

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C.) No. 15500/2004**
% **Date of Decision: 08th October, 2009**
DELHI TRANSPORT CORPORATION PETITIONER
! Through: Mr. Ataul Haque, Advocate.
VERSUS
\$ SH. DHARAMBIR SINGH, S/O SH. RAVI DUTT RESPONDENT
^ Through: NEMO.

CORAM:
Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper 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**

S.N.AGGARWAL, J (ORAL)

The Delhi Transport Corporation in this writ petition seeks to challenge an industrial award dated 16.09.2003 in I.D. No. 142/1995 directing it to pay full back wages to the father of the deceased workman (Sh. Dharambir Singh) till the date of his death as removal of the workman from the service was held to be illegal.

2. Nobody has appeared on behalf of the respondent despite service. Hence, I have heard the arguments of learned counsel appearing on behalf of the petitioner ex-parte. I have also perused the record of the Labour Court.

3. Briefly stated the facts of the case relevant for disposal of this writ petition are that the deceased workman was employed as Safai Karamchari with the petitioner as daily wager w.e.f. 07.09.1982. He was regularised in service w.e.f. 03.04.1984. He was removed from the service of the petitioner w.e.f. 06.08.1987 after holding an inquiry against

him for his alleged unauthorised absence of 147 days in the year 1986. The workman Sh. Dharambir Singh expired on 19.09.1995. However, before his death, he had raised an industrial dispute with regard to his removal from the service of the petitioner which was referred by the appropriate Government in the Government of NCT of Delhi for adjudication to the Labour Court. By the time the reference reached the Labour Court, the workman had expired on 19.09.1995. The statement of claim before the Labour Court was filed by his father, Sh. Ravi Dutt. On the basis of evidence adduced by the parties before the Labour Court, the Labour Court vide its order dated 17.10.1998 decided the preliminary inquiry issue against the petitioner management and vide award dated 16.09.2003 held the removal of the deceased workman Sh. Dharambir Singh to be illegal and directed the petitioner to pay full wages admissible to the deceased workman between the date of his removal till the date of his death to his father Sh. Ravi Dutt, being his Legal Heir. The petitioner aggrieved by the impugned award has filed this writ petition seeking setting aside of the said award.

4. The main thrust of the arguments of Mr. Ataul Haque, learned counsel appearing on behalf of the petitioner, is that at the time impugned award was passed by the Labour Court against the petitioner, the judgment of the Hon'ble Supreme Court in **Delhi Transport Corporation Vs. Sardar Singh, 113 (2004) DLT 258 (SC)**, had not come. It is contended by the learned counsel appearing on behalf of the petitioner that the Hon'ble Supreme Court has held in Sardar Singh's case (supra) that unauthorised absence of a DTC employee amounts to misconduct as defined in the Standing Orders applicable to DTC employees. The argument of Mr. Ataul Haque is that since the deceased workman had remained absent for 147 days in 1986 without pay, his

removal from service has to be dealt within the ambit of the judgment of the Hon'ble Supreme Court in Sardar Singh's case (supra).

5. Mr. Ataul Haque, learned counsel appearing on behalf of the petitioner, has also relied upon the reply of the deceased workman dated 15.06.1987 (at page 99 of the lower Court file) to contend that the deceased workman himself had admitted his unauthorised absence for 147 days in 1986. It is submitted by the learned counsel appearing on behalf of the petitioner that as per reply dated 15.06.1987 given by the deceased workman, the workman could not perform his duties during the period of his absence in 1986 because of illness of his mother and, therefore, according to him, this reply of the workman itself proves the misconduct against him.

6. I have given my anxious consideration to the above arguments advanced by learned counsel appearing on behalf of the petitioner but I have not been able to persuade myself to agree with him. The Court below has taken into account all the above arguments advanced on behalf of the petitioner and has given a categorical finding of fact against the petitioner management that the petitioner had granted leave for 147 days to the deceased workman in 1986. Once leaves were granted, then it cannot be said that the workman had misconducted himself by his absence for a particular period. It shall be significant to mention that even in the charge-sheet for alleged unauthorised absence served by the petitioner on the deceased workman, it was mentioned that he had availed 147 days leave without pay from January 1986 to December 1986. This statement in itself presupposes that leaves for 147 days were duly sanctioned by the petitioner and once leaves were sanctioned, the workman could not have been blamed for remaining absent during the period of leave without pay. The Court below has given a finding of fact

that the petitioner had sanctioned leave of 147 days to the deceased workman and, therefore, misconduct is not proved against him. The relevant portion of the impugned award is extracted below:

“On the face of it the first allegation as mentioned in the charge sheet shows that the leave of 147 days were sanctioned without pay. Leave may be of any kind i.e. leave on pay, leave on half pay, medical leave, extraordinary leave are the leaves. The kind or nature of leave is not material but the substance of the matter is that the petitioner was granted leave and when once the leave is granted to a public servant in respect of a particular period it must be considered that he is permitted to be absent from duty for that period and after sanctioning of leave it is not permissible to an employer or any other authority to proceed against the public servant for absents from duty for the same period and punish the employee. The employer the private or public cannot blow hot and cold. I may refer here to AIR 1976 Andhra Pradesh 75 referred by the AR of the workman. Hence, the first allegation of this charge sheet cannot be the basis of charge sheet. The enquiry officer has written in his enquiry report that the workman has admitted his guilt. I have perused the reply given by the workman which is dated 15-6-87 wherein it is stated by him that he could not perform his duty due to continuous illness of his mother and there was no other person available in his home to look after her. He had been performing his duties diligently and sincerely earlier to it and after recovering his mother he returned to his duties and also beg pardon for his lapse. From this reply to cannot be inferred that he confessed the guilt as alleged in the charge sheet. The allegation no. i and ii in the charge sheet speak about the irregularization in the attendance and lack of interest in the job and in the reply submitted by the workman there is no admission at all on the part of the workman about the irregularisation or about not taking any interest in the job. The management has not produced any other record to show the admission of the workman about these irregularisation or any other record or document from which the admission could have been inferred about the allegation no. 2 and 3 of this charge sheet. Hence the findings of the enquiry officer that the workman has admitted the charge does not appear to be correct as per record.”

7. I have gone through the reply dated 15.06.1987 on which reliance is placed by the learned counsel appearing on behalf of the petitioner. On going through the reply, I am in complete agreement with the view taken by the Labour Court on the said document that the workman has

not admitted his guilt that he was unauthorisedly absent for 147 days in 1986. On being repeatedly asked, Mr. Ataul Haque, learned counsel appearing on behalf of the petitioner, could not point out any evidence on record which might have been ignored by the Court below in arriving at a finding of fact that the petitioner had granted leave of 147 days to the deceased workman in 1986. This Court is not sitting in appeal over the award of the Labour Court.

8 The learned counsel appearing on behalf of the petitioner could not point out any perversity in the impugned award that may call for an interference by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution. The judgment of the Hon'ble Supreme Court in Sadar Singh's case (supra) is not applicable to the facts of the present case because in the case in hand, the petitioner had granted leave before serving charge-sheet to the deceased workman.

9 In view of what has been discussed above, I do not find any infirmity or illegality in the impugned award that may call for an interference by this Court. This writ petition is devoid of any merit and is, therefore, dismissed.

LCR be sent back.

OCTOBER 08, 2009
'BSR'

S.N.AGGARWAL, J