

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

+ **WP(C) 3345/2000**

% **Date of decision: 18th March, 2010**

DELHI TRANSPORT CORPORATION **PETITIONER**
Through: Mr. Alok Shankar, Advocate

Versus

ARUN KUMAR **RESPONDENT**
Through: Ms. Raman Oberoi with Mr. K.R.
Sachdeva, Advocates

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The employer DTC in this writ petition impugns the award dated 11th
October, 1999 of the Labour Court on the following reference:-

“Whether the services of Sh. Arun Kumar have been
terminated illegally and / or unjustifiably by the management
and if so, to what relief is he entitled and what directions are
necessary in this respect?”

2. The respondent workman was appointed as Assistant Body Fitter
with the petitioner DTC on 2nd December, 1978 and thereafter promoted as
Body Fitter on 17th April, 1981. The petitioner DTC vide order dated 20th
November, 1985, holding that the respondent workman had absented from

duty without intimation or leave application from 29th July, 1985 to 28th October, 1985, in accordance with Clause 14(10)(c) of the Delhi Road Transport Authority (Conditions of Appointment & Service) Regulations, 1952 declared the respondent workman as deemed to have resigned his appointment w.e.f. 29th October, 1985. On dispute being raised by the respondent workman and reference aforesaid being made, the Labour court finding Clause 14(10)(c) supra to have been held by the Courts to be illegal and void and further finding that the respondent workman had not been given any charge-sheet and no inquiry conducted, held termination of his services as illegal and unjustified and directed the petitioner DTC to reinstate the respondent workman. However the question of whether full back wages were to be granted to the respondent workman or not was directed to be decided by the petitioner DTC in accordance with its Rules and Regulations.

3. Aggrieved from the aforesaid award, the petitioner DTC preferred this writ petition. This Court vide ex parte order dated 5th July, 2000 while issuing Rule in the petition stayed the operation of the award. Subsequently, on 26th July, 2002, the said order was affirmed till the disposal of the writ petition. The respondent workman applied under Section 17-B of the Industrial Disputes Act. Vide order dated 28th October, 2002, it was directed that he will be entitled to last drawn wages not less than minimum wages w.e.f. 28th September, 2000.

4. On 19th November, 2007, the counsel for the respondent workman informed that the respondent workman had expired on 24th October, 2007. On 17th December, 2007, the legal heirs namely the widow and minor daughter of the deceased workman were substituted in his place and a cheque for Rs.1,39,766/- in compliance of the order under Section 17-B of the Act in the name of the widow of the deceased workman was handed over. Subsequently, on 22nd September, 2008 interest for delay in compliance of the order under Section 17-B was also allowed.

5. The respondent workman having died, the award granting the relief of reinstatement alone cannot be implemented. Insofar as the award directed DTC to take a decision on the entitlement of the workman for back wages, the same has also not happened owing to the stay granted by the Court. However the writ petition has not become infructuous owing to the demise of the respondent workman. The question would remain as to whether the action of the DTC in deeming the respondent workman to have resigned is legal or not. If the said resignation is found to be legal and valid, the decision regarding back wages which the award directed the DTC to take will not be required to be taken and DTC would not be liable to pay any further amounts to the legal heirs of the workman than the entitlement under Section 17-B. However, if this petition fails, then not only will the DTC be required to take the decision regarding back wages from the date of deemed resignation till the date of the award but be also liable for emoluments post

award till the date of demise of the workman; it is also informed that DTC also has a scheme of family pension and where-under the legal heirs of the workman would then also be entitled to pension.

6. The Clause 14(10)(c) where-under the petitioner DTC has deemed the respondent workman to have resigned is as under:-

“14. Holidays and Leave :-

(10).

(b) The duration of extraordinary leave shall not ordinarily exceed three months on any one occasion. In exceptional cases; it may be extended to eighteen months subject to such conditions as the Authority may by general or special orders prescribe and only when the employee concerned is under-going treatment for

(c) Where an employee fails to resume duty on the expiry of the maximum period of extraordinary leave granted to him or where such an employee, who is granted a lesser amount of extraordinary leave, than the maximum amount admissible, remains absent from duty for any period which together with the extraordinary leave granted exceeds the limit upto which he could have been granted such leave under Clause (b) he shall be deemed to have resigned his appointment and shall, accordingly cease to be in the employment of the Authority.”

