

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C.) No. 4742/2008**
% **Date of Decision: 05th October, 2009**
SHRI PRAVEEN KUMAR PETITIONER
! Through: Ms. Neha Gupta, Advocate.
VERSUS
\$ DELHI TRANSPORT CORPORATION RESPONDENT
^ Through: Ms. Charul Sareen, Advocate.

CORAM:
Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper 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**

S.N.AGGARWAL, J (ORAL)

The petitioner being the workman in this writ petition seeks to challenge an order dated 16.04.2008 passed by the Labour Court dismissing his application under Section 33-C(2).

2. Briefly stated the facts of the case relevant for the disposal of this writ petition are that the petitioner was removed from the service of the respondent (DTC) w.e.f. 28.10.1992. It is an admitted case of both the parties that the respondent management was required to obtain approval of the Labour Court for removal of the petitioner from its service under Section 33(2)(b) because at the time of removal of the petitioner from the service of the respondent, an earlier industrial dispute was pending adjudication before the Labour Court. In fact, the respondent filed an application under Section 33(2)(b) before the Labour Court for approval of removal of the petitioner from its service. This application of the respondent under Section 33(2)(b) was dismissed for non-prosecution vide

order dated 16.12.1994. An application for restoration of the approval application filed by the respondent was dismissed by the Labour Court vide its order dated 27.03.1995. The necessary consequence of dismissal of respondent's application under Section 33(2)(b) was that the petitioner was deemed to have continued in the employment of the respondent in view of the judgment of the Hon'ble Supreme Court in **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others reported as (2002) 2 SSC 244.**

3. Consequent thereto, the petitioner was reinstated in service of the respondent w.e.f. 24.09.2003. In fact, the respondent vide its letter Exhibit RW-1/1 also paid an amount of Rs. 5,61,087/- to the petitioner vide cheque No. 765627 dated 15.02.2005 being the amount due to the petitioner on account of salary between the date of his removal and the date of his reinstatement.

4. Since according to the petitioner he was not paid all the benefits consequent upon his reinstatement w.e.f. 24.09.2003, he filed an application under Section 33(2)(c) which has been dismissed by the Labour Court vide order impugned in the present writ petition.

5. Ms. Neha Gupta, learned counsel appearing on behalf of the petitioner, has drawn attention of this Court to the evidence of the management's witness at page 24 of the Paper Book to contend that the petitioner was admittedly not paid salary for the period between the date of his suspension on 24.03.1992 and the date of his removal on 27.10.1992 and that he has also not been paid salary for the period from 17.11.2002 to 20.10.2003. The learned counsel appearing on behalf of the petitioner has also not been granted increments during the period from 24.03.1992 to 01.01.1994.

6. Ms. Charul Sarin, learned counsel appearing on behalf of the

respondent, has contended that the petitioner is not entitled for salary for the period between the date of his suspension and the date of his removal and also for salary for the period from 17.10.2002 to 20.10.2003 because according to her, the petitioner himself had given up his right to claim salary for the said period. I do not find any merit in this argument advanced on behalf of the respondent. Since the petitioner is deemed to have continued in the employment of the respondent for not obtaining approval under Section 33(2)(b), the petitioner is entitled to all consequential benefits from the date he was placed under suspension w.e.f. 24.03.1992. The witness of the management (respondent herein) has admitted in his cross-examination which is at page 24 of the paper book that the petitioner has not been paid full salary for the period between the date of his suspension and the date of his removal and also that he has not been paid salary from 17.11.2002 to 20.10.2003. The witness of the management has also admitted that the workman has not been granted increments for the period from 24.03.1992 to 01.01.1994. According to the witness of the management, the petitioner was not granted increments for the period between 24.03.1992 to 01.01.1994 as the petitioner remained under suspension during the said period.

7. The petitioner could not have remained under suspension beyond the date of his removal. Even if it is assumed that the petitioner remained under suspension for the aforesaid period, he was still entitled to get full wages for the entire period from the date of his suspension till the date he was reinstated because the order of his removal became non-est for want of approval under Section 33(2)(b). Needless to say that the petitioner is also entitled to get benefit of increments for the period intervening the date of his suspension and the date of his reinstatement.

8. In view of what has been stated above, the impugned order of the Labour court is hereby set aside. The petitioner is held entitled to all consequential benefits including salary for the period mentioned hereinabove besides other benefits for the period between the date of his suspension and the date of his reinstatement. However, since the petitioner has not actually worked during the aforesaid period, he will not be entitled to bonus claimed by him. Save and except bonus, he will be entitled to all other benefits. The respondent is directed to pay the arrears to the petitioner within a period of eight weeks from today.

9 This writ petition is allowed in terms referred hereinabove.

OCTOBER 05, 2009
'BSR'

S.N.AGGARWAL, J