

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

+ **W.P.(C) NO. 10665/2005**

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Date of Decision : 25.03.2009

Delhi Transport Corporation

.... Petitioner

Through Ms. Kiran, Advocate

Versus

Sh. Mahender Kumar Sharma

.... Respondent

Through Mr. Sanjay Ghose, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether reporters of Local papers 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 |

V. K. SHALI, J. *(Oral)*

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1. The petitioner has challenged the award dated 26th March, 2004 passed by the learned Labour Court No.VII in ID No. 907/1996 in the case titled **Sh. Mahender Kumar Sharma Vs. Delhi Transport Corporation.**

2. By virtue of the impugned award the learned Labour Court came to a finding that the workman did not commit any misconduct by absenting himself as the respondent's had sanctioned the leave without pay for his period of absence and it also held that the Inquiry report is perverse and is liable to be quashed. Accordingly, the learned Labour Court held the termination of the services of the respondent/workman

w.e.f. 2nd July, 1993 as illegal, biased and perverse and directed his reinstatement with 50% back wages.

3. I have heard the learned counsel for the parties and gone through the record. The learned counsel for the petitioner has challenged the award on the ground that the entire basis of setting aside the order of dismissal (of the petitioner which had taken place on account of his unauthorized absence which was subsequently treated as leave without pay) is the order of the Division Bench of this High Court in the case titled **Delhi Transport Corporation Vs. Sardar Singh** bearing LPA No. 361/2002.

4. It was contended by the learned counsel for the petitioner that the aforesaid Division Bench judgment was set aside by the Hon'ble Supreme Court in **Sardar Singh 2004 (6) JT SC 342** wherein the Apex Court observed that unauthorized leave or remaining absent for a long period without sanctioned leave can be treated as a misconduct because it showed that the employee was habitually negligent in his duties and exhibited lack of interest in the work and such conduct was nothing but reprehensible in extreme and was hardly justified. It constituted misconduct within para 4(ii) and 19(h) of the Standing Orders of the DTC and was inconsistent with the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations 1952. The Division Bench judgment was accordingly set aside.

5. It was contended on the basis of the said judgment by the learned counsel for the petitioner that the award of the learned Labour Court in holding that the absence of the respondent/workman for a period of

106 days though he was granted leave without pay could not be said to be not constituting a misconduct as has been held by the learned Labour Court, and accordingly, the award of the learned Labour Court is unsustainable in the eyes of law.

6. The second submission of the learned counsel for the petitioner is that the learned Labour Court has wrongly held that the Inquiry report is perverse and is liable to be quashed. This finding has been given by the learned Labour Court without any reasoning as to why the learned Labour Court has come to form such an opinion. The observation passed by the learned Labour Court that the inquiry held by the Inquiry Officer regarding the unauthorized absence was incomplete inquiry because of non-giving of opportunity to the respondent/workman, is not sustainable in the eyes of law because the respondent/workman had himself admitted that he was absent for 106 days both in the year 1989 and 1990. Accordingly, it was contended that the award of the learned Labour Court deserves to be set aside.

7. Per contra, the learned counsel Mr. Ghosh on behalf of the respondent/workman contended that he does not dispute the preposition of law laid down by the Hon'ble Supreme Court in **Sardar Singh's** case (supra) but it was urged by him that he is not opposed, in case the matter is remanded back to the learned Labour Court to be decided afresh on the question as to whether the misconduct of the petitioner in remaining absent constituted violation of the Standing Orders of the DTC or not. With regard to the second submission of incomplete Inquiry being conducted by the Inquiry Officer it was urged

by the learned counsel for the respondent that as the respondent/workman was not given an opportunity to adduce evidence, therefore, the observation of the learned Labour Court that the finding of the Inquiry Officer were incomplete was also reasonable and correct.