7. I had on 9th March, 2010 when the counsel for the petitioner had commenced arguments enquired as to whether the aforesaid Clause is valid, inasmuch as it does not provide for any opportunity to be given to the workman to show cause against the proposed action and also does not provide for sufficiency of reasons for such absence to be gone into. The said question assumes significance because the case of the respondent/workman

in the present case is that he had been implicated in a criminal case and was arrested on 1st August, 1985 and remained in custody and his bail application was rejected; that he was convicted by the Session Court but in appeal to the High Court was acquitted; immediately after acquittal in July, 1988, he had returned for duty but was not permitted to resume duty and informed that he was deemed to have resigned under Clause 14(10)(c) supra.

8. However, the aforesaid aspect need not detain me any further inasmuch as a five Judge Bench of the Supreme Court in ***Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress*** 1991 Supp (1) SCC 600 has held Clause 9(b) of the Regulations (supra) of DTC to be void for the reason of not giving an opportunity of being heard to the workman before terminating his services. The Labour Court has rightly held that Clause 14(10)(c) (supra) which also does not provide for any opportunity for hearing to be given to the workman before deeming him to have resigned from employment would be bad for this reason. The Labour Court also relied on ***Uptron India Ltd. Vs. Shammi Bhan*** 1998 Labour Industrial Cases 1545 laying down that where the standing orders prescribed termination of service of a permanent employee without holding any enquiry, such provision of the standing order is illegal on the ground of being violative of the principles of natural justice. The Labour Court applying the said principle further rightly held that Clause 14(10)(c) supra would also be illegal for the said reason and no benefit thereof could have

been taken by the petitioner DTC. Since then this court in ***DTC Vs. Om Kumar*** 95(2002) DLT 425 and ***Ram Phal Vs. U.O.I.*** 151 (2008) DLT 452 also held dismissal under clause 14(10)(c) without holding enquiry and giving opportunity to the workman as invalid.

9. The counsel for the petitioner DTC however counters by contending that Regulations supra are a piece of subordinate legislation framed under Section 53 of the Delhi Road Transport Authority Act. It is contended that such deemed resignation is not by an executive fiat. Reliance is placed on ***V.C., Banaras Hindu University Vs. Shrikant*** AIR 2006 SC 2304 in this regard. It is further contended that even though Clause 14(10)(c) does not provide for giving any opportunity of being heard before deeming the workman to have resigned, the petitioner DTC as a matter of practice and instructions issued by it has been issuing a show cause notice before taking any action there-under. It is pointed out that in the present case a show cause notice dated 29th October, 1985 was issued to the respondent workman before deeming him to have resigned. However, on the record of the Labour Court summoned in this Court there exists a reply dated 5th November, 1985 sent by the father of the respondent workman; in the same it was informed that the respondent workman had been falsely entrapped in a court case and as such was unable to attend his duty; it was requested that the respondent workman may be treated as on extraordinary leave without pay from 29th July, 1985 till his court case was finally settled. The respondent workman

also in continuation of the reply dated 5th November, 1985 of his father sent a letter dated 14th November, 1985 informing that certain allegations under the IPC have been leveled against him of which he could not send any information owing to shock and tension and also requesting for treating him as on extraordinary leave. I also find on the file earlier communications dated 14th August, 1985 and 6th September, 1985 of DTC purportedly sent to the respondent workman asking him to report for duty immediately.

10. The counsel for the petitioner DTC has contended that the respondent workman in the replies aforesaid to the show cause notice did not give any particulars whatsoever of the court cases; that it was only subsequently before the Labour Court that it was disclosed that the respondent workman had been arrested on 1st August, 1985 and remained in custody. It is further urged that the respondent workman before the Labour Court also filed only the judgment of this Court in appeal against the order of his conviction and which also was allowed giving the respondent workman the benefit of doubt. It is contended that thus at the time when the decision under Clause 14(10)(c) supra was taken, no such facts had been disclosed by the respondent workman and in absence thereof no fault could be found with the said decision.

11. However, I find that the order dated 20th November, 1985 whereby the decision on Clause 14(10)(c) supra was taken does not record any reason. It neither records that any show cause notice as aforesaid was given to the

respondent workman nor the reply received from the father of the respondent workman and the respondent workman thereto. It also does not record that the said replies were found to be unsatisfactory or that because the particulars of the court cases were not given, no sufficient cause had been shown by the respondent workman for his absence.

