

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

+ **Writ Petition (Civil) No. 18147/2006**

Date of Decision : 23.04.2009

Sh. Raghubir Singh (Driver) Petitioner
Through: Mr.M.Hassain, Advocate

Versus

Delhi Transport Corporation Respondent
Through : Ms.Arati Mahajan, 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 has challenged the award dated 22nd May, 2006 passed by the Industrial Tribunal-II in ID No. 11/2004 in case titled **Delhi Transport Corporation Vs. Shri Raghubir Singh**. By virtue of which the learned Tribunal instead of directing reinstatement and payment of back wages had granted a onetime lump sum compensation of Rs.15,000/-

2. I have heard the learned counsel for the parties and perused the record. The learned counsel for the petitioner has contended that the quantum of compensation which has been awarded to the petitioner/driver in the instant case is grossly inadequate, keeping in view the fact that the petitioner has rendered approximately four years of service and the fact that in case he would have been directed to be reinstated then he would have continuously worked for a long period

of time till the age of superannuation. It has also been urged by the learned counsel for the petitioner that the petitioner has not been given litigation expenses for conducting the matter both before the Conciliation Officer and then before the Labour Court as well.

3. As against this, the learned counsel for the respondent/DTC has contended that the total quantum of service which has been put by the petitioner as a driver with the respondent/DTC was 3 ½ years out of which for 1 ½ years he had worked as on retainer basis which practically means on daily wage basis. In this system, as and when his services would be requisitioned, he would be paid his wages. Thereafter, he was converted on a monthly basis and put on probation and for this purpose during probation he worked for approximately two years, however, even during this short tenure of 3 ½ years the conduct of the petitioner/driver was not befitting that of a driver on account of the fact that he frequently indulged in absenteeism on several occasions because of which the functioning of the public transport system was jeopardized.

4. It was also contended by the learned counsel for the respondent /DTC that there are judgments to the effect that there is no straight jacket formula has been evolved for taking various factors into consideration while calculating the compensation. This aspect has been dealt with by the Apex Court in different judgments and different points like the length of service served or yet to be served, conduct of employee, wages earned by him, capacity of the employer to pay compensation, etc. are taken into consideration. The chances of the workmen having gainfully employed during the period of alleged termination have been taken into account.

5. In all these cases, the learned counsel for the respondent/DTC contended that the quantum of compensation which had been awarded to the workman was in the range of Rs.10,000/- to Rs.30,000/-. Reliance in this regard was placed on case titled ***Nagar Mahapalika Vs. State of U.P. AIR 2006 SC 2113, Branch Manager, M.P. State Agro Industries Development Corporation Ltd. & Anr. Vs. S.C. Pandey 2006 (2) SCALE 619 and I.T.C. Monghyr, Bihar Vs. Presiding Officer, Labour Court, Patna, Bihar 1978 (3) SCC 504.***

6. I have carefully considered the submissions made by the respective sides and also gone through the award of the learned Labour Court.

7. There is no dispute about the fact that the petitioner was working as a driver. It has also come on record that the conduct of the petitioner even as a driver had not been befitting that of a driver. The learned Labour Court has observed that the petitioner had absented himself from duty on several occasions was irregular in performance of his duties.

8. The petitioner who was admittedly functioning as a driver of a public transport system was expected to maintain high degree of punctuality and efficiency because much will depend on the drivers of the public transport system to maintain the overall efficiency and punctuality of the fleet which has to transport the people of the city on daily basis. Therefore, this factor if taken into consideration certainly goes against the petitioner/driver. The second factor which has been taken into consideration is the total number of years of service where broadly speaking there is not much of difference between the learned counsel for the parties. The petitioner is contending that he had

served the organization for a period of four years. The learned counsel for the respondent has contended that he has actually served for a period of 3 ½ years out of which 1 ½ years he was on a retainer basis which practically means as daily wagger. This aspect has not been refuted by the learned counsel for the petitioner from the record, thereby we are left with total service of approximately of two years having been rendered by the petitioner with the respondent/DTC.

9. The petitioner in the writ petition itself has stated that his basic salary at the time of his alleged termination was Rs.322/- or so and other allowances which he would have earned. Accordingly, the salary of the petitioner would have been in an around of Rs.600/- or so per month. The petitioner had rendered service with the respondent/DTC for the period of 2 years or so and if quantum of compensation is calculated, it would be more than two years' wages, if calculated @ Rs.600/- per month.

10. Another aspect of the matter which perhaps seems to have weighed with the learned Tribunal while fixing the compensation is the fact the petitioner was working as a driver of a heavy duty vehicle and a skilled person of his type would hardly remain idle even during the period when his services were terminated. In addition to this, there was a considerable gap between the date of his termination and the date of award, and therefore, I feel that the learned Labour Court was practically right in fixing onetime lump sum compensation of Rs.15,000/- to be paid to the petitioner in exercise of its powers under section 11A of the Industrial Disputes Act, 1947.

11. So far as the question of payment of litigation expenses is concerned, this is certainly not a prayer in the writ. As regards the litigation expenses for conducting the proceedings before the learned

Labour Court, it was for the petitioner to make a prayer to the said forum and the Tribunal was to consider the request of the petitioner either to allow or disallow the said prayer. Even in the present writ petition, there is no prayer to the effect that while computing the compensation, the factum of the litigation expenses which the petitioner might have incurred in carrying out the entire exercise ought to have taken into account. Therefore, this aspect of the matter seems to be totally an after thought.

12. For the foregoing reasons mentioned above, I do not find any illegality, perversity or any violation of rule and regulations of principle of natural justice, and therefore, there is no merit in the writ petition and accordingly the same is dismissed.

No order as to costs.

V.K. SHALI, J.

APRIL 23, 2009
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