report to the Secretary or Executives and Accounts Officer and not directly to the Directors and the files were handled by the officers and not the directors themselves.

25. It is submitted that the respondent erred in not examining the Account Officer and Executive Officer, who were responsible for maintaining the record of the Income tax files and other documents of the office.

26. It is further submitted that the learned Labour Court failed to acknowledge the fact that, apart from the respondent's Director, no other staff member was examined as a witness to substantiate the allegations regarding the lack of trustworthiness in the service of the petitioner.

27. It is submitted that the learned Labour Court has not acted in accordance with the directions issued by the Coordinate Bench of this Court, since the learned Labour Court was directed to adjudicate on the matter regarding the termination of the services of the petitioner afresh.

28. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed, and the reliefs be granted as prayed for.



29. *Per Contra*, the learned counsel appearing on behalf of the respondent management vehemently opposed the instant petition submitting to the effect that the same is liable to be dismissed being devoid of any merit. It is submitted that the impugned Award has been passed after considering the entire facts and circumstances of the case.

30. It is further submitted that the petitioner has not raised any substantive question of law and/or grounds to invoke writ jurisdiction of this Court hence, there is no merit to challenge the impugned Award.

31. It is submitted that the petitioner was designated as Accounts Supervisor, however, he was discharging duties as an Administrative Officer in the Accounts Section of the respondent management and was entrusted with confidential assignments.

32. It is further submitted that while the other staff members received increments or *ex-gratia*, the norms for granting any increments to the administrative and supervisory staff was different, therefore, the petitioner has duly received all the entitlements due to him.

33. It is submitted that the allegations against the directors of the respondent management, Shri Shiv Gopal and Raj Gopal are false and levied with ulterior plan. It is further submitted that there is no rebuttal to the testimony of the respondent management witnessed during the trial.

34. It is further submitted that during the trial before the Labor Court, it was established that the petitioner did not participate in the enquiry proceedings despite, being afforded a fair opportunity to present his case.



Moreover, the petitioner was asked to be represented by his co-worker but he denied this opportunity as well.

35. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be dismissed.

36. Heard the learned counsel appearing on behalf of the parties and perused the record.

37. It is the case of the petitioner workman that he has been wrongfully accused of misconduct and suspended from the services by the respondent management. Furthermore, the learned Labour Court has not acted in accordance with the directions issued by the Coordinate Bench of this Court, as the Labour Court was directed to adjudicate on the matter with regard to the termination of the services of the petitioner afresh.

38. In rival submission, it has been contended on behalf of the respondent management that during the enquiry, petitioner was afforded a fair opportunity to present his case and it was the petitioner himself who did not participate in the proceedings, hence, there was no violation of the principles of natural justice. Furthermore, that when the matter was heard and evidence were recorded before the learned Labour Court, the respondent substantiated the charges before the court resulting in the petitioner's dismissal found being justified and lawful.

39. At this juncture, the question that falls for adjudication before this Court is whether the impugned Award suffers from illegality or any error apparent on the face of it.



40. Adverting to perusal of the impugned award and the same has been reproduced herein below:

Issue Nos. (i) and (ii) framed on 21.12.1989 and additional Issue no. (v) framed on 27.11.1991:-

17. Vide award of this court dated 04.10.2008, all these issues already decided in favour of workman and against the management. In my considered opinion, there are no grounds, on the basis of existing record, to differ from the findings of this court already arrived at pertaining to these issues vide earlier award of this court dated 04.10.2008.

Additional Issue No. (iv) framed on 27.11.1991 :-

18. As already mentioned, this issue on point of domestic enquiry already stands decided in favour of workman and against the management vide order of Ld. Predecessor dt. 23.05.2002.

Issue No. (iii) framed on 21.12.1989:-

19. For deciding this issue afresh, I have to deal with the evidence of management first which has been produced on behalf of management to prove charges against the workman on merits before this court.

