

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

Date of decision: 8th September, 2011

+ **W.P.(C) 1353/2008**

ASHOK KUMAR VERMA **Petitioner**

Through: Ms Kittu Bajaj, Adv.

Versus

D.T.C **Respondent**

Through: Mr Uday N. Tiwary, Adv. for DTC.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Not necessary
2. To be referred to the reporter or not? Not necessary
3. Whether the judgment should be reported in the Digest? Not necessary

RAJIV SAHAI ENDLAW, J.

1. The petitioner, earlier employed as a driver with the respondent DTC, was vide order dated 12th September, 1994 retired prematurely. Upon industrial dispute being raised, the Industrial Adjudicator vide award dated 15th September, 2007, though holding that the respondent DTC had arbitrarily and prematurely retired the petitioner from service after he had

served DTC for 11 years and that the said premature retirement was illegal and unjustified, has granted relief of payment of lump-sum compensation of ₹ 1 lac only to the petitioner in lieu of reinstatement, backwages and other benefits. Aggrieved therefrom the present petition has been filed.

2. The only reason given by the Industrial Adjudicator for the relief granted is that there was no pleading of the petitioner that he had been unemployed since the date of termination and there was no evidence also of the petitioner in this regard.

3. Notice of the petition was issued and the pleadings have been completed. The counsels have been heard.

4. Neither has the respondent DTC in its counter affidavit impugned the finding of the Industrial Adjudicator of the illegality of the premature retirement of the petitioner nor has the counsel for the respondent DTC during the hearing impugned the said finding. Thus the only question for consideration is whether in view of findings returned, the award of compensation of ₹ 1 lac only is appropriate and whether the petitioner is entitled to be reinstated in service as sought.

5. It has been enquired from the counsels as to whether the petitioner has already attained the age of superannuation. It is informed that the petitioner if had continued in service, would have superannuated on 31st August, 2008, though subject to being found medically fit, would have been entitled to yearly extensions for maximum five years that is till he attained the age of 60 years. The counsel for the petitioner contends that the petitioner is medically fit and is still holding a valid driver's licence and if he is so re-employed, would continue for another two years from now.

6. Upon further enquiry whether the award amount of ₹ 1 lac has been paid, it is informed that it is the plea of the respondent in the counter affidavit that the same was tendered but not received by the petitioner.

7. The counsel for the petitioner has relied on:

(a) ***Jaipal Sharma Vs. The P.O., Labour Court No. VIII 102*** (2003)

DLT 60 where this Court for the reason of the Industrial Adjudicator having not given any reasons for awarding only 50% of the backwages for four years, directed payment of full backwages;

(b) ***Vikramaditya Pandey vs Industrial Tribunal*** AIR 2001 SC 672 laid

down that ordinarily once the termination of services of an employee is held to be wrongful or illegal, the normal relief of reinstatement with full backwages should be available and it is open to the employer to specifically plead and establish that there were special circumstances which warranted either non-reinstatement or non-payment of backwages. It is thus argued that it was for the respondent DTC to plead and prove that the petitioner was employed elsewhere and the Industrial Adjudicator erroneously has placed the onus on the petitioner;

(c) ***Workmen of Messrs Firestone Tyre & Rubber Company of India vs Management*** AIR 1973 SC 1227 to contend that the power of the Industrial Adjudicator under Section 11A of the ID Act to interfere with the punishment is only in the cases where the dismissal is upheld and not when the dismissal is set aside.

8. Per contra, counsel for the respondent DTC has contended that there has been a shift in the law and reference in this regard has been made to ***Uttar Pradesh State Electricity Board vs Laxmi Kant Gupta*** (2009) 16 SCC 562 and ***Senior Superintendent Telegraph (Traffic), Bhopal, vs Santosh***

Kumar Seal (2010) 6 SCC 773 to contend that the Apex Court has been leaning against automatic reinstatement and has been granting compensation in lieu of reinstatement. The counsel for the respondent DTC contends that the compensation awarded is adequate in the circumstances.

9. It has been enquired from the counsel for the petitioner as to whether the petitioner had pleaded or proved at any place before the Industrial Adjudicator that he was unemployed. The counsel for the petitioner has in this regard invited attention to a letter dated 18th May, 1994 of the petitioner which though does not expressly state that he was unemployed but stated that the dire financial state in which the petitioner was. The counsel for the respondent DTC contends that the said letter is of a date prior to raising the dispute and there was no plea or evidence before the Industrial Adjudicator to the said effect.

10. I am of the view that it is not appropriate to burden the DTC with retiral benefits including pension of the petitioner when the services of the petitioner, even if illegally, were terminated long back on 12th September, 1994 and when the petitioner has worked for 11 years only as against the

normal 30 years. It is also unbelievable that the petitioner in the said long span of time has remained totally unemployed. The respondent DTC cannot be directed to pay pension to those who have not worked for it till attaining the age of superannuation.

11. Notwithstanding so, I am not satisfied with the quantum of compensation awarded. Unfortunately, no parameters have been laid down in any of the judgments for computing the said compensation in lieu of reinstatement. The Courts in various judgments, on assessment of the particular facts, have been awarding compensation. Upon it being asked from the counsel for the petitioner as an officer of the Court as to what should be the amount of compensation, she has fairly and without prejudice to her rights and contentions informed that during mediation, though remained unsuccessful, the petitioner had offered settlement subject to being paid pension as per his entitlement. It is stated that the minimum eligibility for earning pension is of 10 years of service and the petitioner even with eleven years of service would have been entitled to pension of approximately ₹5000/- per month. The counsel for the respondent DTC

states that he has no instructions in this regard and is unable to state whether the petitioner had crossed the eligibility threshold for pension and/or award pension of ₹5000/- as claimed.

12. In the entirety of the circumstances, considering that the sum of ₹1 lac also has remained in the pockets of the respondent DTC for the last nearly four years even though tendered and would today have a value of nearly ₹2 lacs, it is deemed expedient to enhance the compensation of from ₹1,00,000/- to ₹ 4,25,000/-, payable by the respondent DTC to the petitioner within eight weeks from today failing which the same, besides other remedies of the petitioner shall earn interest at the rate of 10% p.a. In the circumstances, the petition is disposed of with no order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

SEPTEMBER 8, 2011

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(corrected & released on 20.09.2011)