

* **HIGH COURT OF DELHI : NEW DELHI**

+ **W.P. (C) No. 6732 of 2007**

Delhi Transport Corporation Petitioner

Through: Mr. J.S. Bhasin, Adv. with
Ms. Rashmi Priya, Adv.

Versus

Sh. Ram Pal Respondent

Through: Mr. Sudhanshu Tomar, Adv.

% Judgment pronounced on: 01.11.2010

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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

MANMOHAN SINGH, J.

1. The present writ petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India praying for issuance of a writ for quashing the impugned award dated 20.12.2006.

2. The brief facts of the case are that the respondent was appointed by the petitioner corporation as a daily rates driver w.e.f. 20.09.1980 and w.e.f. 20.03.1981 he was brought on monthly basis.

3. According to the petitioner on the basis of the report submitted by a pay bill clerk, a chargesheet dated 07.09.1985 was issued to the respondent for availing 54 days leave without pay during the period from 01.01.1985 to 31.07.1985 without giving any intimation to the

management.

4. On 14.05.1987 the enquiry proceedings were held as per the rules and regulations and during the inquiry the respondent admitted that he remained absent due to illness and treatment of his wife. On 19.05.1987 the Enquiry Officer submitted his findings and held the respondent guilty of the charges.

5. Thereafter the Disciplinary Authority after considering the past record of the respondent and the going through the enquiry report, issued a show cause notice dated 01.06.1987 to the respondent. The respondent submitted his reply to the said show cause notice on 18.06.1987 which was found to be unsatisfactory by the Disciplinary Authority therefore, an order of removal from the service was issued to the respondent on 29.10.1987 also remitted one month's salary as required under Industrial Disputes Act, 1947.

6. That after the failure of Conciliation proceedings the matter was referred to the Secretary (Labour) Government of NCT Delhi and an Industrial Dispute was raised which was referred to the Industrial Tribunal for reference on the following terms :

“Whether the removal from service of Shri Ram Pal is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

7. An award dated 11.09.2002 was passed directing the petitioner herein to reinstate the respondent with full back wages.

8. The said award was challenged by the petitioner by way of a Writ Petition bearing No. WP (C) No. 5703/2003 and the same was

decided in favour of the petitioner by this Court.

9. The award dated 11.09.2002 was set aside and the matter was remanded back to the Industrial Tribunal for adjudication.

10. Thereafter the Industrial Tribunal framed an additional issue which is:

“(i) Whether the leave herein as claimed by the workman has been sanctioned or not & whether the workman was habitual defaulter and whether it tantamount to misconduct?
(ii) Relief in terms of reference.”

11. The evidence by way of affidavits was filed by both the parties. Vide award dated 20.12.2006, the labour court ordered the reinstatement of the respondent with 50% back wages from the date of termination till the date of reinstatement with continuity of service. Being aggrieved by the said award the petitioner has filed the present writ petition to quash the order/award dated 20.12.2006.

12. The respondent by filing of independent Writ Petition (C) No.2891/2008 also challenged the award to the extent about the grant of limited prayer of 50% of the back wages on the ground that his services were terminated in an illegal and unlawful manner. As the petitioner remained unemployed and he could not find any other alternative job inspite of his best efforts, he was therefore entitled for the relief of full back wages in the award.

13. The said writ petition filed by the respondent was dismissed with the following observation:

“10. Factors which would be considered by the court while awarding back wages would include the time involved in the litigation and causes of the delay; the status of the

management as a public body meant for public benefit, possibility of the worker being gainfully implied; nature of the alleged misconduct; ensuing financial burden; delay in raising an industrial dispute; duration of the employment and the nature of the employment. Labor Court has granted 50% of back wages after considering these factors. No manifest error has been pointed out by the learned counsel for the petitioner except that the termination of the petitioner was illegal. There is no perversity in the award dated 20th December, 2006 awarding only 50% of the back wages and this Court will not be justified in interfering with the same in the present facts and circumstances of the case.”

14. Now coming to the main contention of the learned counsel for the petitioner in the present writ petition is that the Tribunal has incorrectly relied upon the judgment passed by this Court in the case of ***Hindustan Prefab Ltd. Vs. Labour Commissioner & Ors.***, 108 (2003) DLT 585 as the said judgment is completely on different facts of the case wherein the management has failed to prove the leave record before the Labour Tribunal. However, in the present case, it is the admitted position that the respondent during the inquiry proceedings admitted that he has availed the excessive leave from 1.1.1985 to 31.7.1985 due to illness of his wife and his leave application was not sanctioned due to non availability of leave.