20. Now turning to the evidence of MW1 Sh. Jai Gopal (produced on record to prove charges against the workman on merits before this court), the main deposition of MW1 in his affidavit Ex. MW1/1 on record is mainly to the effect that he was fully conversant with the facts and circumstances of this case being the Managing Director of the management Company. He further deposed, inter-alia, that Sh. Kewal Kishore Arora was working with the management as Administrative Officer at last drawn salary of Rs.1050/- per month; that he was given Income Tax files of Sh. Raj Gopal for the year 1973-74 for preparing a case sometimes in the first week of January, 1985 by Sh. P.L. Ghosh; that he (the workman Sh. Kewal Kishore Arora) had reported on 09.03.1985 that aforesaid files were not traceable; that he was also handed



over certain confidential file of Sh. Raj Gopal, one of the Directors of the management Company, which was either misplaced by the workman herein or handed over to somebody else but never returned to the management and the management lost confidence in the workman due to such activities and continuous insubordination and indiscipline shown by workman against the management and its employees from time to time; that the workman also used filthy and abusive language against the Director of the Company Sh. Raj Gopal; that the workman also levelled false allegations against the Directors of the company namely Sh. Shiv Gopal and Sh. Raj Gopal; that he also used most abusive language against these two Directors and also misbehaved with them; that the workman also did not hand over the Income Tax files to the Directors of the company; that workman did not submit any plausible explanation against the charges levelled against him; that due to rude conduct and misbehaviour hf the workman with the seniors of the management including the Directors, the management lost faith in him and after conducting a domestic enquiry against the charges levelled against the workman, he was dismissed from his service vide dismissal order dated 06.06.1985.

21. MW1 Sh. Jai Gopal was cross-examined at length by Ld. AR of the workman. In my considered opinion, there is no substantial rebuttal of the testimony of MW-1 from the side of the workman mainly on the points that the workman herein committed various irregularities from time to time while working in the capacity of Accounts Supervisor with the management and also on the point that he had shown rude behaviour against the staff concerned from time to time during course of his employment with the management. In my further considered opinion, there is also no substantial rebuttal of the testimony of MW-1 from the side of the workman on the points that the workman herein did not return important income tax files of the two Directors of the management company and when asked to do so, he used abusive and filthy language



against those two Directors and also on the point that the workman herein did not maintain punctuality in attending to his duties despite being asked repeatedly by management to remain punctual which also resulted into loss of confidence of the management in him. In my further considered view, there is also no substantial rebuttal of the testimony of MWI from the side of the workman on the point that the workman herein frequently used unparliamentary language against the Directors of the management company with the intention to defame them in the eyes of the public and more particularly in the eyes of other employees of the management company.

22. The workman also examined himself in rebuttal on 14.02.2008 and 09.04.2008 respectively and also filed his affidavit on 14.02.2008 as Ex. WW1/A in lieu of his examination in chief. During the course of his cross-examination on behalf of the management, he admitted, inter-alia, that he was prevented from entering the premises of the management by Security Guards and 'Gundas' kept by management but he could not tell the names of those persons who prevented him; that he did not lodge any complaint against Security Guards and such 'Gundas' with the police to the above effect; that he did not send any letter to the management complaining about his prevention by such Security Guards and 'Gundas' allegedly kept by the management; that it was correct that he did not search for any job because dispute was pending with the management; that he got the job with M/s. Aiyer & Co. in June, 1922; that it was correct that he filed a claim petition against M/s. Aiyer & Company alleging illegal termination; that it was correct that he did not disclose the facts of pendency of this case to M/s. Aiyer & Company; that it was correct that in the year 2000, his age was 58 years; that the case with M/s. Aiyer & Co. ended in compromise and he received Rs. 44000-45000/- in view of compromise.



