

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) NO. 1763/2001

W.P. (C) No. 8530/2005

Judgment delivered on :20 January, 2010

Delhi Transport Corporation

.....Petitioner

Through: Mr.Rupesh Tyagi, Advocate

Versus

Sh. Vinod Kumar

..... Respondent

Through: Mr. Mohit Bhandari, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR:

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. (ORAL)

1. This order shall dispose of two separate writ petitions filed by the petitioner Delhi Transport Corporation under Article 226 and 227 of the Constitution of India for setting aside the order dated 03.08.2000 of the Ld. Industrial Tribunal –

II, Delhi in O.P. No. 90/91, whereby the Hon'ble Tribunal rejected the approval application under Section 33 (2) (b) of I.D.Act of the petitioner, and also for setting aside the award dated 26.07.2004 passed by the Industrial Tribunal-II, in I.D. No. 327/2001 directing reinstatement of the workman with full back wages and continuity of service.

2. The factual matrix of the case is that the respondent/workman was appointed by the petitioner management on the post of driver as Daily Wager w.e.f. 19.06.1981 and his services were confirmed as driver on 19.12.1981. The services of the respondent workman were terminated on 08.11.1991 on the ground that respondent/workman while performing his duties as driver with bus No. 6424 on route from Delhi to Chandigarh was found by the checking officials to be driving the vehicle with lights inside the bus switched off and was also to have alighted three passengers without ticket. The respondent workman also misbehaved with the checking officials and had also refused to hand over the driver memo and to accept the Challan. As per the petitioner DTC, the respondent committed mis-conduct

within the meaning of para 18 (h) and (m) of the standing orders governing the conduct of the DTC employees. An enquiry was conducted into the said mis-conduct of the respondent and the enquiry officer found him guilty. Based on the enquiry report, show cause notice dated 26.09.1991 was issued to the respondent by the Disciplinary Authority and after finding the reply submitted by the respondent workman to be not satisfactory, the Disciplinary Authority vide orders dated 8.11.1991 directed the removal of the respondent from his service. After taking the said decision, the petitioner DTC had filed an application under Section 33 (2) (b) of the I.D. Act to seek approval of their decision which was dismissed vide order dated 3.8.2000. On the other hand the respondent raised an industrial dispute under Section 10 of the Industrial Disputes Act challenging the said action of removal by the petitioner.

3 . I have heard learned counsel for the parties.

4 . The application of the petitioner under Section 33 (2) (b) of the I.D. Act was dismissed by the Industrial Tribunal as the only witness produced by the petitioner management i.e. AW 1 Sh. Sri Krishan failed to prove mis-conduct on the part of

the respondent and rather gave strength to the defence of the respondent workman. The Tribunal also found the evidence adduced by the respondent workman far more convincing which was also duly corroborated by the statement of the conductor RW 1. Amazingly the said witness AW 1 Sh. Sri Krishan was not aware of the fact as to whether the respondent at the relevant time was employed as a driver or conductor. Counsel appearing for the petitioner has failed to satisfy this court as to how the order passed by the Ld. Tribunal can be termed as illegal or erroneous when the petitioner itself failed to prove the mis-conduct on the part of the respondent/workman by adducing any cogent evidence. The petitioner DTC failed to lead any evidence to prove the preliminary issue with regard to the legality and validity of the enquiry set up by the petitioner against the respondent/workman. I, therefore, do not find any illegality or perversity in the said order passed by the Tribunal while rejecting the application of the petitioner under Section 33 (2) (b) of the I.D. Act.

5 . The position with regard to I.D. No. 327/2001 is also no way better so far as the petitioner is concerned. Here also

the petitioner management failed to prove any of the issues framed by the Tribunal. On issue No.1 the tribunal found that the findings given by the enquiry officer were perverse as the same did not establish any linkage with the alleged misconduct. The Tribunal also found that the enquiry officer failed to give any weightage to the deposition of witnesses produced by the respondent/workman who gave evidence in support of the workman. With regard to issue No.2, on the alleged misconduct of the respondent, the tribunal found that the witness produced by the management failed to prove the alleged misconduct against the respondent workman. On issue No.3, concerning the punishment, the Tribunal held that since the enquiry itself was found to be vitiated therefore consequential punishment imposed by the management upon the workman was clearly illegal and unjustified. The tribunal thus ultimately came to the conclusion that the punishment imposed by the petitioner cannot sustain and accordingly directions were given for the reinstatement of the respondent workman along with back wages. Counsel for the petitioner has failed to point out any illegality or perversity in the reasoning of the Tribunal and

rightly so when the petitioner itself has failed to prove the alleged mis-conduct on the part of the respondent/workman or the correctness of the findings of the enquiry officer.

6 . It is a settled legal position that the Labour Courts are the final courts of finding of facts and this court while exercising jurisdiction under Article 226 of the Constitution of India will not sit over to re-appreciate the finding of the Labour Court unless such findings are either not tenable in the eyes of law or the same are perverse on the very face of it. It would be pertinent to reproduce the relevant para from the judgment of the Apex Court in **Madurantakam Coop Sugar Mills Ltd. Vs. Vishwanathan (2005)3 SCC 193.**

"12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these type of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution of India can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere he has come to the conclusion that the finding of the Labour Court is either perverse or based on no evidence or based on

evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court."

7. The counsel for the petitioner DTC in both the cases has failed to satisfy this court as how the findings of the Tribunal can be termed as illegal or perverse. I do not find any merit in the present petition. The same is hereby dismissed.

January 20, 2010
pkv

KAILASH GAMBHIR,J