

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

+ W.P.(C) 823/2010

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Reserved on: 31st July, 2012

Decided on: 8th August, 2012

SH.SUKHBIR SINGH

..... Petitioner

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

versus

DELHI TRANSPORT CORPORATION

..... Respondent

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

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioner impugns the award dated 19th May, 2009 to the extent it does not grant back wages to the Petitioner.
2. Briefly the facts leading the Petitioner to file the present petition are that the Petitioner was a driver with the Respondent/Management when he was removed from services on 26th October, 1995. On the Petitioner raising a dispute following reference was made:

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

3. Learned counsel for the Petitioner contends that in view of the law laid down by the Hon'ble Supreme Court since the Petitioner was a permanent employee and had worked for 8-9 years before he was terminated, he ought to have been given back wages as well. The Petitioner has filed an affidavit that he was unemployed during this period and thereafter the onus shifts on the Respondent-Management to prove that the workman was gainfully

employed. Thus full back wages be directed to be paid to the Petitioner. Reliance is placed on *Ramesh Kumar Rawat vs. Management of Northern Scales Company*, WP (C) No. 7385/2007 decided on 14th May, 2012

4. Learned counsel for the Respondent on the other hand contends that the finding of the learned Trial Court is that the entire charges are not proved in total and has returned no finding qua the charge that the Petitioner misbehaved. Thus, the Petitioner is not entitled to back wages. Further the Petitioner has not made any effort to seek an alternative employment and so he is not entitled to back wages.

5. I have heard learned counsel for the parties.

6. The case of the Petitioner was that he was employed as a driver and on 18th November, 1994 he was served with a charge sheet for misbehaving with the time keeper. It was further alleged that he did not tell the position correctly and misbehaved with the Supervisor. According to the Petitioner the inquiry was not held in accordance with the principles of natural justice and the finding of the Inquiry Officer was perverse based on presumptions. The Management replied that the workman misbehaved and manhandled the time keeper during the course of his employment. Further when the checking staff checked the bus at 11.00 a.m., the workman was not found in the bus and had left the bus without any information. Sufficient opportunity was given to the workman to defend himself. The findings of the inquiry officer are justified. After hearing the parties the learned Tribunal came to the conclusion that on the basis of the available material the charges against the Petitioner were not proved in total. The first charge of intentionally delaying the bus to go on route Nos. 324 with a false excuse of starting trouble was not substantiated, however, there is no finding with regard to the

alleged misbehavior. Thus the learned Tribunal directed reinstatement. In view of the fact that the Petitioner only stated that he remained unemployed and did not make any averment that he made efforts to find an alternative employment in his affidavit or pleading, the learned Tribunal while not granting back wages held that the intermittent period shall not affect the seniority, promotion, gratuity and pension benefits of the workman and the same shall not be treated as a break in service.

7. The only issue in the present case is that whether the Petitioner is entitled to back wages or not and if so to what extent?

8. Learned counsel for the Petitioner has laid emphasis on the decision of this court in *Ramesh Kumar Rawat* (supra) wherein this Court held that the workman cannot be blamed for the delay of trial. However, the said observations of the learned Single Judge were not based on perusal of the Trial Court record therein but were general observations. In the present case I have perused the Trial Court record. During the trial repeated adjournments have been taken by the Petitioner as his Authorized Representative was not present. Hence in the present case the delay during trial is largely attributable to the Petitioner.

9. Further the Hon'ble Supreme Court in *Harjinder Singh vs. Punjab State Warehousing, JT 2010 SC 598* held that while exercising jurisdiction under Article 226 or 227 of the Constitution of India, the High Court is duty bound to keep in mind the Industrial Disputes Act and other similar legislative instruments which are social welfare legislations and are required to be interpreted keeping in view the goal set out in the preamble of the Constitution of India and the provisions contained in Part-IV of the Constitution of India including Articles 38, 39A-E, 43 & 43A.

10. In *General Manager, Haryana Roadways v. Rudhan Singh*, (2005) 5 SCC 591 their Lordships' held-

“8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year.”

10. The line of decisions on the point are that the criteria for granting back wages are the length of service, whether the appointment was in consonance with the statutory rules, whether there existed any vacancy etc. Applying the criteria to the facts of the present case that the Petitioner was working as a driver on regular basis, had put in nearly 7 years of service when he was

terminated but since there has been a delay of the trial on account of the Petitioner's conduct and the fact that the Petitioner has only stated that he was unemployed and has not even averred that he made efforts for finding alternative employment during this period while balancing the various circumstances, I deem it fit to modify the impugned award dated 19th May, 2009 to the extent that the Petitioner is entitled to 50% back wages. Ordered accordingly.

10. Petition is accordingly disposed of.

(MUKTA GUPTA)
JUDGE

AUGUST 08, 2012
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