23. *From the above mentioned testimony of MW1 (to prove charges against the workman on merits before this court) which almost remains unchallenged and unrebutted from the side of workman, on various points, as mentioned above, read with the above mentioned own admissions of the workman in his cross-examination i.e. the above effect and further read with the entire oral as well as documentary evidence produced on record from both sides, I am of the considered opinion that the management side has been successful to prove/this court on merits various charges of misconduct, indiscipline, insubordination, misbehaviour etc. against the workman by way of cogent evidence, both oral and documentary. Accordingly, the management seems to be justified in dismissing the workman herein from his services vide dismissal order dated 06.06.1985 put on record as Ex. WW1/X3 and mainly on the grounds of continuous misbehaviour committed by the workman from time to time during the course of his employment with the management committed repeatedly against the Directors/Senior Officers of the management as well as against the other employees of the management and also on the ground of continuous negligence in performing his duties with the management which ultimately resulted into loss of confidence of the management in him and which also resulted into dismissal of his services by the management.*

24. *In view of the above mentioned discussion, coupled with entire material on record, I am of the considered view that the termination of services of the workman herein by the management herein was legal and justified in the given facts and circumstances of this case. Hence, this issue is decided accordingly against the workman and in favour of the management.*

Order on Quantum of Punishment :-

25. *I heard both sides on the quantum of punishment. During the course of arguments on quantum of punishment, the main submission of workman was that in the*



given facts and circumstances of this case, awarding of punishment of dismissal of his services by the management was disproportionate to the gravity of alleged charges.

26. On the other hand, the main submissions of Ld. AR for the management on the point of quantum of punishment were to the effect that in view of the serious charges levelled against the workman herein by the management herein and which duly stand proved on merits by the management before this court by way of cogent evidence, both oral and documentary, the punishment of dismissal of service awarded to the workman by the management in this case is perfectly justified and proportionate also.

27. I again perused the entire judicial file minutely in view of the rival submissions made from both sides on quantum of punishment in order to decide whether the punishment awarded to the workman in this case is proportionate or not.

28. As already mentioned while discussing issue no. (iii) framed on 21.12.1989, to the above effect, the workman herein is found guilty of serious charges of misconduct during the course of his duties with the management from time to time. The workman was also found guilty of using unparliamentary and abusive language from time to time against senior Officers of the management, including Directors of management as well as against other employees of the management during the course of his duties. The workman herein is also found guilty of serious insubordination committed by him from time to time during the course of his employment with the management. He is also found guilty of serious charges of misplacing various important files of the management, including the income tax files of the Directors of the management. To my considered view, all the above mentioned charges have been duly proved by management on merits before this court against the workman.

29. As per his own admission during the course of his cross-examination, the workman herein admittedly attained the age of



approx. 58 years in year 2000 and he might have crossed the age of 68 years by now.

30. In view of the above mentioned discussion and taking into consideration the serious charges against the workman, duly proved against him, as discussed above, I am of the considered opinion that the punishment awarded to the workman by the management in this case was proportionate and justified and it does not warrant any interference from this court.

Relief:-

31. In view of the above mentioned discussion on various issues and more particularly in view of the findings of this court on quantum of punishment to the above effect, I am of the considered view that the workman herein is not entitled to claim any relief against the management in this matter. An award is passed to the above effect and the reference answered accordingly.

32. A copy of this Award be sent to the Deputy Labour Commissioner, Govt. of NCT of Delhi of Distt./ Area concerned for publication as per rules and judicial file be consigned to Record Room as per rules.”

41. Upon perusal for the aforementioned Award, it can be summarily stated the learned Labour Court held that based on the existing records there exist no grounds, to deviate from the findings previously recorded by it concerning issues no (i) and (ii) as well as additional issues no. (iv) and (v).

42. The learned Labour Court adverting to adjudicating upon issue no. (iii) opined that there is a lack of substantial rebuttal from the petitioner's side concerning the testimony of MW-1 regarding allegations of various irregularities committed by the petitioner while serving as the Account Supervisor. It was also noted that there is insufficient rebuttal from the petitioner's side regarding the assertion made by MW-1 that the petitioner



failed to return the income tax files belonging to the directors of the respondent management company.

43. It further held that the petitioner failed to substantially refute allegations pertaining to the usage of offensive, filthy and abusive language against the directors of the Respondent management.

