

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

+ **Writ Petition (Civil) No. 23841/2005**

Date of Decision : 13.5.2009

DELHI TRANSPORT CORPORATION Petitioner
Through : Mr.J.S.Bhasin with
Ms.Rashmi Priya, Advocates.

Versus

SH.ROHTASH SINGH (EX-DRIVER) Respondent
Through : Mr.Gurbir Singh,
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)

1. The petitioner in the instant writ petition has challenged the award dated 29.8.2005 passed by the Industrial Tribunal in ID No.50/2004 in case titled The Management of M/s DTC Vs. Its Workman Sh.Rohtash Singh. By virtue of the aforesaid award, the learned Tribunal has held that the termination of service of the workman under Clause 14 (10) (c) of the Delhi Road Transport Act (Conditions of Appointment and Service) Regulations, 1952 (hereinafter referred to as Regulations) without giving an opportunity of being heard was held to be illegal and unjustified on the part of the petitioner and accordingly, the said

termination was set aside and the respondent/workman (since deceased) was directed to be reinstated with continuity of service and with all consequential benefits along with 50% of the back wages. The petitioner /Management feeling aggrieved by the aforesaid award and has accordingly challenged the same.

2. I have heard the learned counsel for the parties and perused the record.

3. The first contention which has been raised by the counsel for the petitioner/Management is that admittedly the respondent/workman (since deceased) was deemed to have resigned w.e.f. 23.10.1990 on account of his continued absence despite intimation having been sent to him repeatedly. It is urged that the respondent/workman slept over the matter and approached appropriate Government belatedly after a lapse of 14 years when the reference was made on 26.5.2004 to the Industrial Tribunal with regard to the legality of the deemed resignation under the aforesaid clause. It was urged by the learned counsel for the petitioner that the very fact that reference was made after a period of 14 years, the reference itself ought not to have been considered and answered by the learned Labour Court on account of inordinate delay and laches and in any case merely on account of the fact that the petitioner /Management did not assail the reference by the appropriate Government by filing a writ petition in the High Court, it did not preclude the

petitioner /Management from raising this issue even after the final award having been passed.

4. As a subsidiary to this submission, it was further contended by the learned counsel for the petitioner that even if the legality of the reference made to the learned Labour Court is given up on account of inordinate delay even then on equity also the respondent /workman having approached the learned Tribunal belatedly, he was not entitled to payment of any wages for the said period of delay till the time the reference was made.

5. The learned counsel for the respondent/workman has contested these submissions of the counsel for the petitioner on the ground that if the petitioner/Management felt aggrieved from the reference itself it ought to have challenged the same earlier by filing the writ petition. By not having done so, it is estopped now from assailing the same after the award having been passed. With regard to the question of payment of back wages, it was urged that the learned Labour Court has already taken into consideration the factum of delay attributable to the respondent /workman while giving him the benefit of back wages and has appropriately reduced the same to 50%. Even if it is conceded that there may be some merit in the submission of the learned counsel for the petitioner even then some percentage of back wages ought to be given to the legal heirs of the deceased workmen.

6. I have considered this submission of the respective sides. I agree with the counsel for the petitioner that the respondent /workman having remained silent for a period of 14 years with regard to the grievances of his illegal termination by invoking clause 14(10) (c) of the Regulations, he is not entitled to any back wages for the said period. As a matter of fact, the petitioner ought to have approached the High Court immediately after the reference was made and assailed the same and even if the same is not assailed by the petitioner earlier, the Court cannot put a premium on the conduct of the respondent/workman by giving him the benefit of back wages for the period for which he had gone into slumber. Therefore to that extent, this Court feels that the award dated 29.8.2005 deserves to be modified.

7. The next question which arises for consideration is that the petitioner has been directed to reinstate the respondent /workman by the impugned award but it is not in dispute that though the award has been passed on 29.8.2005, however, the respondent/workman is admitted to have expired on 10.5.2007. His legal heirs have been brought on record but the benefit of reinstatement cannot be given to the LRs of the petitioner and to that extent the award of the learned Labour Court cannot be implemented and has become infructuous by subsequent event.

