

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

+ **W.P.(C) No. 4315/2003**

Judgment delivered on: 24.02.2009

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Shri Om Prakash Petitioner.
Through: Mr.Rajesh Goyal, Advocate.

versus

Delhi Transport Corporation & Others Respondent
Through: Mr. J.N. Aggarwal, Advocate.
Mr. Sunil Bagai, Advocate for R-3/Labour Commissioner.

+ **W.P. (C) No. 688/2004**

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Delhi Transport Corporation Petitioner.
Through: Mr. J.N. Agarwal,
Advocate

versus

Sh. Om Prakash Respondent
Through: Mr. Rajesh Goyal,
Advocate.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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 . This order shall dispose of two writ petitions --- one bearing No. 688/2004 filed by the DTC challenging the order dated 23.5.2003 whereby the application under Section 33 (2) (b) of I.D.Act filed by the DTC/Management was dismissed and the other filed by the workman Om Prakash vide writ petition No. 4315/2003 seeking directions for his reinstatement with full back wages pursuant to the dismissal of the application of the former filed under Section 33 (2) (b) I.D. Act.

2 . Brief facts relevant for the decision of both these petitions are as under:-

The petitioner in W.P. No. 4315/03 and respondent in W.P. No. 688/2004 (hereinafter referred to as workman) was employed with the DTC/Management as driver and was removed from his services on 12.2.1993 on the allegations that on 20.3.1991 at about 15.15 hours he along with some other co-employees manhandled Sh. Harish Chand Gupta, the then Depot Manager and

Sh. P.K. Rai, the then Assistant Engineer, Nand Nagri Depot and threatened them with dire consequences. This act of the workman was alleged by the DTC/Management as misconduct within the meaning of para 19 (g) of the standing orders governing the conduct of DTC employees and pursuant to which the Disciplinary Authority removed him from service vide order dated 12.2.1993 and remitted full one month wage to him by way of money order. For approval of its order/action, the DTC/Management moved the application under Section 33 (2) (b) of I.D. Act before Presiding Officer, Industrial Tribunal-II, Karkardooma Courts, Delhi but the said application was dismissed. Aggrieved by the said order, on the one hand, the DTC/Management filed writ petition No. 688/2004 and on the other hand, workman moved Writ petition No. 4315/2003 for seeking directions to the DTC/Management to reinstatement him with full backwages pursuant to the dismissal of the application under Section 33 (2) (b) of I.D. Act.

3 . Mr. J.N. Aggarwal, Counsel for the DTC Management submits that merely because the DTC Management was not found to have paid a sum of Rs.25/- as part of the salary to the workman the

Tribunal rejected the application under Section 33 (2) (b) of the I.D. Act. The contention of the counsel for the Management is that as far as the mis-conduct of the workman is concerned, the inquiry against him was held to be legal and valid vide separate order dated 24.2.2003 passed by the same Tribunal but as far as the full one month wage was concerned, the Tribunal came to the conclusion that the full salary of one month was not paid to workman being short of special pay of Rs.25/- as part of the salary and therefore, in the absence of the same the approval of the Management's action was rejected. Counsel thus urges that once the substantial amount of one month wage was paid by the Management except the special amount of Rs.25/- which was left to be paid by the Management, that alone would not have come in the way of the Tribunal in granting the said approval. In support of his argument counsel for the petitioner placed reliance on the judgment of the Apex Court in **(1990) SCC 314 Bharat Electronics Ltd. Vs. Industrial Tribunal, Karnataka.**

4 . Refuting the said submissions made by the counsel for the Management, the counsel for the workman states that it is not a question of the extent of the sum not being paid by the petitioner as

the mandate of the law is full payment of one month wage and admittedly the Management failed to pay the full salary for one month same being short of special pay of Rs.25/-. Counsel further contends that the said amount was being paid to the workman towards special pay right from the year 1982, since the time he had undergone sterilization operation. Counsel thus submits that the special pay was a part of his one month wages and as per the requirement of Section 33 (2) (b) I.D.Act he was entitled to the same and admittedly the said amount was not paid to the workman and therefore the Tribunal rightly came to the conclusion that the approval sought by the Management 'deserved rejection'. Counsel further submits that the judgment of the Apex Court is not applicable to support the case of the Management, rather it supports the case of the workman as the Court has clearly observed as under:-

"It is, of course, risky for the Management to raise it as to pay even a paisa less than the month's wages due would be fatal to its seeking permission under Section 33 (2) (b) I.D Act as it is for the management to establish that the sum paid to the workman under Section 33 (2) (b) represented full wages of the month following the date of discharge of dismissal."

