

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

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WP(C)1993/1992

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Date of decision: 26th April, 2010

DELHI TRANSPORT CORPORATION

..... PETITIONER

Through: Mr. J.N. Aggarwal & Mr. Mayank Joshi,
Advocates

Versus

SHRI SHYAM SUNDER & ORS.

..... RESPONDENTS

Through: Mr. H.K. Chaturvedi & Ms. Anjali
Chaturvedi, Advocates.

AND

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WP(C)6584/2003

SHRI SHYAM SUNDER

..... PETITIONER

Through: Mr. H.K. Chaturvedi & Ms. Anjali
Chaturvedi, Advocates.

Versus

DELHI TRANSPORT CORPORATION

..... RESPONDENT

Through: Mr. J.N. Aggarwal & Mr. Mayank Joshi,
Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 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. WP(C) 1993/1992 has been preferred by DTC with respect to the award dated 19th September, 1991 of the Labour Court holding the termination by the DTC of the services of the respondent workman to be illegal and unjustified and

directing DTC to reinstate the workman with continuity of service and full back wages.

2. The DTC appointed the respondent workman as a Retainer Crew Conductor with effect from 15th March, 1984 and he was put on probation for one year with effect from 15th September, 1984. It is the case of DTC that the respondent workman was negligent in discharging his duties; that the bus on which he was posted was involved in an accident at Shahdara Terminal and hit a person who fell down and received fatal head injuries. DTC thus terminated the services of the respondent workman on 21st March, 1985 under Regulation 9(a)(i) of DRTA (Conditions of Appointment & Service) Regulations, 1952 after paying one month's notice pay including retrenchment compensation. The respondent workman raised an industrial dispute which was referred to the Labour Court. The Labour Court held that notwithstanding the fact that the respondent workman was on probation, since the cessation of his probation or termination of his services was for the reason of misconduct aforesaid, it was stigmatic and enquiry having not been held, the termination was held to be bad.

3. The award aforesaid is dated 19th September, 1991. DTC instead of challenging the said award, issued a letter dated 16th March, 1992 to the respondent workman, reinstating the respondent workman in service with immediate effect subject to the final decision of the High Court in the writ petition "which was going to be filed by the Corporation against the award dated 19th September, 1991". It was also promised vide the said letter that the respondent workman would be entitled to full back wages from the date he was

terminated from service till the date of his reinstatement with the benefit of continuity of service. It is undisputed that in pursuance to the said letter the respondent workman joined the services of the DTC and continues to be in the service. The writ petition challenging the award was filed after more than two months in or about May, 1992 and came up before this Court on 27th May, 1992 when Rule was issued. However, notwithstanding the aforesaid, the writ petition was accompanied with an application for interim relief. Even though as per the letter dated 16th March, 1992, the respondent workman was not only reinstated but also held entitled to back wages but on 28th November, 1994, on the statement of the counsel for the DTC that in pursuance to the award the respondent workman had been reinstated in service, this Court stayed the implementation of the award qua the payment of back wages.

4. WP(C) No.6584/2003 was filed by the respondent workman contending that though in pursuance to the letter dated 16th March, 1992 he had joined duties with DTC and has since then been working with DTC but without getting the benefit of continuity of service. The respondent workman thus seeks the relief of implementation of the letter dated 16th March, 1992 of the DTC in as much as continuity of service is concerned. Notice of the said writ petition was also issued and the same ordered to be heard along with WP(C) No.1993/1992.

5. The counsel for the DTC has contended that the award dated 19th September, 1991 is contrary to the law as laid down in *Municipal Committee, Sirsa Vs. Munshi Ram* JT 2005 (2) SC 117, *Chaitanya Prakash Vs. H. Omkarappa* (2010) 2 SCC 623, *Ram Narain Jha Vs. T.M. Apartments Pvt. Ltd.*

2007 (99) DRJ 724 and the order dated 22nd September, 2004 in WP(C) No.1061/1994 titled ***Delhi Transport Corporation Vs. Presiding Officer*** of another Single Judge of this Court, all to the effect that during the probation period the services of an employee can be terminated and merely because the employer on appraisal of the performance of the employee finds the employee not up to the mark, the order of termination of probation or cessation of probation does not become stigmatic.

6. I have also recently in ***Duli Chand Vs. P.O., Labour Court-VIII*** MANU/DE/0582/2010 held so. I find that the Division Bench of this Court in ***Mahavir Singh Vs. D.T.C.*** 57 (1995) DLT 465 has also held that an order of termination simplicitor of a probationer is not *per se* bad even when it is preceded by a preliminary fact finding enquiry and it is only when a probationer is dismissed from service without a proper enquiry that a stigma as a result of some specific charge that the plea that the removal from service is by way of punishment can be sustained.

7. In the present case, the order of termination of the respondent workman does not cast any stigma on him. The order of the Labour Court is thus clearly not in accordance with law.

8. However, the conduct of the DTC in reinstating the respondent workman immediately after the award, though subject to the final decision in the writ petition challenging the award, which had not even been filed at that time, compels me to hold that this is not a fit case for exercise by this Court of the discretionary jurisdiction under Article 226 of the Constitution of India. It has

been put to the counsel for the DTC as to why DTC in this case followed such procedure. No answer is forthcoming. No reason for such conduct is set out in the writ petition also. It was not as if DTC had sought interim stay of the award and the same had been declined by this Court or there was any other compulsion on DTC to reinstate the respondent workman. The proceedings since then have remained pending for about 18 years. I have enquired from the counsel for DTC as to whether DTC has in the last 18 years had any problem of conduct/misconduct or otherwise with the respondent workman. The counsel for DTC states that he has no instructions. The counsel for the respondent workman on the other hand makes a categorical statement that for the last 18 years there has been no case of misconduct against the respondent workman. The counsel for the respondent workman infact invites attention to the certificate of appreciation dated 6th September, 2004 issued by DTC to the respondent workman, appreciating the exemplary honesty displayed by the respondent workman and giving incentive of Rs.500/- to the respondent workman. The said document has been on record for the last over five years and has not been controverted by DTC.

9. This Court is of the opinion that DTC by its unilateral act of reinstating the respondent workman has created a situation which does not now merit interference by this Court in the award of the Labour Court even though found to be contrary to law. The respondent workman at that time was at the threshold of his career/ working life and could have got employment elsewhere. Today after such a long lapse of time, the respondent workman would be incapable of finding employment anywhere else and even otherwise family-wise would be at such a

stage where dismissal of the respondent workman from employment, which would be the consequence of allowing the petition, would play havoc on the respondent workman and his family members. DTC which has considerable industrial / service litigation in this Court is deemed to be aware of the time for which the writ petition would remain pending before this Court. DTC before issuing the order of reinstatement dated 16th March, 1992 did not even take a chance of seeking stay of operation of the award from this Court. It is generally found that in a large number of awards against DTC stay of operation of the award is granted. In such eventuality, the respondent workman in the meanwhile would have arranged his affairs otherwise. However, DTC by making the respondent workman work has now not left the respondent workman with any other alternative avenue of employment.

10. WP(C) No.1993/1992 is thus dismissed. Consequently, WP(C) No.6584/2003 is allowed. It is inexplicable as to why DTC has not fully implemented its letter dated 16th March, 1992 by which it had made the respondent workman accept the offer of reinstatement on the promise that he will be paid full back wages and the benefit of continuity of service. The DTC is directed to, within six weeks hereof, implement the letter dated 16th March, 1992 in entirety and to make payment to the respondent workman of salary giving benefit of continuity of service as per the award. However, in the circumstances, the parties are left to bear their own costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

26th April, 2010/gsr