8. The third component of the benefit which has been granted by the Labour Court is the benefit of continuity of service with all consequential benefits. Though the Supreme Court in case

titled ***D.K.Yadav V.J.M.A. Industries Ltd. SC 1993 P-696 LLJ*** **Vol. 2 page 696** has not approved of the practice of the learned Labour Court or the Industrial Tribunal to grant mechanically the benefit of continuity of service and consequential benefits without realizing that it has very vital effect on the functioning of the Organization inasmuch as the workman who is given such benefit without having rendered the actual services, he becomes entitled to be considered for promotional post without having actually worked in the feeder cadre itself. Therefore, this impinges on the efficiency of the Organization itself. This question of continuity of service and consequential benefits in the instant case becomes redundant on account of the fact that the respondent /workman is no more. The only question therefore, remains regarding the payment of pensionary benefits.

9. The learned counsel for the petitioner has very fairly conceded that the Supreme Court in case titled ***DTC Vs. Prakash Chand*** in Civil Appeal Nos. 7110-7111/2004 has passed a consent order where the services of the employees of the petitioner which were dispensed with by invoking clause 14(10) (c) of the Regulation were restored back by the petitioner /Management with the condition of the workman forgoing their claim for back wages or limiting their relief in other categories to certain pensionary benefits to themselves or to their legal heirs granted them pensionary benefits only.

10. One such category visualized by the aforesaid order of the Apex Court is that where the workman has died during the pendency of litigation and the benefit of continuity of service with consequential benefits has been limited only to the extent of payment of pensionary benefits.

11. In the instant case also the operation of the impugned award with regard to the continuity of service and the consequential relief is limited only to the extent of payment of pensionary /retiral benefits to the LR's of the deceased workman whose name stand already brought on record. Accordingly, the impugned award stands modified to that extent also.

12. It has now been urged by counsel for the petitioner that though the respondent /workman has been denied the wages for the period of 14 years resulting in making of reference to the learned Industrial Tribunal but the respondent/workman had filed CM No.4645/2007 on 28.3.2007 under Section 17-B of the Industrial Disputes Act for grant of the last drawn wages/minimum wages in terms of the provisions under Section 17-B of the ID Act till the time of his death which happens to be 10.5.2007.

13. I have heard the learned counsel for the parties on the said application also. The prayer of the respondent /workman with regard to the grant of statutory benefit in terms of Section 17-B of the Act from the date of the award i.e. 29.8.2005 till the date of his death which is 10.5.2007 seems to be a reasonable and in

accordance with the provisions of law inasmuch as the petitioner had assailed the impugned award and obtained stay and therefore, the respondent /workman was entitled to the statutory benefits.

14. It is not in dispute that the last drawn wages of the respondent /workman were Rs.2,900/- and that he died on 10.5.2007. It has been stated that the respondent/workman has been unemployed since the date of termination and continues to be so. There is a supporting affidavit in this regard. Therefore, the onus was on the petitioner/Management to show that the respondent was gainfully employed anywhere and earning money. Since this has not been done, therefore, this Court is inclined to grant the benefit of the last drawn wages i.e. Rs.2,900/- per month for the period during which the award has been passed and till the time he has actually expired. The aforesaid amount so calculated for the period from 29.8.2005 to 10.5.2007 shall be granted by the petitioner to the LRs of the deceased respondent/workman by way of a cheque/pay order/demand draft within six weeks.

15. It is made clear that in case the aforesaid amount is not paid within time stipulated, it will carry an interest @ 5% per annum from the date of the award till the actual payment is made.

16. With these directions, the award dated 29.8.2005 passed by the Industrial Tribunal in ID No.50/2004 in case titled The

Management of M/s DTC Vs. Its Workman Sh.Rohtash Singh
stands modified to the extent that the LR's shall be entitled to
only pensionary benefits.

No order as to costs.

V.K. SHALI, J.

MAY 13, 2009

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