

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

+ **Writ Petition (Civil) No.1603/2008**

% Date of Decision : February 27, 2008

Gajanand Sharma Petitioner

Through : Mr. G.S. Charya,
Advocate

Versus

Delhi Transport Corporation Respondent

Through : Ms. Avnish Ahlawat,
Latika Chaudhary,
Advocates

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

SUDERSHAN KUMAR MISRA, J : (Oral)

1. The petitioner has come before this Court against an order passed by the Industrial Tribunal No.II, Karkardooma Courts, Delhi on 21st February, 2002 whereby the respondent/DTC was granted approval under Section 33(2) (b) of the Industrial Disputes Act, 1947. The petitioner has come to this Court after nearly six years. It appears that the petitioner's services were terminated by the respondent on 20th November, 1991. At that time, since another Labour dispute was pending, the DTC applied to the Industrial Tribunal under Section 33(2) (b). This

approval was granted by the Industrial Tribunal on 21st February, 2002 as aforesaid. Consequently, the petitioner's services stood terminated. Dissatisfied by his termination, the petitioner raised an industrial dispute which was referred to the Industrial Tribunal. An award was given by the Industrial Tribunal on 9th May, 2003 dismissing his claim. The petitioner thereafter invoked the writ jurisdiction of this Court by filing Writ Petition No.6196/2004 wherein he challenged the award dated 9th May, 2003 by which his claim was dismissed. On 27th July, 2006, Writ Petition No.6196/2004 also came to be dismissed, thereby confirming the award dated 9th May, 2003. The petitioner does not appear to have taken the matter any further. He has now come to this Court by way of challenge to the aforesaid order of 21st February, 2002 whereby permission was granted to the respondent under Section 33(2) (b) of the Industrial Disputes Act.

2. Counsel for the petitioner has sought to explain this inordinate delay by stating that the petitioner was otherwise engaged in pursuing his challenge to his termination of 20th November, 1991 before the Labour Court which ultimately resulted in the aforesaid award dated 9th May, 2003 and thereafter he was engaged in pursuing Writ Petition No.6196/2004 which was finally dismissed on 27th July, 2006. He says that it was because these matters were pending that his client was unable to move this Court earlier against the impugned order of 21st February, 2002.

3. I do not find any force in this contention. On the contrary, the fact that the petitioner was actively engaged in pursuing his legal remedies, first by contesting the application moved by the DTC under Section 33(2) (b), and thereafter the proceedings before the Labour Court which resulted in the award dated 9th May, 2003 against him and ultimately in filing Writ Petition No.6196/2004 which was dismissed on 27th July, 2006, shows that he was active and vigorous in seeking his remedies. There is therefore no reason why the petitioner could not have assailed the impugned order also within reasonable time.

4. Counsel for the petitioner has also failed to draw my attention to any impediment that prevented the petitioner from approaching this Court earlier in the matter. Nor has any such impediment been pleaded. Indeed, to my mind, there could not be any impediment.

5. Counsel further states that after the order of 21st February, 2002 under Section 33(2) (b), the petitioner in fact chose not to challenge it at that time. In that case, the petitioner has only himself to blame. There is no gainsaying the fact that the cause of action, if any, to challenge the impugned order of 21st February, 2002 arose in favour of the petitioner on that date itself. Yet he chose not to challenge the said order during all this time. It is noteworthy that on 9.5.2003 itself he knew that the approval granted by the Industrial Tribunal under Section 33(2) (b) is the reason for denial of the relief sought by him before the Labour Court. Thereafter on 27.7.2006 also, he knew

that the writ court had also upheld the Labour Court's decision to deny him relief because of that approval. Yet he approaches this Court only in February, 2008. I do not see how he can maintain his challenge today merely on the ground that according to him, all the other proceedings have been decided against him because of the approval granted by the Industrial Tribunal on 21.2.2002. Ex facie, these findings do not give rise to any fresh cause of action in the petitioner's favour to impugn the order passed six years ago on 21.2.2002. The fact remains that he is approaching this Court after an inordinate period of six years and, as stated in the maxim, ***Vigilantibus, et non dormientibus, jura subveniunt*** – The vigilant and not the sleepy are assisted by the laws. I therefore see no reason to entertain this petition.

The writ petition is dismissed.

Sudershan Kumar Misra, J.

February 27, 2008
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