

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

+ **WP (C) No.7183/2007**

DELHI TRANSPORT CORPORATION Petitioner
Through: Mr. J.S. Bhasin, Adv. with
Ms. Rashmi Priya, Adv.

Versus

CHETAN PARKASH Respondent
Through: Mr. A.K. Bhattacharya, Adv. with
Mrs. S. Mukherjee, Adv.

Judgment pronounced on: 09.08.2010

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 filed by the petitioner DTC is directed against the order dated 4.4.2007 passed by the Presiding Officer, Labour Court-19, Karkardooma Courts, Delhi.

2. The brief facts are that due to participation of the respondent in a strike and inciting other workmen, he was removed from service of the petitioner on 24.3.1988 invoking the provision of Section 4 of the Essential Services Maintenance Act, 1981. The enquiry against the respondent was disposed with in exercise of power conferred under

proviso (II) of Clause 15(2)(c) of Delhi Road Transport Authority Regulations, 1952.

3. Thereafter, the respondent filed the complaint under Section 33-A of the Industrial Dispute Act, 1947 (hereinafter referred to as the Act) before the Labour Court by raising the industrial dispute reference regarding the implementation of 4th Pay Commission recommendation to the employees of DTC. The said complaint was decided vide award dated 3.10.2001 and the following directions were issued by the said order:

“The above discussion shows that the services of the workman/complainant were terminated illegally and without any justification. The management has already taken various workmen whose services were terminated for taking part in illegal strike or instigation and inciting the other workers to strike work in March 1988. It is correct that the management put certain conditions for taking those workmen in its employment. However, those conditions cannot be made application in the present case because of specific finding that the workman did not commit misconduct as alleged against he consequently, the complaint Shri Chetan Parkash is entitled be reinstated in service with full back wages and continuity in service. He is entitled for full back wages from the date of his removal from service i.e. 24.3.1988.”

4. The said order was challenged by the petitioner by filing writ petition before this Court which was dismissed by order dated 31.8.2004. The respondent was later on reinstated into the services of the petitioner along with back wages with effect from 16.2.2005. The respondent subsequently filed an application under Section 33(C)(2) of the Act for payment of arrears towards back wages and payment of other benefits such as bonus, leave encashment, gazetted holiday cash

compensation, medical allowance, cost of items of liveries, washing allowance and leave travel concession because he was not physically present for work during the said period.

5. The evidence was recorded in the matter before the Trial Court. In cross-examination, the respondent admitted that he had received a sum of Rs.10,17,501/- towards dues from 24.3.1988 till 15.2.2005. In the evidence of Mr. G.K. Popli, Depot Manager of the petitioner he admitted that the respondent was not in service with effect from 24.3.1988 to 15.2.2005 hence, he was not paid complete dues.

6. By impugned order dated 4.4.2007, the Tribunal held that in view of the facts and circumstances of the case, the workman would be entitled to receive Rs.100/- per month since April 1999 when the medical allowance scheme was stated to have been implemented till he was reinstated in service on 22.2.2005. The directions were issued by the Tribunal to pay the said amount to the respondent towards medical allowance @ Rs.100/- per month for the said period within three months. The petitioner has challenged the said order in the present writ petition.

7. The main contention of the petitioner is that in the earlier award dated 3.10.2001 there was no direction for payment of any consequential benefits to the respondent and as per the settled law until and unless there is a specific direction by the Court for payment of consequential benefits, there was no question of payment of any benefits or medical allowance and other benefits to the workman. In support of

his submission, the petitioner has referred to the decision of **State of U.P. & Anr. Vs. Brij Pal Singh**; (2005) 8 SCC 58 wherein in paras 10, 11, 12 and 13, the Supreme Court has held:

“that the workman can proceed under Section 33-C(2) only after the Tribunal has adjudicated on a complaint under Section 33-A or on a reference under Section 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. A proceedings under Section 33-C(2) is a proceeding in the nature of execution proceedings in which the Labour Court calculates the amount of money due to a workman from the employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. The right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman and his employer. It is not competent to the Labour Court exercising jurisdiction under Section 33-C(2) to arrogate to itself the functions of an Industrial Tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute in a reference under Section 10 of I.D. Act.”

8. The next submission of the petitioner is that the Labour Court had no jurisdiction to first decide the workman’s entitlement and then proceed to compute the benefit on the basis of existence of power under Section 33-C(2) of the Act.

9. He has referred to the decision of **Municipal Corporation of Delhi Vs. Ganesh Razak & Anr.**; (1995) 1 SCC 235 wherein in para 12 it has been held:

“That where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or

recognition thereof by the employer, the dispute relating entitlement is not incidents to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33-C(2) like that of the Executing Court power to interpret the decree for the purpose of its execution."

10. In order dated 3.10.2001 passed by the Presiding Officer, it was specifically mentioned that the petitioner was not able to lead convincing evidence against the respondent that the respondent had participated in the strike on 17.3.1988 or he had instigated or incited other workers to strike work. It was also held in the said order that the respondent did not commit any misconduct and therefore, services of the respondent were illegally terminated.

11. Though the respondent was reinstated in the service with full back wages and continuity of service, he was only provided back wages without the medical allowance and other benefits.

12. A mere reading of Section 2(rr) of the Act makes it clear that the medical allowance is a part of wages. It is not disputed by the parties that the medical allowance was not granted to the respondent. By order dated 4.4.2007, the said limited relief was granted by the Labour Court which was not granted earlier by the award dated 3.10.2001. Under the provision of Section 33-C(2) of the Act, the respondent was entitled for the payment of arrears. It appears that the claim of the respondent is hence as per law.

13. As already mentioned that the medical allowance is a part of the wages as per the Section 2(rr) of the Act and the same was allowed even by the award dated 3.10.2001. Therefore, the application filed by the respondent under Section 33-C(2) of the Act was maintainable before the Trial Court who has rightly granted the relief of medical allowance in favour of the respondent. Therefore, the contention of the petitioner is without any substance. The decisions referred to by the petitioner do not help the case of the petitioner, rather ratio of these decisions go in favour of the respondent.

14. The petitioner has not challenged the award dated 3.10.2001. Therefore, I am of the view that the benefit of medical allowance is covered under the definition of Section 2(rr) of the Act and the application filed by the respondent under Section 33-C(2) of the Act was maintainable and the relief granted thereto by order dated 4th April, 2007 was justified.

15. Thus, no case is made out by the petitioner for interference in the impugned order dated 4.4.2007. Therefore, the writ petition is dismissed with no orders as to cost.

MANMOHAN SINGH, J.

August 09, 2010
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