5 . Counsel further submits that even otherwise the issue before the Apex Court in the said case was concerning the payment of

Rs.12/- towards the night shift allowance while in the facts of the present case, the shortfall of Rs.25/- was towards the part of the wages which was being paid by the management and not towards any allowance to be earned by the workman for putting any extra duties. Counsel for the respondent also placed reliance on the judgment of the Karnataka High Court reported in **1984 LAB. I.C. 1358 Karnataka Agro Industries Corporation Ltd. Bellary Vs. Presiding Officer, Industrial Tribunal, Bangalore and another.** Counsel thus states that the workman is entitled to back wages w.e.f. the date of his termination till the date of his superannuation which is 2.9.2005.

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

7 . The mandate of Section 33 (2) (b) of the I.D. Act is that no workman can be discharged or dismissed unless he has been paid wages for one month and indisputably the wages in the present case paid by the DTC/Management were not full wages as there was a shortfall of Rs.25/-. The Apex Court in the case of **Bharat Ranganath Mishra (Supra)** has clearly held that in such a case it is

risky for the management to pay even a single paisa less than the month's wages as the same would be fatal for seeking permission by the Management under Section 33 (2) (b) of the I.D.Act., as the sum paid to the workman under this Act represents full wages of the month following the date of his discharge or dismissal. It is no doubt true that the full one month wages as provided under Section 33 (2) (b) of the I.D. Act are conspicuously for the month to follow so as to grant sufficient time to the workman to secure his employment during that period and wages for such a month are not for the month preceding the date of termination. The mandate of law is also for payment of full wages and not partial or incomplete wages. The judgment of the Karnataka High Court cited by the respondent is more near to the facts of the present case as therein also there was shortfall of one increment which had since fallen due but was not paid and the High Court came to the conclusion that the increment to which the employee became entitled was part of his wages in the entire one month salary which was required to be paid by the management under Section 33 (2) (b) of the Act. Similarly in the facts of the present case, the petitioner has failed to pay the full wages of

one month and it is not that the special pay which was regularly being paid by the management was required to be paid for doing some extra duties or for some extra job but the same was being paid on account of the fact that the respondent had undergone sterilization operation and the special pay of Rs.25/- became part of wages of the respondent. Nowhere the DTC/Management has given any explanation as to why and in what circumstances the said amount of Rs.25/- was not included in the one month's salary of the respondent.

8 . In the light of the above, the petition filed by the DTC/Management is hereby dismissed being devoid of merit and the petition filed by the respondent workman in WP (C) No. 4315/2003 is allowed.

9 . Mr. J.N. Aggarwal counsel for the Management states that the Management has already paid the amount of minimum wages to the workman w.e.f. the date of the award till 1.9.2005 in terms of the direction given by this court vide order dated 4.9.2006. Mr. Aggarwal further submits that the respondent workman has already reached the age of superannuation on 31.8.2005

10 . Taking into consideration the above factual position no directions for reinstatement of the respondent can be given since already he has attained the age of superannuation on 31.8.2005. Further the petitioner has also received the arrears of wages w.e.f. the date of his termination till the date of the award i.e. 1.9.2005, and, therefore, it is directed the petitioner shall pay 50% of the back wages from the date of his termination till the date of his superannuation after giving an adjustment of the amount already paid by the petitioner in terms of the directions of this court vide order dated 4.9.2009. The payment shall be paid by the management to the workman within a period of two months, failing which the workman shall be entitled to interest @ 12% per annum on the said arrears of the amount. The workman shall also be entitled to be paid other retrial benefits as are permissible under the law.

With the above directions, the petition No. W.P (C) 4315/2003 is disposed of in terms of above directions and the petition No. 688/2004 is hereby dismissed being devoid of any merit.

February 24, 2009
pkv

KAILASH GAMBHIR, J