

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

Date of decision: 11th July, 2012

+ **W.P.(C) No. 5372/2000**

% **SHRI AZAD SINGH** **....Petitioner**
Through: None.

Versus

DELHI TRANSPORT CORPN. & ANR. **..... Respondents**
Through: None.

CORAM :-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the award dated 17th October, 1996 of the Industrial Adjudicator on the following reference:-

“Whether Shri Azad Singh himself abandoned his job or his services were terminated by the management illegally and/or unjustifiably and if so, to what relief is he entitled and what directions are necessary in this respect?”

and though holding that the petitioner had not himself abandoned his job and that his services were terminated illegally by the respondent employer but granting the relief only of lump sum compensation of Rs.75,000/- to the petitioner.

2. The petitioner in this petition contends that the award, in so far as declining the relief of reinstatement with full back wages to him, is bad and seeks modification of the award to the said effect. *Rule* was issued in the

petition but the interim relief of reinstatement pending adjudication of the petition denied. On 28th September, 2005 it was reported that the petitioner workman had expired; vide order dated 14th January, 2008 his legal heirs were substituted. None has been appearing for the petitioner on 24th October, 2008, 15th December, 2011, 2nd January, 2012, 5th March, 2012, 11th May, 2012, 15th May, 2012 and 2nd July, 2012. Today also none has appeared for either of the parties inspite of the matter having been kept pending for a sufficiently long time. Considering that the petition is of the year 1998 and primarily claimed the relief of reinstatement and that owing to the demise of the petitioner, the same is now not possible, it is not deemed expedient to await the petitioner any longer. Though the petition is liable to be dismissed for non-prosecution but since *Rule* was issued, it has also been considered on merits to find out whether the petitioner was entitled to the relief of back wages and reinstatement and if so, now enhanced compensation in lieu of reinstatement.

3. The petitioner joined the service of the respondent DTC in November, 1981 as a driver; he claims to have fallen ill in March, 1988 and sent his leave application along with medical certificate; he further claims that when he went to join duty in June, 1988 he was not allowed and was vide letter dated 11th July, 1988 deemed to have resigned from service under Clause 14(10) (c) of the DRTA (Conditions of Appointment and Service) Regulations, 1952.

4. Even though the respondent DTC was *ex parte* before the Industrial Adjudicator but on the basis of the evidence and material on record it was found that the petitioner workman was absenting from duty w.e.f. 14th

March, 1988; he was however on 20th April, 1988 allowed to resume duty but did not perform; he was directed to the Medical Officer, DTC Medical Board for medical examination vide Office Memorandum dated 26th May, 1988 but in vain; he was issued show cause notice dated 13th June, 1988 to show cause as to why he should not be deemed to have resigned his appointment from the services of the respondent DTC; in response to his reply dated 17th June, 1988, he was again directed to the Medical Officer, DTC Medical Board for medical examination vide Office Memorandum dated 17th June, 1988; that the Medical Board advised him to bring all the concerned documents regarding his sickness but he failed to do so till passing of the order dated 11th July, 1988 (supra); that even though the period of his absence from 14th March, 1988 to 21st March, 1988 and from 22nd March, 1988 to 21st June, 1988 was regularized by granting him eight days sick leave due to him and three months extra-ordinary leave without pay but the absence beyond 21st June, 1988 could not be regularized; that it was in these circumstances that the petitioner workman was deemed to have resigned under Regulation 14(10)(c) supra. The Industrial Adjudicator however held that termination under Regulation 14(10)(c) supra was also retrenchment and accordingly held that the petitioner had not abandoned his services and that his services had been terminated illegally and unjustifiably.

5. I have in *Delhi Transport Corporation v. the Presiding Officer, Labour Court V* MANU/DE/1044/2010 after a discussion of the case law on the subject held that Regulation 14(10)(c) supra not providing for any opportunity of hearing to be given to the workman before declaring him to have resigned from employment is bad. Notice was however taken of some

other judgments of the Apex Court holding that although laying down a provision providing for deemed abandonment from service may be permissible in law, action taken thereunder must be fair and reasonable so as to satisfy the requirements of Article 14 of the Constitution of India; if the action is found to be illogical in nature, the same cannot be sustained.

6. However in the present case the Industrial Adjudicator on the basis of the evidence and material before him has found that before invoking Regulation 14(10)(c) supra against the petitioner workman, the principles of natural justice had been complied with – a show cause notice was issued and the petitioner workman was given an opportunity to satisfy the respondent DTC of the reasons for his absence; he was directed to appear before the Medical Board of the DTC. The Industrial Adjudicator has further held that the petitioner was however unable to satisfy the Medical Board of his sickness, on which ground he had sought to justify his unauthorized absence. Notice in this regard may be taken of *DTC v. Sardar Singh* AIR 2004 SC 4161 laying down that mere making of an application for leave is not enough and the requirement is of obtaining leave in advance. Thus it cannot really be said that the action of the respondent DTC of invoking Regulation 14(10)(c) supra against the petitioner workman was bad. However the petitioner workman having died and also for the reason that W.P.(C) No. 721/1998 preferred by the respondent DTC against the same award of the Industrial Adjudicator was dismissed for non-prosecution on 2nd July, 2012, it is not deemed expedient to disturb the award on the said aspect at this stage. It may also be mentioned that pursuant to dismissal of W.P.(C) No.721/1998 the award amount of Rs.75,000/- deposited by the

respondent DTC in that proceeding was directed to be released to the legal heirs of the petitioner workman.

7. The Industrial Adjudicator notwithstanding the finding aforesaid (and to disagree with which there are sufficient reasons) denied the relief of reinstatement and full back wages to the petitioner workman for the reason of (i) the petitioner workman having failed to produce medical sickness record before the Medical Board; (ii) the petitioner workman having not produced any such record before the Industrial Adjudicator also – there being thus nothing before the Industrial Adjudicator to constitute sufficient reason for the inability of the petitioner to join duty; (iii) the work of the respondent DTC as employer suffering by long absence of employees especially without any explanation; and, (iv) a period of more than 10 years having elapsed since the removal of the petitioner workman from the employment of the respondent DTC.

8. The Industrial Adjudicator, considering the length of time for which the petitioner workman had served the respondent DTC and his last drawn salary, deemed the compensation of Rs.75,000/- to be appropriate.

9. I am of the opinion that the Industrial Adjudicator has given cogent reasons for denying reinstatement with back wages and has correctly assessed the compensation in lieu thereof. It is worth mentioning that the petitioner workman along with the writ petition also has been unable to produce any document of his illness during the period of unauthorized absence.

10. I am therefore of the view that the award of the Industrial Adjudicator does not call for any interference. The petition is dismissed. No order as to costs.

RAJIV SAHAI ENDLAW, J

JULY 11, 2012

pp..