

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

Date of decision: 8th September, 2011

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W.P.(C) 5540/2008

SHRI RAJ SINGH

..... Petitioner

Through: Mr. G.S. Charya, Adv.

versus

DELHI TRANSPORT CORPORATION

..... Respondents

Through: Mr. J.B. Malik, Adv.

AND

W.P.(C) 6124/2008

DELHI TRANSPORT CORPORATION

..... Petitioner

Through: Mr. J.B. Malik, Adv.

versus

SHRI RAJ SINGH

..... Respondents

Through: Mr. G.S. Charya, Adv.

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. Both, employer DTC and the workman earlier employed with DTC as conductor, challenge the award dated 17th April, 2008 of the Industrial Adjudicator on the following reference:-

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

and though holding the departmental inquiry (preceding the order of removal from service) held by the DTC to be not valid, fair and proper and DTC having failed to prove before the Industrial Adjudicator the misconduct alleged and thus the removal from service to be illegal and unjustified, granting relief to the workman of payment of lump sum compensation of ₹75,000/- in lieu of reinstatement and back wages.

2. While the workman in his writ petition avers that the Industrial Adjudicator after having held the removal from service to be illegal ought to have granted the relief of reinstatement with full back wages and continuity of service and the compensation awarded of ₹75,000/- is too meager and inadequate, DTC in its writ petition contends that, (i) relying

on the judgment of a Single Judge of this Bench in ***DTC v. Surender Pal*** (2007 (IX) AD Delhi 594 contends that the removal from service being after obtaining permission under Section 33(2)(b) of the ID Act, the Industrial Adjudicator could not have held the removal to be bad and illegal; (ii) that the finding of the Industrial Adjudicator of the misconduct having not been proved is erroneous.

3. Notices of both petitions were issued. Pleadings have been completed; record of the Industrial Adjudicator been requisitioned and the counsels have been heard.

4. The counsel for the workman at the outset relies on the judgment of the Division Bench reported in 152 (2008) DTC 671 in ***Surender Pal's*** case setting aside the judgment of the Single Judge relied upon by DTC and holding that notwithstanding the permission accorded under Section 33(2)(b) of the Act, it is open to the workman to raise an industrial dispute under Section 10 of the Act and the findings recorded regarding legality and validity of inquiry in proceedings under Section 33(2)(b) of the Industrial Disputes Act would not operate as *res judicata*. I have also in

DTC v. Rishi Prakash (2010) IV AD (Delhi) 399 intra court appeal being LPA No.508/2010 whereagainst was dismissed on 10th February, 2011. *DTC v. Shyam Lal* ILR (2010) V Delhi 43, *DTC v. Nihal Singh* 169 (2010) DLT 727 and W.P.(C) 10800/2005 titled *DTC v. Sudan Pal* decided on 18th April, 2011 had occasion to discuss the interplay between Section 33(2)(b) and Section 10 of the Act. The challenge by the DTC to the award for the reason of the application under Section 33(2)(b) earlier having been allowed thus cannot be sustained.

5. I may further note that though the aforesaid plea has been taken by the DTC but neither has the DTC along with its writ petition filed the order dated 5th September, 2000 of the Industrial Adjudicator in 33(2)(b) proceedings on the validity of the inquiry nor does a perusal of the record of the Industrial Adjudicator shows the DTC to have produced the same in the proceedings under Section 10 of the Act. Without DTC even producing before the Industrial Adjudicator the orders in the earlier proceedings under Section 33(2)(b) of the Act, it could not possibly have taken the plea

of *res judicata*. The said ground taken in the writ petitions is thus even otherwise untenable.

6. The workman joined the employment of the DTC as a conductor in the year 1979; he was on 16th March, 1992 charge sheeted while being on duty on 19th February, 1992 not issuing tickets to 15 passengers after collecting due fare from them and of refusing to hand over the way-bill and declining to sign the statement of the passengers; the departmental inquiry found him guilty of the charge and the Disciplinary Authority punished him vide order dated 1st July, 1992 with dismissal from service.

7. The Industrial Adjudicator vide order dated 28th March, 2007 held the departmental inquiry to be not valid, fair and proper *inter alia* on the ground that though it was mentioned in the charge sheet that un-punched tickets had been collected from the workman but the inquiry record contained 15 punched tickets and which were indicative of the tickets having been checked and sold; it was thus held that no proper inquiry was conducted and there was no material before the Inquiry Officer to come to the conclusion that it was the workman who got the tickets punched in

connivance with the other officials; it was further held that the Inquiry Officer recorded only one witness and did not call the other witness and called one of the witnesses after closure of the inquiry proceedings and to fill up lacunas in the case of the management; it was thus held that there was perversity in the report of the Inquiry Officer in as much as there was no explanation for the conclusions reached.

8. DTC sought to prove the misconduct before the Industrial Adjudicator. However the Industrial Adjudicator in the award has held that though the witnesses of the management had stated that un-punched tickets were handed over to them but on record were punched tickets falsifying the case of the DTC; the charge of the workman having refused to sign the statement of the passengers was not proved; that it was incumbent upon DTC to produce evidence to prove as to how the tickets got punched when the case of the DTC was of un-punched tickets having been taken from the workman; that there was insufficient evidence of DTC to prove that the workman refused to give way-bill or documents to the checking officials; there was no corroborative evidence to prove the allegations against the

workman; the statements of the passengers did not bear the signatures of the workman and there was no allegation of the workman having refused to sign the statement.

