

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

+ **W.P.(C) NO.11803/2005**

% **Date of Decision: 13.01.2009**

DELHI TRANSPORT CORPORATION Petitioner

Through Mr.Mohammad Sajid, Advocate

Versus

SH. RAMESH CHANDER Respondent

Through Ms.Rekha Palli, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

V.K.SHALI, J. (Oral)

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1. This is a writ petition filed by the petitioner challenging the award dated 8th March, 2004 passed by Sh.C.K.Chaturvedi, Presiding Officer, Labour Court No.VII, Delhi in ID No.150/1996 titled as The Workman Sh. Ramesh Chander Vs. The Management of M/s Delhi Transport Corporation

2. Briefly stated the facts leading to the filing of the present writ petition are that the Workman Sh.Ramesh Chander raised an Industrial dispute against his alleged illegal removal from services of the petitioner/DTC herein. The said dispute came to be referred for

adjudication by the Secretary (Labour) Government of NCT of Delhi in the following terms of reference:-

“Whether the removal of Shri Ramesh Chander from the service by the Management is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

3. The workman filed a statement of claim that he was employed by the Delhi Transport Corporation as a Conductor. It was alleged by the workman that a charge sheet was issued to him on 19.9.1986 alleging therein that he had not issued the tickets to the passengers though he had collected the fare from them. The respondent/workman had alleged that along with the charge sheet neither the copy of documents nor the list of witnesses or the preliminary enquiry report was given to him. Accordingly, the report of the enquiry officer was assailed as being violative of the principles of natural justice as well as on merits being perverse. The workman had alleged that he is unemployed and therefore, claimed reinstatement with full back wages and continuity of service.

4. The petitioner/Management filed its written statement and refuted the allegations made by the respondent/workman without refuting the stand of the respondent/workman. It was averred that the respondent/workman was performing the duties on Bus No.DEP 8563 on Delhi Bela route road and on checking it was found that he was involved in malpractice of collecting fare, yet not issuing the tickets and

thereby causing loss of revenue to the Delhi Transport Corporation. On the pleadings of the parties, the following two issues were framed :

- “(i) Whether a fair and proper enquiry was not conducted in accordance with principles of natural justice ?
- (ii) As per terms of reference.”

5. The workman did not adduce any evidence in support of his statement of claim but on the contrary took the plea that the Management of DTC had under Section 33 (2)(b) of the Industrial Disputes Act, 1947 approached the Court for the purpose of approval of the Secretary (Labour) so far as the dismissal of the respondent/workman was concerned.

6. The relevant provisions of Section 33 of the Industrial Disputes Act, 1947 are reproduced below :

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.-(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceedings before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,-

- (a)
- (b)
- (2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman]-
 - (a)

- (b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman.....”

7. The approval was rejected by the Secretary (Labour), Government of NCT of Delhi. Even the petition under Section 33 (2)(b) of the Industrial Disputes Act was dismissed by Sh.P.S.Teji, the learned Presiding Officer, Industrial Tribunal No.II vide its order dated 28.7.2003.

8. This order of dismissal of the petition under Section 33(2)(b) was not challenged by the petitioner/Management before the High Court and therefore, this order had attained finality so far as the parties are concerned. In the light of the dismissal of such petition under Section 33 (2)(b) of the Industrial Disputes Act, 1947 it was urged by the respondent/workman that he was entitled to be reinstated with full back wages. The respondent/workman had also placed reliance in this regard in a case titled as Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Verma & Ors. AIR 2002 SC 643.

9. The learned Labour Court had also placed reliance on the said judgment and come to a conclusion that as the petitioner who was the respondent before the Labour Court had not challenged the dismissal of its petition under Section 33 (2)(b) of the Industrial Disputes Act before the High Court therefore, the said non-grant of approval by the Secretary (Labour) and the dismissal of the petition by the Labour Court was final and binding between the parties. The said finding is res

judicata so far as the lis between the DTC and respondent/workman was considered. Giving this reasoning, the learned Presiding Officer of the Labour Court has held his removal to be illegal and directed the Management to reinstate the respondent/workman with continuity of service and with full back wages and consequential benefits.

10. I have heard the learned counsel for the parties and perused the record. The legal position is very clear as is laid down by the Constitutional Bench of the Hon'ble Supreme Court in Jaipur **Zila Sahakari Bhoomi Vikas Bank Ltd.** case (supra), wherein it has been held that non-approval of the order of dismissal or failure to make an application under Section 33 (2)(b) of the Industrial Disputes Act seeking approval renders dismissal of a workman inoperative and consequently, the workman becomes entitled to reinstatement and back wages from the date of his dismissal. It has also been held by the learned Single Judge of our own High Court in case a titled as Delhi Transport Corporation Vs. Surinder Pal 2007 (142) DLT 595 that in a case of industrial dispute, if a Tribunal has given a finding after recording evidence that inquiry was fair and just and the Tribunal gives approval on the said application under Section 33(2)(b) and this finding is not challenged, it becomes final and it shall operate as res judicata between the parties. The Court observed that though the provisions of Section 11 of CPC are not applicable but the broad principles of res judicata are applicable.

11. Thus a perusal of the aforesaid two authorities leaves no manner of doubt that in case an application under Section 33 (2)(b) of the Industrial Disputes Act filed by the Management is approved or disapproved by the Tribunal then such a finding attains finality between the parties and unless and until the said finding is set aside by the High Court in exercise of its powers of judicial review. In subsequent proceedings between the parties pertaining to the same issue of dismissal of the employee would be barred by doctrine of res judicata. In other words, meaning thereby that if such an approval is not granted to the Management under Section 33 (2)(b) of the Industrial Disputes Act by his petition by Labour Court automatically the dismissal of the respondent/workman becomes bad in law and he is entitled to reinstatement with full back wages. In the instant case, the learned counsel for DTC/ the petitioner herein was not able to refute this proposition of law. He has also not been able to cite any authority to the contrary in this regard though he was reluctant to concede the same. Coming back to the facts of the present case so far as the workman in the instant case is concerned, he was subjected to a domestic enquiry and consequent to dismissal by the Management of the DTC on the alleged ground of having committed mis-conduct inasmuch as it was alleged against him that he had in the official discharge of his duties collected money as a conductor though he has not issued the tickets. In the enquiry proceedings, he was found guilty and the punishment of dismissal was imposed on him. However, dismissal did not become effective unless and until permission was

granted by the Labour Court. The said permission was not granted by the Labour Court consequently the Management filed a petition under Section 33 (2)(b) of the Industrial Disputes Act, 1947 seeking the permission of the Labour Court which permission was refused by Sh.P.S.Teji, Presiding Officer, Industrial Tribunal No.II. This dismissal of the petition by Sh.P.S.Teji, Presiding Officer, vide its award dated 8th March, 2004 has not been assailed by the DTC, the petitioner herein before the High Court. Therefore, that no grant of approval by the Secretary (Labour) of the dismissal of the petition and the consequent reinstatement of the petitioner becomes final between the Management of DTC of the workman. In such a contingency to assail the present award which is purely based on the earlier dismissal of their petition under Section 33 (2)(b) of the Industrial Disputes Act, is not maintainable. Therefore, I do not find any infirmity either in the award, which has been passed by Sh.C.K.Chaturvedei, Presiding Officer, Labour Court No.VII, Delhi in ID No.150/1996. Accordingly, the writ petition of the petitioner is dismissed. No order as to costs

January 13th, 2009
RN/RS

V.K.SHALI, J.