

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

+ WP (C) Nos.6821/2004

% Judgment delivered on: 27.03.2009

Delhi Transport Corporation Petitioner
Through: Mr. Ataul Haque, Advocate

versus

Bishan Singh Respondent
Through: Mr.S.K. Mishra, Advocate with
Mr. Kishan Pal, 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 . The short controversy arising in the present petition is whether the petitioner had remitted one month's wages at the time of the removal of the respondent as per the mandate of Section 33 (2) (b) of the Industrial Disputes Act.

2 . Brief facts in nutshell for decision of the present case are as under:-

Bishan Singh, respondent No.1 was employed with the petitioner/management as conductor, having Badge No. 12112 and Token No. 20897, and was posted at Seemapuri Depot. While on duty on 20.3.1991 at about 15.15 p.m. he manhandled Sh. Harish Gupta, Depot Manager Nandnagri Depot and Shri P.K. Rai Asstt. Engineer, Nandnagri Depot, along with his other accomplices and instigated them to beat Sh. Gupta & Sh. Rai. He threatened them with dire consequences. He was chargesheeted and inquiry was conducted against him and the enquiry officer found all the charges proved and submitted report to the to the Disciplinary Authority. The Disciplinary Authority issued show cause notice dated 4.12.1991 to the respondent but the same was not replied. After considering the case, the Disciplinary Authority removed the respondent from service vide order dated 15.1.1992 and remitted full one month's wages to him through Money Order and simultaneously filed the application under Section 33 (2) (b) of the I.D. Act before the Tribunal which was rejected with the remarks that the management did not remit full one month wages to the workman at his correct address.

Feeling aggrieved with the said order the management has preferred this petition.

3 . Mr. Ataul Haque, counsel for the petitioner management submits that money order towards one month wage of the respondent was sent at his correct address and copy of the money order receipt was duly proved on record by the petitioner before the Tribunal. Counsel thus submits that the Ld. Tribunal wrongly came to the conclusion that full one month wages were not remitted by the petitioner to the respondent at the time of his removal as per the requirement of Section 33 (2) (b) of the I.D. Act. Counsel for the petitioner further submits that the Tribunal was to examine as to whether the petitioner had taken the requisite steps so as to send one month's wages to the delinquent employee or not against whom action of the dismissal or discharge was taken. The contention of the counsel for the petitioner is sending of money order by the petitioner clearly demonstrates that the petitioner in fulfillment of requirement of Section 33 (2) (b) of the I.D. Act took steps to send the money order to the respondent at the address which was available with the petitioner. Strengthening his argument further, counsel for the petitioner submits that in the approval application moved

by the petitioner under Section 33 (2) (b) of the I.D. Act the same address of the respondent was disclosed where the money order was sent and the respondent at no stage had raised any objection on the correctness of the said address. Counsel thus submits that the respondent cannot challenge the correctness of the address as was given by the petitioner in the approval application. In support of his arguments counsel for the petitioner has placed reliance on the judgment of this court in **WP (C) No. 1043/2004 dated 6.2.2007 DTC Vs. Mahesh Chand.**

4 . Refuting the said submissions of the counsel for the petitioner, the counsel for the respondent submits that the petitioner failed to fulfil the mandate of Section 33 (2) (b) of the I.D. Act as one month wages were never paid by the petitioner to the respondent. The contention of the counsel for the respondent is that the findings of the Tribunal cannot be assailed by the petitioner wherein clearly the Tribunal came to the conclusion based on Ex. AW1/R-1 and AW1/R-2 which bears the correct address of the respondent i.e. H.No. D-910/1 Ashok Nagar, Delhi-93 and thus is not the address on which the money order was sent by the petitioner. Counsel for the respondent invited attention of this court to the Ex. AW 1/R-1

which is a copy of the letter dated 7.12.1990 written by the petitioner/DTC to the respondent requiring him to report for duty and the said letter clearly bears the address of the respondent as D-910/1, Ashok Nagar and not the one at which the petitioner had sent the money order. Clearly the order of termination was passed by the petitioner on 15.1.1992 and therefore one month's wages were required to be paid by the petitioner either directly to the respondent or at the correct address of the respondent. Once the said address was available with the petitioner on which the communication dated 7.12.1990 was made then to send the money order at some other address shows clear negligence on the part of the petitioner and the same cannot be taken as due compliance of Section 33 (2) (b) of the I.D. Act. The Supreme Court in **AIR 1962 SC 1500 (V 49 C 218) The Straw Board Manufacturing Co. Ltd. Saharanpur Vs. Govind** has held as under :-

"The proviso to Section 33 (2) (b) contemplates the three things mentioned therein namely,

(i) Dismissal or discharge;

(ii) Payment of Wages; and

(iii) Making of an application for approval,

To be simultaneous and to be part of the same transaction so that the employer, when he takes an action under Section 33 (2) by dismissing or discharging any employee should immediately pay him or offer to pay him wages for one

month and also make an application to the Tribunal for approval at the same time.”

5 . It would be thus evident that the three requirements contemplated under Section 33 (2) (b) of the I.D. Act are part of the same transaction and non-compliance of any of them would be fatal for granting approval by the Tribunal. Once the correct address of the respondent was available with the petitioner, therefore, the payment of one month wages were to be remitted to the respondent at his correct address and not at any other address which is not as per the records of the petitioner DTC. No explanation has been given by the petitioner as to when the communication dated 7.12.1990 could be sent by the petitioner at D-910/1 Ashok Nagar address then why the money order was not sent at the same address. Simply because of the fact that the petitioner mentioned same address of the respondent in the approval application and the same was not objected to by the respondent would not strengthen the case of the petitioner as one month's wages were required to be sent at the correct address of the respondent. In view of the above position I do not find that there is any merit in the present petition. The judgment of this court in **DTC Vs. Mahesh Chand (Supra)** relied upon by the

petitioner is not applicable to the facts of the present case. I do not find that the reasoning given by the Tribunal is either perverse or illegal. Even otherwise, as per the settled legal position the Tribunal is the final court of finding of facts and unless the approach of the Tribunal is perverse or illegal this court in exercise of supervisory jurisdiction under Article 226 of the Constitution of India will not reappreciate such findings of facts so as to arrive at a different conclusion. There is no merit in the present petition. Dismissed.

March 27, 2009
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KAILASH GAMBHIR, J.