

* **HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: September 7th, 2010

+ W.P.(C) 3765/2007

Delhi Transport Corporation Petitioner
Through : Ms. Manisha Tyagi, Adv.

versus

Ram Niwas Respondent
Through : Mr. Tarun Sharma, Adv.

CORAM:-
HON'BLE MS. JUSTICE VEENA BIRBAL

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

Veena Birbal, J

1. By way of present petition, petitioner has challenged the impugned order dated 7th December, 2005 passed by Ld. Presiding Officer, Labour Court No.VII, Delhi by which the application of the respondent/workman under section 33 (C) (2) of the Industrial Disputes Act (in short referred to as the Act) has been allowed.

2. Briefly stated the facts of the present case are as under:-

Respondent/workman was appointed as a Conductor with petitioner/management on 24th September, 1983. His services were terminated on the ground of alleged misconduct i.e. he was caught red handed by the police while he was deflating the tyre of DTC bus at Lajpat Nagar on 16.5.1985. Respondent/workman raised an industrial

dispute challenging the termination as illegal and unjustified. The appropriate Government referred the same for adjudication to the Labour Court, Delhi on 27th October, 1987. Vide award dated 1st December, 1994, the Labour Court held that respondent/workman is entitled for reinstatement with continuity of service. No back wages were awarded to him. The said award was not challenged by the petitioner/management. The respondent/workman joined the duty on 12th August, 1996. In the year 1999, respondent/workman filed an application under section 33(C)(2) of the Act claiming that after the passing of award dated 1.12.1994, he kept on visiting the petitioner/management. Initially, he was not taken on duty. Finally, he was taken on duty on 12th August, 1996, as such, he filed the application under Section 33 (C)(2) of the Act for directions to the petitioner/management to pay him wages for the period from 1st December, 1994 to 12th August, 1996 and also to pay him wages from 12.8.1996 to 1.1.1999 at enhanced rate without any deduction. The said application was contested by the petitioner/management, mainly on the ground that the respondent/workman did not report for duty after passing of award dated 1.12.1994. As soon as he reported on 12.8.1996, he was taken on duty. Further, the stand of management is that at the time of joining, he entered into an agreement/settlement with the management that he would not claim back wages on being reinstated, as such, respondent is not entitled for any claim.

3. On the basis of pleadings of the parties, the Labour Court framed the following issues:-

- “(i) Whether the application is not maintainable in view of preliminary objection No.4 and 6 of W.S?
- (ii) To what amount the applicant is entitled to?”

Respondent led evidence in support of his claim whereas no evidence was led by petitioner/management and its evidence stood closed on 2.2.2005. After hearing the parties, the Labour Court held that respondent/workman was entitled to the wages w.e.f 1st December, 1994 to 12th August, 1996 and was also entitled to have his wages adjusted as per rules from 12.8.1996 till 1.1.1999. Aggrieved with the impugned order dated 7th December, 2005, present petition is filed.

4. Counsel for the petitioner has contended that since disputed questions of facts were involved and the respondent has no existing right as such same could not have been adjudicated under section 33(C)(2) of the Act. It is contended that petitioner/management has not been given full opportunity to prove its case before Labour Court. It is contended that respondent/workman never reported for duty after passing of award prior to 12.08.1996. As soon as he reported, he was taken on duty on 12.8.1996. It is further contended that a settlement dated 7.8.1996 was entered into between the respondent/workman, the petitioner/management and the Union wherein respondent had agreed to forego his claim for back wages on being reinstated as such

petitioner is not entitled for any relief.

5. On the other hand, the stand of respondent/workman is that vide the impugned award dated 1st December, 1994, the Ld. Presiding Officer, Labour Court No.VII, held that workman was entitled to reinstatement with continuity in service. Thereafter, respondent/workman kept on visiting the petitioner/management but was not taken on duty as is alleged. Respondent/workman denied that any settlement was ever entered into between the parties. It is contended that in any event, alleged settlement is not a valid settlement. Counsel for the respondent/workman contends that impugned order is legal and valid in all respects and no interference is called for.

6. I have considered the submissions made.

It is admitted position that vide award dated 1st December, 1994, reinstatement with continuing of service was awarded in favour of respondent/workman and no back wages were awarded. The said award was not challenged by the petitioner/management. In support of his claim, respondent/workman by way of evidence had filed his affidavit Ex.WW1/A before the Labour Court. In cross examination, respondent has stated that he continued reporting for duty from the date of award to 12th August, 1996 and denied having entered into any agreement with petitioner/management relinquishing back wages. The petitioner/management has not led any evidence to prove its stand taken in the written statement. The finding of the Labour Court is as under:-

“ It is admitted position case of the parties that the workman was an employee of the management and his services were terminated and he was ordered to be reinstated by the court vide order dated 1.12.94 Ex.WW 1/1. The only question in dispute is: whether the workman reported for duty or not? Workman has filed his affidavit and reiterated the same in the witness box. He has been cross-examined in detail by the management wherein his version that he continued reporting for duty from the date of award to 12.8.96 has not been challenged. In the cross-examination, he denied that he entered into any agreement for relinquishment of his wages from 1.12.94 to the date of joining. The management has not examined any witness, as such its averments have not been proved in the witness box. There is no evidence that the workman had entered into any agreement with the management for relinquishing his back wages. In the absence of any contrary evidence on record, I have no option but to accept the contention of the workman that he had been reporting for duty since the date of award but was taken on job only on 12.8.96. Thus, the amount claimed by him is entitled to be received by him in view of the service condition i.e for the service offered by him he is entitled to wages and consequential benefits.”

7. Perusal of the order dated 2nd February, 2005 of the Labour Court shows that the petitioner/management did not produce any evidence as such its evidence was closed on that date. Learned counsel for petitioner has contended that petitioner/management had moved an application for leading evidence. Even that was rejected and finally impugned order dated 7th December, 2005 was passed.

Thus, the stand of petitioner/management has remained unsubstantiated before the Labour Court. It is admitted position that petitioner has already been reinstated in service with continuity of service. The only question involved is of grant of 2 years' wages for

which petitioner has not worked. According to petitioner, he reported for duty on passing the award dated 1.12.1994 whereas stand of management is that he never reported for duty and as soon as he reported he was taken on 12.8.1996. Petitioner/management is also relying on alleged settlement dated 7.8.1996. The photocopy of alleged settlement is on record. The same is alleged to have been signed by the Secretary DTC Board, respondent/workman and one Sh.Daryoo Singh Union, workers Union as well as two witnesses. Since burden on public exchequer is involved and in order to have effective adjudication of the matter, petitioner/management is given an opportunity to produce its witnesses before Labour Court to prove its stand in the matter.

8. In view of the above, impugned order dated 7th December, 2005 is set aside and matter is remanded back to Labour Court for deciding afresh after giving opportunity to petitioner to lead evidence. No prejudice will be caused to respondent/workman as he will get full opportunity to cross examine the witnesses of management. Parties are directed to appear before Labour Court on 07.10.2010 at 2.00 p.m. for directions. The concerned Labour Court is directed to decide the matter afresh as expeditiously as possible preferably within a period of 4 months to be reckoned from 7.10.2010. Petitioner will be at liberty to raise contention about maintainability of claim under Section 33(C)(2) of the Act at the time of arguments before the Labour Court. Similarly, respondent/workman will also be at liberty

to raise contention about validity of alleged settlement dated 7.8.1996
as is raised before this court.

The writ petition stands disposed of accordingly.

There is no order as to costs.

VEENA BIRBAL, J

SEPTEMBER 7th, 2010
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