

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

+ **Writ Petition (Civil) No.23156/2005**

Date of Decision: 25.3.2009

DEV RAJ

.....Petitioner

Through : None

Versus

D.T.C.

..... Respondent

Through : None

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 ? | NO |
| 2. | To be referred to the Reporter or not ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J. (Oral)

1. The petitioner in the present writ petition has prayed for setting aside the award dated 17th August, 2004 passed by the learned Labour Court-X, Karkardooma Courts, Delhi in ID No.462/95 in case titled as The Management of M/s Delhi Transport I.P. Estate, New Delhi Vs. Its Workman Sh.Dev Raj, by virtue of which the petitioner was directed to be reinstated on being acquitted in respect of a criminal case under Section 302 IPC. However, the learned Labour Court did not grant any payment of back wages to the petitioner.

2. The petitioner has contended that although he was falsely implicated in a case under Section 147/148/149 & 302 of IPC, Police Station Mehrauli vide FIR No.213/85. However, he was acquitted by the learned Additional Sessions Judge on 30th

September, 1992. The petitioner remained in jail for nearly seven years because of which he was deemed to have resigned from his services, which was challenged by him before the appropriate authority. The appropriate authority in exercise of its powers under Section 10(i) (c) and Section 12 (5) on the following terms:-

“Whether the action of the Management in declaring Sh.Dev Raj, as deemed to have resigned, is illegal and/or unjustified and if so, in what relief is he entitled and what direction are necessary in this respect.”

3. While deciding the said issue, the learned Labour Court had granted the order of reinstatement on 17th August, 2004 which award was published and enforced by reinstating the petitioner w.e.f. 29.8.2005. The contention of the petitioner in this writ petition is that he is not claiming the back wages for the period from 17.6.85 when FIR was registered to 30.9.92 when he was acquitted but he is claiming wages after 30.9.92 i.e. from 1st October, 1992 till the pronouncement of the award on 17.8.2004 as there is absolutely no justification for the Labour Court to deny him the said benefit. It was contended that the petitioner after being acquitted had made number of representations to the respondent /Management for reinstatement and also sent them a demand notice requesting them that the petitioner has been acquitted, he may be reinstated. It was contended that the factum of demand notice having been received by the respondent /Management is admitted by them in their written statement. The respondent also stated in their written statement that the

demand notice of the petitioner was sent to the Deputy Management (P) (South) vide covering letter dated 16th January, 1999 and since no action with regard to the reinstatement was taken by the respondent /Management. Therefore, he is entitled to back wages as there was no action on the part of the petitioner to resume his duty. The petitioner in support of his contention has relied upon two judgments titled as ***Babu Lal Vs. State of Haryana & Ors.*** 1991 2 SCC 335 and ***Union of India Vs. K.V. Jankiraman*** AIR 1991 SC 2010, in support of his contention that the petitioner ought to have given the back wages for the period after his acquittal till the date when the award was passed.

4. Per contra, the learned counsel for the respondent /Management contested this claim of the petitioner. It was urged that as the petitioner had not worked, therefore, the principle of no work no pay ought to be followed. In addition to this, the petitioner had not given any application for reinstatement or payment of back wages. This fact is also recorded in the award of the Labour Court.

5. I have carefully considered the submissions made by the respective sides and perused the authorities. At the outset, it is stated that so far as the judgment in Jankiraman's case is concerned, the same is not applicable, as the facts of the case are totally different in the sense that in Jankiraman's case, the respondent –employee was not facing a criminal trial of a serious

offence. Therefore, what has been observed in the said case cannot be taken advantage by the petitioner.

6. In Babu Lal's case, no doubt the Supreme Court has observed that if a delinquent employee is suspended and subsequently terminated on account of being involved in a criminal proceedings under Section 420 IPC which later on ended in his acquittal of the said charge then the order of termination becomes punitive, illegal and arbitrary and hence is liable to be quashed. This necessarily meant in acquittal of a delinquent employee of a criminal charge invariably must result in reinstatement of the employee concerned and as a consequence, his regularization. In Babu Lal's case since the person concerned was suspended after reinstatement, he was directed to be given the arrears of back wages for the period of his suspension as the same was regularized. The ratio of Babu Lal's case (supra) is also not applicable to the facts of the present case for the simple reason that, it was a case where the person concerned was suspended and subsequent to the acquittal his suspension period was regularized and he was paid arrears of pay for the period of his suspension when he was facing the criminal trial.

7. Coming back to the facts of the present case, no doubt the petitioner is not claiming the arrears and back wages from 17.6.1985 to 30.9.1992 i.e. between the period of his involvement in the criminal case till the date of his acquittal, but only after that date of passing of the award, this is not be done as a matter

of course. The Supreme Court in a number of cases has observed that the principle of no work no pay must be followed with a view to seek justice to both the parties. This principle has been followed as a measure of justice, equity and good conscious. In the present case, the petitioner is claiming that he had sent a demand notice. No doubt, the same is admitted by the respondent /Management in its written statement but filing of the demand notice in itself is not sufficient. The petitioner must show his intension to resume the duty. The respondent /Management was not responsible for having kept the petitioner out of service. It was the making of the petitioner by his own that he was involved in a very serious offence by unlawful assembly and murder in the criminal case on 17th June, 1985. In this matter also he had been acquitted only on the benefit of doubt and it is not a clear acquittal.

8. The learned Labour Court in its judgment has specifically recorded that the petitioner has not filed any application with the respondent/Management for reinstatement. Therefore, I am of the view that as the petitioner had not filed an application for reinstatement with the Management and he was acquitted of a serious offence only on technical ground, it is a case where the principle of no work no pay ought to be followed by the Court and accordingly, I find that there was no infirmity and perversity in the award of the learned Labour Court whereby the back wages have not been given for the period from 1st October, 1992 to 17th August, 2004.

9. For the reasons mentioned above, the writ petition of the petitioner is without any merit and the same is dismissed.

V.K. SHALI, J.

MARCH 25, 2009

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