

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

+ **W.P.(C.) No. 18751/2005 and W.P.(C.) No. 21113/2005**

% **Date of Decision: 06th August, 2009**

DELHI TRANSPORT CORPORATION

..... PETITIONER

! Through: Mr. Ataul Haque, Advocate

VERSUS

\$ SHRI JUGMINDER SINGH EX-CONDUTOR

.....RESPONDENT

^ Through: Ms. Rashmi B. Singh, Advocate.

+ **W.P.(C.) No. 21084/2005 and W.P.(C.) No. 18793/2005**

DELHI TRANSPORT CORPORATION

..... PETITIONER

! Through: Mr. Ataul Haque, Advocate

VERSUS

\$ SHRI KALU PRASAD EX-CONDUCTOR

.....RESPONDENT

^ Through: Ms. Rashmi B. Singh, Advocate.

CORAM:

Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper 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**

S.N.AGGARWAL, J (ORAL)

All these four writ petitions are proposed to be disposed of by this common order because counsel for both the parties have agreed for passing of a consent order in these petitions.

2. There are two workmen in these four petitions and they both were employed as Conductors with Delhi Transport Corporation (hereinafter referred as DTC). They were removed from the service of DTC on the

ground of mis-conduct proved against them in the domestic inquiry. Since the dispute raised by the union relating to general demands was pending adjudication before the Industrial Tribunal, the DTC filed two separate approval applications under Section 33(2)(b) of the Industrial Disputes Act, 1947, against the workmen for approval of their removal from service. These approval applications under Section 33(2)(b) were rejected by the Industrial Adjudicator by two different orders dated 02.09.1996 and 13.10.1997 on the ground of non-payment of costs. In the meanwhile, when approval applications were pending, both the workmen raised separate industrial disputes relating to their removal from the service of DTC and they were referred by the appropriate Government for adjudication to the Labour Court. The Labour Court vide two separate awards dated 17.09.2004 and 29.01.2005 decided the reference in favour of the workman basing its findings on earlier orders dated 02.09.1996 and 13.10.1997 rejecting the approval application. The industrial dispute raised by the workmen relating to their removal from the service of DTC was admittedly not examined by the Court below on merits.

3. The DTC being the management of the workmen being aggrieved by the impugned orders dated 02.09.1996 and 13.10.1997 rejecting the approval under Section 33(2)(b) and also aggrieved by the impugned awards dated 17.09.2004 and 29.01.2005 have filed these four writ petitions seeking setting aside of all these four orders.

4. A Division Bench of this Court in ***Delhi Transport Corporation vs. Hari Narain Giri and Another, LPA No. 480/2000 decided on 07.02.2002*** relying upon a judgment of the Supreme Court in ***PNB Vs. Ram Kunwar Industrial Tribunal AIR 1957 SC 276*** has held that order of the Tribunal rejecting approval applications under Section

33(2)(b) on the ground of non-payment of costs is an order without jurisdiction. Though there is considerable delay on the part of the management of DTC in filing of writ petitions against the impugned orders rejecting approval (on the ground of non-payment of costs), but the Court need not go into the aspect of delay in filing of writ petition against order rejecting approval as these impugned orders of the Tribunal are without jurisdiction. In case an order impugned in the writ petition is an order without jurisdiction, then such an order does not exist in the eyes of law. For that reason, the impugned orders dated 02.09.1996 and 13.10.1997 passed by the Tribunal under Section 33(2)(b) rejecting the approval on the ground of non-payment of costs, cannot be sustained in the eyes of law and have to be set aside.

5. As far as the two awards dated 17.09.2004 and 29.01.2005 impugned in these writ petitions are concerned, there was no delay on the part of the management in filing of the writ petitions against these awards. The writ petitions were filed within a year of the said award. Admittedly, the Tribunal has not adjudicated the reference on merits and has passed the impugned awards only relying on the earlier orders of rejection of approval under Section 33(2)(b). Such a course adopted by the Tribunal below is contrary to law. The Tribunal was required to adjudicate the reference on merits notwithstanding refusal of approval for removal of the respondent from service. Reliance is place on four earlier judgments of this Court on the same point in ***Delhi Transport Corporation Vs. Sh. Rajbir Singh W.P.(C.) No. 18018/2005 decided on 23.09.2008; Delhi Transport Corporation Vs. Sh. Sahab Singh (Ex-Conductor) W.P.(C.) Nos. 22768/2005 & 22860/2005; Delhi Transport Corporation Vs. Shri Hari Narain Giri & Another L.P.A. No. 480/2000 decided on 07.02.2002 and Delhi***

***Transport Corporation Vs. Kusum Pahaljani and Another 2000
(56) DRJ (Suppl) 133.***

6. Since the impugned awards dated 17.09.2004 and 29.01.2005 are not adjudicated on merits and were decided in favour of workman only because of rejection of the approval application under Section 33(2)(b), the said awards also cannot be sustained in law.

7. For the foregoing reasons, the impugned orders dated 02.09.1996 and 13.10.1997 under Section 33(2)(b) as well as the impugned awards dated 17.09.2004 and 29.01.2005 are all hereby set aside. The case is remanded back to the concerned Labour Court / successor Court for fresh decision on management's application under Section 33(2)(b) and also for fresh decision of the industrial dispute raised by the workmen relating to their removal from service. Needless to say that the Court below shall give an opportunity of hearing to both the parties before deciding the dispute afresh as per law.

8. At this stage, the Court has been informed that one of the workmen, namely, Shri Kalu Prasad has been taken back on duty by the management without prejudice to its rights and contentions and he is stated to be working with the management as on date. The other workman, namely, Shri Jugminder Singh has not so far been taken back on duty by the management.

9. Mr. Ataul Haque, learned counsel appearing on behalf of the management, submits that the workman Mr. Jugminder Singh can also join duties with the petitioner management subject to final outcome of the fresh decision of the Labour Court.

10. Ms. Rashmi B. Singh, learned counsel appearing on behalf of the respondent workman Shri Jugminder Singh, on instructions from her client present in Court, submits that her client will join duties with the

petitioner management in the afternoon, today itself. It is made clear that the service of the workmen with the petitioner Corporation will not create any special equity in their favour and their rights shall be subject to final outcome of the fresh decision of the Labour Court.

11. The parties are directed to appear before the concerned Labour Court / Successor Court for further directions at 2:00 P.M. on 17.08.2009. The Court below is directed to decide the case on remand as expeditiously as possible preferably within one year from today. In view of the above, all these four writ petitions stand disposed of.

All miscellaneous applications pending in these petitions, are rendered infructuous and stand disposed of accordingly.

A copy of this order be kept in the files of all the four writ petitions which have been disposed by this common order.

AUGUST 06, 2009
'bsr'

S.N.AGGARWAL, J