44. During the course of his cross-examination, the petitioner admitted that he was obstructed from entering the premises of the respondent management by the Security Guards employed by the respondent management. In this regard to the same, the learned Labour Court observed that the petitioner could not even tell the names of the people who prevented him from entering into the premises of the respondent management.

45. Furthermore, the petitioner testified that he did not actively seek an alternate employment due to the ongoing dispute with the respondent management. With regard to the same, the learned Labour Court opined that the petitioner secured an employment with M/s Aiyer & Co. in June, 1992 and subsequently filed a claim petition against M/s Aiyer & Company alleging illegal termination.

46. Accordingly, the learned Labour Court, based on the testimony of MW-1, concluded that the respondent management has successfully substantiated the charges of misconduct, indiscipline, insubordination, misbehavior etc. leveled against the petitioner workman.

47. In view of the aforesaid discussions, the learned Labour Court held that the dismissal of the petitioner from the services of the respondent entity, as per the dismissal order dated 6th June, 1985, was justified.



48. In the light of the aforementioned facts and circumstances, the learned Tribunal has opined that that the petitioner, as an employee, is guilty of serious instances of misconduct throughout his tenure with the management since the petitioner workman has used abusive, unfilthy and derogatory language against the senior officers, including the directors of the petitioner management, and has also been found guilty of mishandling confidential management files and income tax documents belonging to the said directors. The learned Tribunal was of the view that the termination of services of the petitioner workman by the Respondent management was legal and justified.

49. Now adverting to the merits of the instant petition.

50. This Court is of the view that the learned Labour Court has duly acknowledged the fault on the part the petitioner as an employee. It is evident that the petitioner was entrusted with confidential income tax files belonging to the director of the respondent management which were never returned to the respondent management. Hence, the said act of the petitioner exhibited insubordination and indiscipline towards the respondent entity and has also resorted to using derogatory, filthy and abusive language against the respondent directors and he failed to provide a satisfactory explanation regarding charges levelled against him.

51. It is further observed that there is no substantial rebuttal of the testimony of MW1 from the side of the petitioner workman concerning the irregularities committed by the petitioner while serving as Accounts Supervisor, as well as the misconduct exhibited towards the directors and staff of the company. Furthermore, there is no substantial rebuttal of the



testimony of MW1 indicating the petitioner's failure to return the important income tax files belonging to the two directors of the company.

52. In the light of the above, it is held that during cross-examination, the petitioner admitted that he was being prevented from entering the premises of the respondent management by Security Guards employed by the respondent management, although he failed to identify the individual who prevented him from entering the premises. Furthermore, the petitioner failed to lodge a complaint with the police or notify the respondent management regarding the alleged obstruction. Further, the petitioner admitted to refraining from seeking alternative employment due to the ongoing dispute with the respondent management, however, on the contrary, the petitioner filed a claim petition against M/s Aiyer & Co. alleging wrongful termination and the same was not disclosed thus, concluding gainful employment.

53. Hence, the unchallenged and unrebutted testimony of MW1, coupled with the admissions of the petitioner workman during his cross-examination and the entirety of oral as well as documentary evidence presented by both the parties, it is concluded that the respondent management has successfully substantiated the charges of misconduct, indiscipline, insubordination and misbehavior leveled against the petitioner.

54. In view of the above, it is held that the decision of the respondent management to dismiss the petitioner from his employment is deemed to be justified.

55. This Court must exercise the power conferred to it under Article 226 very cautiously and sparingly in exceptional circumstances and only in cases



where it is demonstrated that there is something palpably erroneous in the award passed by the learned Labour Court.

56. This Court is of the view that the impugned order dated 3rd December, 2011 passed in POLC NO. IX in I.D. No. 20/87 (Old) and 504/11(New) titled as *Sh. Kewal Kishore Arora Vs. M/s Rajiv Motors Pvt. Ltd.* does not suffer from any illegality and there is no error apparent on the face of it which merits interference of this Court, hence, the same is upheld.

57. In view of the observations made by this Court in the foregoing paragraphs, the instant petition is dismissed along with pending application, if any.

58. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 30, 2024
GS/DB/DA

Click here to check corrigendum, if any