15. The main contention of the petitioner is that the negligence of the respondent from his duty tantamount to misconduct within the meaning of para 4 (1) and para 19 (e) (h) and (m) of the Standing Orders by which the employees of petitioner are the governed.

16. The petitioner has heavily relied upon the case titled as ***DTC Vs Sardar Singh*** reported as (2004) 7 SCC, 574 wherein the Apex Court held as follows:

“When an employee absents himself from duty, even without sanctioned leave for very long period, it prima facie shows lack of interest in work. Para 19(h) of the Standing Order as quoted above relates to habitual negligence of duties and lack of interest in the Authority's work. When an employee absents himself from duty without sanctioned leave the Authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's work. Ample material was produced before the Tribunal in each case to show as to how the concerned employees were remaining absent for long periods which affect the work of the employer and the concerned employee was required at least to bring some material on record to show as to how his absence was on the basis of sanctioned leave and as to how there was no negligence. Habitual absence is a factor which establishes lack of interest in work. There cannot be any sweeping generalization. But at the same time some telltale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings.”

17. The learned counsel for the petitioner has argued that the Apex Court has settled the jurisdiction and power of the Industrial Tribunal under Section 11-A of the I.D. Act regarding the sustainability of order of punishment. He has referred to the following decisions:

a) ***Firestone Tyre and Rubber Company of India (Pvt.) Ltd.***

Vs. Management and others, 1973 (1) SCC 813, wherein it was held that once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimization.

b) ***CMC Hospital Employees Union & Anr. Vs, CMC***

Vellore Chennai Association & Ors., (1987) 4 SCC 691, wherein in para 11 it was held that Section 11-A of the I.D. Act cannot be considered as conferring an arbitrary power on the Industrial Tribunal.

18. The first contention of the learned counsel for the respondent is that the writ petition filed by the petitioner is liable to be dismissed on the ground that while obtaining the stay order from this Court on 14.9.2007 the petitioner misled the Court by making the statement about the actual age of superannuation 55 years of the drivers. As per counsel, on the basis of the statement made, the court ought to have felt that the respondent was superannuated, hence an interim order dated 14.9.2007 was passed staying the operation of an impugned award though the age of the retirement of the driver is 60 years as all the drivers of DTC have retired at the age of 60 years. His submission is that on this misstatement itself, the writ petition is liable to be dismissed. He has however not disputed the fact that during the pendency of the present petition, the respondent has been superannuated.

19. The second submission of the learned counsel for the respondent is that in term of Section 17-B of the Industrial Disputes Act, 1947 which is a mandatory provision of law, the petitioner was required to clear all past dues with accruing benefits thereto from the date of termination of the respondent but the petitioner has not paid anything to the respondent after his termination from the services despite of order passed by the Industrial Tribunal and in the garb of obtaining the interim order by misleading the Court.

20. Third contention of the learned counsel for the respondent is that the respondent in his cross-examination has deposed that the leave applications were supported with the medical certificate and in suggestion

he gave the reply that it is incorrect to suggest that his applications were rejected as the same were not submitted in time. He has also produced the witnesses which proved the case of the respondent to the effect that the charge-sheet issued by the petitioner was illegal and unlawful and the services of the respondent were terminated in an illegal and unlawful manner. The learned counsel for the respondent has also referred various paras of the counter affidavit.

21. Admittedly the charge-sheet Ex.MW1/1, the charge against the workman was that during the period January 1985 to July 1985 he absented for 54 days. The relevant portion of the same reads as under:

“That you availed 54 days leave without pay during the period from 1.1.85 to 31.7.85 frequently. This shows your lack of interest in the Corporation’s work and in the performance of your duties. That above act on your part is tantamount to misconduct within the meaning of para 19(h) of the standing orders governing the conduct of D.T.C. Employees.”

22. It is not disputed by the petitioner that in the domestic enquiry, the finding was given against the respondent to the effect that he had absented for 54 days and the punishment of dismissal followed because of this one and consolidated absence of 54 days during the aforesaid period. The contention of the respondent is that it has been established before the Industrial Tribunal that this consolidated absence is incorrect, therefore, the trial court has rightly quashed the charge-sheet and set aside the dismissal of the respondent on the basis of evidence produced, as was admitted by MW1 Jagdish Singh that before chargesheet was given, the workman was sanctioned leave of 25 days.