12. An opportunity of being heard is not be an empty exercise. It is not merely a high sounding legal principle but is a basic rule of natural justice. Justice is done in the working of the said rules and not merely by doing lip service thereto. An order of deemed resignation is certainly prejudicial to the workman. Such a prejudicial order cannot be made without giving him an opportunity of being heard. Such opportunity was in fact sought to be given by issuing the show cause notice dated 29th October, 1985 supra. However, it appears that the notice was issued merely to complete a formality and without any intent to give due consideration to the reply to the show cause notice. Even if the petitioner DTC were to be right in contending that the reply received did not disclose sufficient cause for unexplained absence of the respondent workman, as is being argued now, it was for the appropriate authority of the petitioner to, before invoking Clause 14(10)(c) to have held so. That has admittedly not been done.

13. I have also enquired from the counsel for the petitioner DTC that even if the respondent workman in his replies had not given the particulars of the court case, whether any communication was sent seeking the said

particulars. Though the counsel for the petitioner stated that he will have to take instructions but I do not find any such plea or document on the record of the Labour Court or having been placed before this Court. The reason for the respondent workman to have then not disclosed the factum of his arrest is understandable. Such arrest is often a cause itself for action against the respondent workman. The respondent workman by suppressing the particulars attempted to avoid such action. Though I must notice that the counsel for the respondent has urged that under the regulations of DTC, the respondent workman could in such situation also have been only suspended with the benefit of subsistence allowance and awaiting the verdict of the Criminal Court. In any case, I feel that the petitioner DTC having not considered the reply of the respondent workman to the show cause notice and having not based its decision under Clause 14(10)(c) on the same, the rules of natural justice which were required to be complied with have not been complied.

14. The Clause aforesaid in the Regulations of the DTC is nothing but a provision for abandonment of service by an employee. A Division Bench of this Court in *Shakuntala's Export House (P) Ltd. Vs. Secretary (Labour)* MANU/DE/0541/2005 has held that abandonment amounts to misconduct which requires proper enquiry. The judgment of the Single Judge of this Court upheld by the Division Bench is reported as *Shakuntala Export House (P) Ltd. Vs. P.O. Labour Court* X 117 2005 DLT 479. To the same

effect is another judgment of this Court in *Municipal Corporation of Delhi Vs. Shri Begh Raj* 117 2005 DLT 438 laying down that if the workman had abandoned the employment, that would be a ground for holding an enquiry and passing an appropriate order and that having not been done, the action of MCD could not have sustained. The Supreme Court also in *D.K. Yadav Vs. J.M.A. Industries Ltd.* (1993) 3 SCC 259 has held that even where the standing orders of the employer provide for dismissing the workman from service for unexplained absence, the same has to be read with the principles of natural justice and without conducting domestic enquiry and without giving an opportunity of being heard, termination of service on the said ground cannot be effected. Though subsequently in *Punjab & Sind Bank Vs. Sakattar Singh* MANU/SC/0733/2000, it was held that no enquiry may be conducted where the standing orders of the bank provide a procedure for treating such absentee employee to have deemed to have voluntarily retired after a particular period of unauthorized absence, but in the present case, the Regulations of the DTC do not provide any procedure and thus the said judgment also would not be applicable. I may notice that the standing orders in the case of nationalized Banks provide for such an action after the employee has remained absent unauthorizedly for continuous 90 days and after he has been served with a notice of 30 days calling upon him to join employment. Per contra Clause 14(10)(c) supra allows DTC to automatically treat an employee as having resigned on the very next day on

the maximum period of leave and without even calling upon him to join employment.

15. I am therefore of the opinion that no fault can be found and in any case no inference is required with the award insofar as holding the termination of employment of the deceased workman to be illegal.