9. The Industrial Adjudicator however after holding the removal of the workman from service to be illegal and unjustified, further held that DTC had not led any evidence that the workman had been gainfully employed; however since more than 15 years had elapsed since the order of the removal of the workman and further since the record showed 15 adverse entries against the workman including number of entries regarding non-issuance of tickets to the passengers after collecting fare and of manipulation or alteration of official records, held it would not be appropriate to impose the workman in whom the DTC had lost confidence on the DTC; thus relief of compensation of Rs.75,000/- was award.

10. As far as the challenge by DTC to the findings aforesaid of the Industrial Adjudicator is concerned, DTC has in its petition not taken any ground that the said factual findings are not based on any evidence or are such which no reasonable person could have reached. It is settled position

in law that this Court in exercise of powers of judicial review is not to exercise appellate powers and is not to interfere in the findings of fact unless shown to be perverse i.e based on no material at all or such which no reasonable person on the basis of evidence on record could have reached. The conclusion by the Industrial Adjudicator that DTC had failed to prove the misconduct is thus inassailable.

11. Similarly, no ground had been taken by the DTC in its writ petition as to the illegality of the order dated 28th March, 2007 of the Industrial Adjudicator holding the departmental inquiry conducted to be bad. In fact DTC in its writ petition has not even bothered to file the copy of the said order.

12. Though the counsel for the DTC relying on *State of Haryana v. Rattan Singh* 1997 (2) SCC 491 has sought to argue that sufficiency of evidence cannot be gone into but the present is not a case of the Industrial Adjudicator having set aside the departmental inquiry proceedings for the reason of evidence not being sufficient. The present is a case where the

departmental inquiry was held to be invalid and it was held that DTC had failed to prove the misconduct before the Industrial Adjudicator.

13. On the contrary, the counsel for the workman has urged that the reasons given by the Industrial Adjudicator for not granting the relief of reinstatement in service with back wages to the workman is erroneous. It is contended that the Industrial Adjudicator ought not to have considered the past record of the workman; that the said past record is relevant only when charge is proved and to decide the punishment to be imposed and not when the charge itself is not proved. It is contended that Section 11A of the ID Act empowering the Industrial Adjudicator to interfere in the punishment imposed is an exception to the normal rule and such exception has been provided only in situations where the charge is proved.

14. On enquiry, it is informed that the workman if had been reinstated and had continued in the employment of DTC, would have superannuated in the year 2016 and would also become entitled to retiral and pensionary benefits.

15. I am however of the view that the workman cannot be reinstated now after 19 years of having not served the DTC. Reinstating him at this stage for the balance period till his superannuation would not allow DTC to reap any benefit from the service. I am also of the opinion that it is not just and equitable to impose the liability of retiral benefits and pension of an employee who instead of serving the employer for the full period to be entitled to pension, has served the employer for less than even half or 1/3rd of the said period. I also find that though the workman was removed from service as aforesaid on 1st July, 1992 but he is found to have raised the industrial dispute only in the year 1996. There is no explanation for the delay of four years from 1st July, 1992 till 1996 when the dispute was raised and of which the reference aforesaid dated 22nd August, 1997 was made. The said delay of four years is enough to disentitle the workman from the relief of reinstatement.

16. However considering that the workman prior to his termination had served DTC for 12 years and further considering that the workman at the time of the award had about nine years of service left, and further in view

of the finding of the Industrial Adjudicator of the workman having remained unemployed since the date of his termination, the award of lump sum compensation of ₹75,000/- is found to be inadequate. Compensation in lieu of reinstatement and back wages has to bear proportionality to the relief of reinstatement and back wages and cannot be grossly unproportionate to the liability which would have accrued to the employer had the relief of reinstatement been awarded. I however do not agree with the contention of the counsel for the workman that while awarding the said compensation, the past record of the workman is not to be seen. Even if DTC failed to prove the misconduct before the Industrial Adjudicator, the said past record can definitely be indicative of the likelihood of the workman even if had been reinstated committing some other misconduct.

17. I have in another writ petition being W.P.(C) 1353/2008 titled ***Ashok Kumar Verma v. DTC*** also listed today and where the workman had served as a driver for 11 years and had attained the age of superannuation during the pendency of the writ petition and where the past record was clean, awarded compensation of Rs.4,25,000/- Considering that

the petitioner was a conductor as distinct from a driver and his past record has number of adverse entries and further considering the four years still remaining of employment of the workman, the compensation of Rs.4 lacs is found to be apposite in the present case.

18. Accordingly, W.P.(C) 6124/2008 preferred by the DTC is dismissed and W.P.(C) 5540/2008 preferred by the workman is partly allowed; the compensation awarded by the Industrial Adjudicator of ₹75,000/- to the workman is enhanced to ₹4 lacs. DTC is directed to pay the said compensation of ₹4 lacs within eight weeks of today failing which the same shall incur interest at 10% per annum till the date of payment. The amount of ₹75,000/- deposited in this Court in W.P.(C)6124/2008 together with interest accrued thereon is directed to be released in favour of the workman. The amount so received be deducted from the compensation of ₹4 lacs awarded and directed to be paid to the workman.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

September 8th , 2011/pp