

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

+ **W.P.(C.) No. 14770/2004**

% **Date of Decision: 25th September, 2009**

HARYANA ROADWAYS

..... PETITIONER

! Through: Mr. Harikesh Singh, Advocate

VERSUS

\$SHRI RAN SINGH

.....RESPONDENT

^ Through: Mr. Sarvesh Bisaria, Advocate.

CORAM:

Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **No**
2. To be referred to the reporter or not? **No**
3. Whether the judgment should be reported in the Digest? **No**

S.N.AGGARWAL, J (ORAL)

The management of M/s Haryana Raodways, in this writ petition, seeks to challenge an industrial award dated 31.03.2003 in ID No. 250/2995 (Old ID No.9/1994) directing reinstatement of the respondent workman with back wages except for the period from 10.02.1992 to 11.04.1992.

2 The respondent was appointed as a Driver in the pay scale of Rs.420-700/- with Haryana Roadways w.e.f. 19.01.1986. He was terminated from the service of the petitioner w.e.f. 24.11.1992 after holding a domestic inquiry against him for his remaining absent unauthorizedly for a period of about two months from 10.02.1992 to 11.04.1992. The respondent in the course of domestic inquiry held against him had justified his absence stating that he was ill during the period of his absence and he had submitted the medical certificate from Government dispensary to the petitioner and also during domestic

inquiry held against him. The Labour Court in its impugned award has found the punishment of termination to be highly disproportionate to the charge of alleged unauthorized absence against the respondent noting that his absence was on account of medical reasons. The relevant portion of the impugned award is extracted below:-

“As a Rule Labour Court should not interfere with the punishment awarded by the disciplinary authority until and unless the same is shockingly disproportionate to the misconduct alleged against the workman was that he remained unauthorizedly absent for two months. The plea of the workman was that he remained ill for the said period for which he submitted medical certificate along with fitness to the management issued by Government Hospital. It is also plead of the workman that the said medical certificate submitted by him was not challenged by the management at any stage of proceedings. It is admitted case of the parties that the workman submitted his medical record during the domestic enquiry proceedings. Now, the only lapse committed by the workman is that he proceeded/remained on leave without intimation to the management. The polemical point involved is as to whether the aforesaid lapse is sufficient to snatch the bread and butter of the workman. Ld. A/R for the workman vehemently stressed that in the past the management treated its employees who remained on unauthorized leave being without pay during the absence period and as such the same treatment should be metted out to the workman in the case at hand. It is true that punishment and act complained of should have close nexus for instance a person guilty of theft of bicycle cannot be hanged. Accordingly, I fee that the penalty imposed on the workman is shockingly disproportionate to the misconduct alleged to have been committed by the workman and this is a case, which calls for interference on quantum of punishment. I, therefore, set aside the penalty of dismissal awarded to the workman by the management and order that the period of absence of the workman without prior permission to the management should be treated as period without pay. Accordingly, the management is directed to reinstate the workman with full back wages and continuity of service except the period from 10.02.1992 to 11.04.1992.”

3 The reasonings for substitution of the penalty contained in the impugned award have not been assailed by learned counsel appearing on behalf of the petitioner. Admittedly, the petitioner had given lesser punishment to its other employees for their remaining absent unauthorizedly. I do not find any perversity in the impugned award in so far as it directs reinstatement of the respondent.

4 The question that is really agitated by Mr. Harikesh learned counsel appearing on behalf of the petitioner is regarding back wages awarded by the Labour Court in favour of the respondent workman. I have heard the learned counsel for both the parties on the question of back wages. The respondent was terminated from the service of the petitioner w.e.f. 24.11.1992. He was terminated from the service because of his unauthorized absence of two months from duty. The respondent had not intimated to the petitioner about his illness. The unauthorized absence in fact is admitted by the respondent. The punishment of termination awarded by the petitioner has been substituted by the Labour Court vide impugned award only because the petitioner in the past had awarded lesser punishment to other employees who also had remained unauthorizedly absent. About 17 years have now passed since the respondent was terminated from the service of the petitioner. This court is of the opinion that interest of justice will be sub-served by awarding 50% back wages to the respondent from the date of award till the date of his reinstatement. The respondent, however, shall be entitled to all other consequential benefits including continuity of service.

5 In view of what has been stated above, the impugned award is modified to the extent that the respondent shall be entitled to reinstatement with 50% back wages from the date of award till the date of his reinstatement with all other consequential benefits including

continuity of service. The respondent is given two weeks time for joining duties with the petitioner management. Needless to state that the petitioner will be entitled to adjust the payment, if any, already made by it to the respondent workman pursuant to orders passed by this Court under Section 17-B while computing the arrears of 50% back wages from the date of award till the date of reinstatement. The parties are left to bear their own costs.

This writ petition is disposed of in terms referred above.

SEPTEMBER 25, 2009
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S.N.AGGARWAL, J