

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

+ **W.P.(C) 7173/2002**

% **Date of decision: 27th April, 2010**

DELHI TRANSPORT CORPORATION PETITIONER

Through: Mr. Hanu Bhaskar, Advocate

Versus

**PRESIDING OFFICER, LABOUR
COURT-III & ANR.**

..... RESPONDENTS

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers 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

RAJIV SAHAI ENDLAW, J.

1. This petition impugns the award dated 22nd September, 2001 holding the removal by the petitioner DTC of its workman Umed Singh (working as Conductor) to be illegal and / or unjustified. However, the workman Umed Singh died during the pendency of the proceedings before the Labour court and his legal representatives were substituted. Hence the petitioner DTC was directed to pay to the legal representatives of the workman, back wages at the rate at which salary to other Conductors was being paid by the petitioner DTC, from 21st September, 1987 i.e. the date of dismissal from service till 1st May, 2000 i.e. the date of demise of the

workman. It was further held that if the arrears are not paid within three months of the award, then the legal representatives of the workman would also be entitled to get simple interest at 12% per annum. Aggrieved therefrom the present petition was filed. Notice of the writ petition was ordered to be issued to the legal representatives of the respondent workman. However, the application for stay of operation of the award was dismissed as not pressed on 29th November, 2002. The legal representatives of the respondent workman remained unserved till 23rd August, 2006 and appeared before this Court first on 16th March, 2007 and sought time for filing the counter affidavit. However, no counter affidavit was filed and the legal representatives of the respondent workman also stopped appearing and were proceeded against ex-parte on 18th August, 2009. The record of the Labour Court was requisitioned and perused. The ex parte arguments of the counsel for the petitioner DTC have been heard.

2. The deceased workman, working as a Conductor with the petitioner DTC, was chargesheeted to the effect that while on duty, he lost tickets of different denominations along with leather bag and two complaint books. The said action was stated to amount to misconduct under the rules of petitioner DTC. A domestic enquiry was conducted. The enquiry officer reported that though the workman had admitted his guilt before the enquiry officer but he had proceeded with the enquiry and found the charge to be proved and established against the deceased workman. The Disciplinary Authority

of the petitioner DTC meted out the punishment of dismissal from service. Upon industrial dispute being raised, the reference aforesaid to the Labour Court was made.

3. The Labour Court vide order dated 21st February, 1998 decided the preliminary issue of the validity and legality of the domestic enquiry against the petitioner DTC. The Labour Court found that when the deceased workman had admitted his guilt before the enquiry officer, he had also moved an application to summon / examine the driver of the bus and a duty officer of the Police Station Pahar Ganj where complaint was made by him; it was held that no opportunity was given to the deceased workman to examine the said witnesses inspite of repeated requests. The said two witnesses were also found to have been named by the deceased workman in his reply to the chargesheet. The denial of such opportunity by the enquiry officer was found to be against the principles of natural justice and the enquiry officer was found to have not given proper opportunity to the deceased workman to prove his case. The Labour Court also found that the report of the enquiry officer showed that he had already made up his mind and was in fact swayed by the fact that there were many adverse entries against the deceased workman on earlier occasions also. The Labour Court held that the enquiry officer should not have considered the previous record of the workman and should have confined himself to the issue before him. It was further held that the admission of loss of tickets and the bag was not

an admission of negligence which under the rules of DTC was a misconduct.

4. The petitioner DTC sought opportunity to establish misconduct before the Labour Court. The award dated 22nd September, 2001 (*supra*) holds that though it stood established that the deceased workman by his actions caused loss of goods and property of the petitioner DTC but the same was held to be not sufficient to remove him from service. It was held that causing of damage or loss must be wilful. It was further held that the Disciplinary Authority did not give due weightage to the admission of mistake by the deceased workman and / or to the action of the deceased workman of immediately lodging a report with the Police Station of the said loss. It has been further held that though the Disciplinary Authority had been swayed by the 34 earlier adverse entries made against the deceased workman but on none of the said occasions the deceased workman had been chargesheeted and thus had no occasion to explain the same. The Labour Court by a detailed well reasoned award found that no case of misconduct or negligence under the rules was proved / established by the petitioner DTC.

5. The counsel for the petitioner DTC has attempted to take me through the evidence and the enquiry proceedings. However, the same is not the scope of the writ jurisdiction. It is by now a well established principle of

law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority. Reference in this regard may be made to ***Government of Andhra Pradesh Vs. Mohd. Narsullah Khan*** AIR 2006 SC 1214.

6. The counsel for the petitioner DTC has next contended that the Labour Court erred in awarding back wages for 13 long years when the deceased workman has not worked for the petitioner DTC for so long. It is not as if the Labour Court has acted mechanically in this respect. The Labour Court has reasoned that the termination having been found to be illegal, the deceased workman was entitled to reinstatement-cum-back wages. It has been held that it was not the case of the petitioner DTC that the deceased workman was employed elsewhere; rather it was established that the deceased workman was unwell, suffering from T.B. and to which he succumbed pre-maturely. On this basis, it was held that the deceased workman was entitled to full back wages. No ground for interference with the said reasoning either is made out.

7. There is no merit in the petition; the same is dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

27th April, 2010
gsr