23. The trial court while passing the impugned order has come to the following conclusion:

- a) that at the time of giving the chargesheet Ex.MW1/1, the workman was wrongly charged.
- b) that a chargesheet given to the respondent cannot be bifurcated as it was one and consolidated.
- c) As regard the case of the petitioner that the workman was a habitual absentee, it appears from the record that the absences were spread over in one or two days leave in seven months period which does not show the lack of interest of the respondent.

24. The decision referred by the petitioner in the case of ***DTC Vs Sardar Singh (supra)*** has been recently considered by the Division Bench of this Court who examined the said decision in the case of ***Delhi Transport Corporation Vs. Bhawar Lal***, 172 (2010) DLT 589 (DB). Para 7 of the said judgment reads as under:

“7. Even the Supreme Court in *Sardar Singh (supra)* has held that one of the exceptions to the cases of unauthorised absence is absence due to sudden illness. In our opinion, habitual absence is only established when there is lack of interest in work. There cannot be any sweeping generalisation. In the present case, both the learned Single Judge and Tribunal have found that respondent-workman was absent because of illness and further that the respondent-workman had intimated the factum of his illness to the appellant-DTC. The relevant observations of the Supreme Court in *Sardar Singh (supra)* are reproduced hereinbelow:

9... Habitual absence is a factor which establishes lack of interest in work. There cannot be any

sweeping generalization. But at the same time some tell-tale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings

xxxx xxxx xxxx xxxx

11. Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorized. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials. Clause (ii) of Para 4 of the Standing Order shows the seriousness attached to habitual absence. In Clause (i) thereof, there is requirement of prior permission. Only exception made is in case of sudden illness. There also conditions are stipulated, non-observance of which renders the absence unauthorized.

12. The Tribunal proceed in all these cases on the basis as if the leave was sanctioned because of the noted leave without pay. Treating as leave without pay is not same as sanctioned or approved leave ”

25. It is also pertinent to mention here that the Industrial Tribunal by order dated 20.12.2006, ordered the reinstatement with 50% back wages from the date of termination till the reinstatement with the continuity of service. As per order the said amount was to be paid by the petitioner within 30 days of publication of the award along with 9% interest thereupon upto the payment of aforesaid amount. The petitioner did not pay the said amount as per the direction issued by the Presiding Officer, rather the present writ petition was filed after the lapse of eight months along with the stay application being CM No.12735/2007 in which following orders were passed:

“Counsel for petitioner states that the respondent/workman who was engaged as driver with the petitioner, had attained the age of 55 years which is the date of superannuation fixed

in the petitioner corporation for the drivers, in the year 2004 and hence, the impugned award passed by the Labour Court directing reinstatement of the respondent with 50% back wages from the date of his termination till reinstatement, is erroneous. He submits that due to bona fide mistake on the part of the petitioner, the same was not indicated to the Labour Court.

Operation of the impugned award dated 20-12-2006 is stayed subject to the petitioner paying to the respondent/workman a sum of Rs. 7,500/- towards litigation expenses on or before the next date of hearing either directly or through his counsel.”

The interim order continued for more than three years despite of pendency of application under Section 17-B of the Act. The order dated 14.9.2007 was passed most likely on the basis of the statement made by the petitioner that the respondent had attained the age of 55 years which is contrary to the actual retirement age of the driver.

26. In view of the recent decision, I am of the opinion that the dismissal of the respondent was not correct on the basis of charge-sheet as it was not denied by the petitioner even before the trial court that the charge-sheet was pertaining to consolidated absence of 54days despite the fact that in the evidence it was admitted by MW1 Mr. Jagdish Singh that he was sanctioned leave for 25 days and the remaining period of absences of 29 days was spread over in one's or two's in seven months period. Therefore, the charge-sheet was rightly quashed. The other points raised by the petitioner about the misconduct/lack of interest are not relevant to the facts and circumstances in the present case.

27. Therefore, after considering the overall facts and circumstances of the case this court is of the considered view that no case is made out by the petitioner for interference in the impugned award. The

writ petition is, therefore, dismissed. No costs.

MANMOHAN SINGH, J.

NOVEMBER 01, 2010

jk/dp