16. The counsel for the respondent workman has drawn attention to:-

- (i) ***Gammon India Ltd. Vs. Niranjan Dass*** (1984)1 SCC 509 where the relief of full back wages with all benefits and interest was granted.
- (ii) ***Sh. Pearey Lal Vs. Sh. O.P. Singla*** 1995 IV AD (Delhi) 380 where in lieu of reinstatement, compensation was awarded because of the demise of the workman.
- (iii) ***Narotam Chopra v. Presiding Officer, Labour Court*** JT 1988 3SC 35 where also on holding the order of termination to be illegal, full back wages with continuity in service were granted.
- (iv) ***Basudeo Tiwary Vs. Sido Kanhu University*** JT 1998 (6) SC 464 where also full arrears of salary were allowed.
- (v) ***Union of India Vs. Rattan Singh*** 2007 IV AD (Delhi) 40 where interest at 9% on arrears of salary was granted.

(vi) *Darshan Singh Vs. DTC* 2006 II AD (Delhi) 17 where in view of plight of the workman relief of full back wages with all benefits was granted.

17. The counsel for the respondent workman has also urged that long time having lapsed, this Court rather than leaving the question of back wages to be determined by the DTC as directed by the award, should determine the same itself. The Labour Court deemed it appropriate to direct such determination by the DTC finding that the executive instructions of DTC make a provision for dealing with a case where an employee has been arrested or prosecuted on a criminal charge. As per the said rules such an employee is to be treated as under suspension for the period of his detention and is entitled to suspension allowance as per rules; the rules also provide for taking of a decision by the department regarding grant of wages during that period. The Labour Court thus felt that it was for the department to take a decision regarding the same owing to the acquittal of the workman, not honourably but giving him the benefit of doubt. Though during the hearing it was observed by me that the respondent having not challenged that part of the award could not claim such relief but the counsel for the respondent countenanced contending that considering the factum of demise of the workman and the plight of his widow who is not even receiving any amount under Section 17-B owing to the demise of the workman, this Court should intervene.

18. I am also swayed by the fact that the dispute had remained pending for the last 22 years. Even if a direction to the petitioner DTC to take a time bound decision were to be given, it would probably still entail a challenge thereto through the channel of the Labour Court and subsequently this Court and which would again take time. I have, therefore, considered whether it is possible for this Court to, in the exercise of its jurisdiction under Article 226 of the Constitution of India, resolve the said controversy also.

19. I find that the respondent workman in replies to the show cause notice supra had himself offered that he be treated as on leave without pay till his court case is decided. I thus am of the opinion that the respondent workman was not entitled to anything till he raised a dispute in the year 1988 and on which award as aforesaid was made on 11th October, 1999. Keeping in view the aforesaid facts and particularly the fact that the respondent workman had suppressed the factum of his arrest and conviction, I deem the back wages of 50% of the emoluments due to the workman for the period from date of raising the dispute till the date of award to be appropriate. However, for the period thereafter and till the decision hereof, I find the petitioner to have taken an unreasonable stand. The petitioner inspite of pronouncements holding provision for termination without complying with principle of natural justice to be illegal has delayed the enforcement of the award. The petitioner would thus be liable for full back wages with all benefits to which the respondent workman would have been entitled to from the date of the

award and till the date of the demise of the respondent workman. Thereafter the family of the respondent workman would be entitled to family pension in accordance with the Rules and Regulations of the petitioner DTC, treating the respondent workman to be in employment on the date of his demise. During the course of hearing, it has been informed that the respondent workman was about 50 years of age at the time of his demise.

20. Though the counsel for the respondent has sought to contend that the family of the respondent is entitled to compensation in lieu of reinstatement but the benefits of reinstatement having been awarded, no double benefit can be given to the respondent.

21. The writ petition is thus dismissed and the rule discharged and the petitioner is directed to pay to the widow of the respondent workman 50% of the back wages with all benefits from the date of raising of the dispute till the date of the award and full back wages with all benefits from the date of the award till the date of demise of the respondent workman within four weeks hereof, failing which the same shall incur interest at the rate of 9% per annum till the date of payment. The amounts paid in compliance of order under Section 17B shall be deducted from amounts so found due. The petitioner is also directed to, within 10 weeks herefrom, release the arrears of family pension and other benefits to which the respondent would have been entitled to on the date of his demise treating him to have been

reinstated, failing which the said amount shall also incur interest at the rate of 9% per annum. The petitioner is also directed to continue to pay family pension to the heirs of the respondent in accordance with its Rules treating the respondent workman to have been in employment on the date of his demise. The respondent is also awarded costs of Rs.20,000/- of these proceedings.

**RAJIV SAHAI ENDLAW
(JUDGE)**

March 18th 2010
gsr