8. I have considered the respective submissions and gone through record.

9. There is no dispute that the Division Bench judgment in Sardar Singh case has been set aside by the judgment of the Hon'ble Supreme Court in DTC Vs. Sardar Singh JT 2004 (6) SC 342 wherein it has been held that unauthorized leave can be treated as a misconduct. Leave without pay is not the same as sanctioned or approved leave. It was observed that the conduct of the respondent in remaining absent for long periods without sanctioned leave showed that he was habitually negligent in duties and exhibited lack of interest in the work and such conduct was nothing but reprehensible in extreme and can hardly be justified. The Hon'ble Supreme Court also observed that unauthorized absence was not only in contravention of Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations 1952 but it also constituted violation of Regulations 15 and paras 4(ii) and 19(h) of the Standing Orders framed thereunder and the petitioner/management in a given charge would be well within its right to terminate the services of the respondent/workman.

10. In the instant case, the learned Labour Court has primarily held that the absence of the respondent/workman for a period of 25 days in 1989 and 81 days in 1990 (wrongly recorded as 18 days) was not

misconduct because the petitioner/management had sanctioned leave without pay to the respondent/workman.

11. In the light of the holding by the Hon'ble Supreme Court to the effect that sanction of the leave without pay cannot be construed as an approved leave or sanctioned leave and thereby cannot be said to be a ground for not treating long unauthorized absence as misconduct. Accordingly, I am of the considered opinion that the respondent/workman himself had admitted that he was absent for a period of 25 days in the year 1989 and for 81 days in the year 1990 without any leave and that too unauthorisedly. This constituted the misconduct within Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations 1952 but it also constituted violation of Regulations 15 and paras 4(ii) and 19(h) of the Standing Orders of the DTC. It could not be said that merely because the said period was regularized by granting him leave without pay that the aforesaid unauthorized absence would not be treated as misconduct. To that extent the finding of the learned Labour Court is not sustainable in the light of judgment of the Apex Court in Sardar Singh case and is accordingly liable to set aside.

12. So far as the second finding of the learned Labour Court is concerned, that the finding of the Inquiry Officer is perverse or that the Inquiry was incomplete because the respondent/workman was not given an opportunity to adduce evidence also is not sustainable as being perverse because this has come on record that the factum of the respondent/workman being absent for 25 days in 1989 and 81 days in

1990 is not disputed by him. As a matter of fact he has admitted before the Inquiry Officer. Merely, because the petitioner had been sanctioned leave without pay for the aforesaid period, it could not be assumed that he was absolved of the misconduct which is ex-facie established. The observation of the learned Labour Court that the respondent/workman was not given an opportunity to adduce evidence is also not correct or sustainable because the general law is that a fact which is admitted need not be proved. The charge against the respondent/workman was that he was absent for 25 days in 1989 and 81 days in 1990 (wrongly recorded as 18 days) is itself admitted by the respondent/workman even before the Inquiry Officer. Having done so, it was not the case of the respondent/workman that he was unable to attend office because of some reason. He had also not sought any opportunity to justify his absence for which he had been sanctioned leave without pay.

13. In the background of these facts, I am of the considered opinion that the learned Labour Court was not right in holding that the Inquiry was incomplete or the finding of the Inquiry Officer was perverse. To that extent the learned Labour Court's award is unsustainable. Now, the question which arises for consideration is as to whether the matter deserves to be remanded back as is suggested by the learned counsel for the respondent/workman or not.

14. I am of the considered opinion that the remand of the matter to the learned Labour Court afresh will be a total futile exercise. The factum of the respondent/workman being absent and the period thereof is not disputed that the respondent/workman was also sanctioned the

leave without pay for the aforesaid period of absence. In the light of these two submissions, if we apply the proposition of law laid down by the Hon'ble Supreme Court it can hardly be said that the action of the respondent/workman in remaining absent for a prolonged period did not constitute misconduct for which he has been visited with the punishment of dismissal for which approval was refused by the learned Labour Court. The refusal to grant approval in the light of Sardar Singh judgment was also unwarranted and illegal and therefore cannot be sustained.

15. I, accordingly, hold that the petitioner/management entitled to the approval and the same is granted after setting aside the award dated 26th March, 2009 passed by the learned Labour Court. No order as to costs.

CM No.7198/2006

16. Since the writ petition has been disposed of, no order is called for on this application. Accordingly, the same is also disposed of as having been infructuous.

MARCH 25, 2009
KP

V.K. SHALI, J.