

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

+ **W.P.(C.) No. 11647/2009**

% **Date of Decision: 14th September, 2009**

SH. ROHTAS SINGH

..... PETITIONER

! Through: Mr. Atul T. Nagrajan, Advocate.

VERSUS

\$DELHI TRANSPORT CORPORATION

.....RESPONDENT

^ Through: Mr. Sumeet Pushkarna, 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)

C.M. No. 11516/2009 in W.P.(C.) No. 11647/2009

Having regard to the averments contained in the instant application, delay in filing of the writ petition is condoned.

W.P.(C.) No. 11647/2009

The petitioner in this writ petition seeks to challenge an industrial award dated 04.07.2008 in ID No.9/07/1999 by which his removal from the service of the Delhi Transport Corporation w.e.f. 08.08.1996 has been held to be legal and just.

2 Heard on admission.

3 The petitioner was employed as a conductor with the Delhi Transport Corporation (the respondent herein) w.e.f. 19.05.1985. He was served with a charge-sheet dated 09.09.1993 for remaining unauthorizedly absent for 84 days from 24.12.1992 to 17.03.1993. A

domestic inquiry was held into the charge against the petitioner in which he was found guilty for remaining absent unauthorizedly for 84 days from 24.12.1992 to 17.03.1993. The management of the respondent upon considering the inquiry report and the past conduct of the petitioner, decided to remove him from its service and he was accordingly removed from the services of the respondent w.e.f. 08.08.1996. The petitioner aggrieved by his removal from the service of the respondent had raised an industrial dispute which was referred by the Government of NCT to the Labour Court for adjudication.

4 This writ petition is now in its second round of litigation. Earlier the Labour Court vide its order dated 15.07.2003 had decided the inquiry issue in favour of the petitioner and had passed an award dated 28.08.2003 directing his reinstatement with back wages.

5 The respondent, aggrieved by the award dated 28.08.2003, had filed a writ petition being W.P.(C) No.164/2005 which was allowed vide order passed by this Court on 03.10.2005 and the case was remanded back to the Labour Court for fresh decision in accordance with the judgment of the Hon'ble Supreme Court in ***Delhi Transport Corporation vs Sardar Singh reported as AIR (2004) SC 4161.***

6 Pursuant to the above remand order, the Labour Court has now passed the impugned award affirming the removal of the petitioner from the service of the respondent because of admission on his part that he remained absent unauthorizedly for 84 days from 24.12.1992 to 17.03.1993. The petitioner in his cross-examination before the Labour Court had admitted that he had submitted medical certificate and fitness certificate when he went to report for duty after remaining unauthorizedly absent from 24.12.1992 to 17.03.1993 on 18.03.1993. The petitioner further admitted that he had not sent any intimation of his

illness till the time he went and reported for duty on 18.03.1993. This clearly proves the misconduct against the petitioner in view of provisions contained in Paras 19 (h) & (m) of DRTA applicable to the DTC employees.

7 Earlier when the award came in favour of the petitioner workman vide award dated 28.08.2003, the view with the Court was that 'leave without pay' does not amount to misconduct. However, after the judgment of the Hon'ble Supreme Court in Sardar Singh's case (Supra), the view on this aspect underwent a change as it was held by the Hon'ble Apex Court in Sardar Singh's case that in case the leaves were not sanctioned then the unauthorized absence though it may be treated as 'leave without pay' amounts to misconduct within the meaning of paras 19 (h) & (m) of DRTA applicable to the DTC employees. The impugned award has been passed by the court below strictly relying upon the judgment of the Hon'ble Supreme Court in Sardar Singh's case referred above.

8 In view of what has been stated above, I do not find any infirmity, perversity or illegality in the impugned award that may call for an interference by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution. This writ petition therefore fails and is hereby dismissed in limine.

September 14, 2009,
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S.N.AGGARWAL, J