

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

+ **WP (C) No. 7546/2003**

% Judgment delivered on: 8.05.2009

Delhi Transport Corporation Petitioner
Through: Mr. Alok Shankar with Mr. Ranjit
Sharma, Advocates

versus

Ram Kishan Respondent
Through: Mr. Sube Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J. (Oral)

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1. By this petition filed under Article 226 of the Constitution of India the petitioner DTC seeks quashing of the order dated 22.9.1999 and 13.2.2002 passed by the learned Industrial Tribunal. This order shall also dispose of another W.P.

(C) No. 4618/2003 filed by the workman thereby seeking enforcement of the same very order whereby the application of the respondent DTC under Section 33(2)(b) of the ID Act was rejected. Counsel for the petitioner in WP(C) No. 7546/2006 submits that simply because of the fact that the petitioner failed to prove misconduct on the part of the respondent, should not have resulted into dismissal of its application moved under Section 33 (2)(b) of the ID Act. Contention of the counsel for the petitioner is that once the petitioner had placed on record material documents sufficient enough to point out misconduct on the part of the respondent, then simply because of the fact, that for certain reasons the petitioner could not produce its witness for cross-examination would not have resulted into rejection of its application. Contention of counsel for the petitioner is that in view of the judgment of the Apex Court in **Delhi Transport Corporation vs Sardar Singh AIR 2004 SC 4161** the initial onus is on the workman to prove that he was not negligent in performing his duties.

The counsel relied on **Depot Manager, Andhra Pradesh SRTC & Anr. Vs V. Surender (2008) 12 SCC 169; Divisional Controller, G.S.R.T.C. vs Kadarbhai J. Buther 2007(3) SLR 377 (SC)** to contend that in the event of the writ petition being dismissed, this court may not allow full backwages to the workman since the workman did not work from the date of dismissal order.

2. Refuting the said submissions made by the counsel for the petitioner, Mr. Sube Singh, counsel for the respondent workman submits that it was the petitioner who had filed the said application leveling charges of misconduct against the respondent in terms of chargesheet dated 16.7.1993 and therefore, the initial onus was on the petitioner management to have proved misconduct on the part of the respondent, and then, only the onus could have been shifted upon the respondent workman to give evidence in rebuttal. The counsel relied on decision in **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs Ram Gopal Sharma & Ors. AIR 2002 SC 643** to contend that in the event, the petition of DTC is dismissed then he is eligible for the entire backwages from the date of the dismissal order.

3. I have heard learned counsel for the parties and gone through the record.

4. The petitioner management had filed an application under Section 33(2)(b) of the ID Act so as to seek approval of the Tribunal for its decision to remove the respondent from his services. It was stated in the application that the respondent had committed misconduct as he remained absent from duty w.e.f. 3rd May, 1993 till the date of issuance of the chargesheet and such a misconduct is in clear violation of para 4 (i) and (II) 19 (h) & (m) of the Standing Orders governing the conduct of the DTC Employees. An enquiry was conducted by the petitioner and the enquiry officer found the respondent guilty of misconduct. Based on the enquiry report, a show cause notice was served upon the respondent by the Disciplinary Authority but no reply thereto was submitted by the respondent, which led the Disciplinary Authority to pass an order of removal of the respondent from service. One month salary was also sent to the respondent by way of money order and on the same very date the present application under Section 33(2)(b) of the ID Act was moved by the respondent. Indisputably, once the

application was moved under Section 33(2) (b) of the ID Act then initial onus was on the petitioner to have proved the case of misconduct against the respondent. The petitioner cannot take shelter under the plea that by filing photocopies of certain documents on record such an onus was discharged. Perusal of the record clearly shows that sufficient opportunities were given to the petitioner to lead evidence, but it failed to avail the same and ultimately on 22.9.1999 the evidence of the petitioner was closed. One Mr. Sahib Singh had filed his affidavit on behalf of the petitioner management but he did not present himself for his cross-examination on various dates given by the Tribunal. Absence of the said witness led the Court to close the evidence of the petitioner vide order dated 8.11.2001. On the other hand the respondent workman filed his affidavit as his examination-in- chief and the respondent was also not cross-examined by the petitioner. It is evident that not only the petitioner itself failed to lead any evidence so as to prove misconduct on the part of the respondent but even the petitioner failed to cross-examine the respondent workman who proved his case in examination-in-chief. In such

circumstances, the Tribunal rightly observed that there is no evidence adduced from the side of the petitioner to prove the alleged misconduct on the part of the respondent. It would be relevant to reproduce para 13 and 14 of the impugned Award, which are as under:-

"13. The respondent has examined himself as RW-1 and has filed his affidavit Ex.RW1/A as his examination –in-chief. He has deposed that allegation made against him in charge sheet are false and frivolous. He has testified that he submitted the leave applications in time for his non performing duty with the DTC on 3.5.93. He did not remain absent from duty without intimation.

14. There is no evidence from the side of the petitioner to observe that the respondent remained absent from duty without intimation/leave application . There are no evidence of the petitioner to contradict the defence of the respondent. Further, there is no evidence of the petitioner to say that leave application of the respondent were received late and the same were rejected or that letters were sent to him to report for duty or to report to the DTC medical Board, if he was ill. In the absence of the evidence of the petitioner and undisputed statement of the respondent, I do not find any ground to believe the case of the petitioner that the respondent committed the misconduct as alleged against him. Issue is decided against the petitioner".

5. In the absence of any evidence led by the petitioner, the Court also found that the petitioner failed to prove on record that one month wage was remitted by the petitioner to the respondent.

6. In view of the aforesaid findings given by the Tribunal, I do not find any scope to interfere with the same. The Tribunal has rightly observed that in the absence of any evidence led by the petitioner and uncontroverted statement of the respondent, there is no basis to believe the case of the petitioner. The judgment of the Apex Court cited by the counsel for the petitioner would be of no help in so far as the facts of the present case are concerned. There cannot be any dispute to the legal position settled in the **Sardar Singh's** case that it is not merely filing of leave application, but due sanction of such leave has to be obtained by the concerned employer, but here is a case where the petitioner miserably failed to lead any evidence or to controvert the evidence led by the respondent, and under these circumstances the Court rejected the application of the petitioner.

7. I do not find that the order passed by the Tribunal suffers from any illegality or infirmity. There is no merit in the present petition and considering the aforesaid facts the same is hereby dismissed.

8. In view of the said order passed in CWP No. 7546/2003 the other petition filed by the respondent workman necessarily has to be allowed. The same is accordingly allowed. Since, the petition of the workman is being allowed and the order of dismissal has become nonest, therefore, the employer DTC is bound to treat him continuing in service from the date of dismissal with the right to all consequential benefits. The judgments relied upon by the counsel for DTC are of no assistance to him in view of the decision of the Apex Court in **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd's case (supra)**.

9. In view of the foregoing discussion, both the petitions are disposed of in terms of the above directions.

8th May, 2009
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KAILASH GAMBHIR, J.