

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

% W.P.(C) 1387/2005

+ Date of Decision: 2nd February, 2012

D.T.C. Petitioner

! Through: Mr. J.N. Aggarwal, Advocate

Versus

\$ INDER SINGH Respondent

Through: Mr. Ram Sewak, Advocate

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J: (ORAL)

By way of this writ petition the petitioner-management challenges the award of the Labour Court whereby the reference made to it by the appropriate Government at the instance of the respondent-workman in respect of the dispute raised by him regarding the petitioner's decision to prematurely retire him from its employment on medical grounds has been answered in favour of the respondent-workman.

2. The relevant facts are that the respondent-workman was employed with the Delhi Transport Corporation as a driver in the year 1980. On the allegation that he had participated along with many other employees of DTC in an illegal strike in the year 1998 he was

dismissed from service. However, subsequently all the employees, including the respondent herein, who had allegedly participated in that illegal strike were reinstated in service in October, 1989 subject to their being found medically fit (though as per the case of the workman there was no such condition imposed). The respondent was then subjected to medical examination and as per the case of the petitioner when the medical Board of DTC examined the respondent he was found medically unfit for the post of driver vide report dated 25th July, 1991. The medical deficiency found by the medical Board as per report was “amputated distal phalanx of right ring finger”. In view of the fact that the respondent-workman was declared medically unfit, the petitioner-management invoked Clause 10 of DRTA (Conditions of Appointment and Service) Regulations, 1952 and a decision was taken to prematurely retire him on 9th January, 1992. The respondent-workman felt aggrieved and approached the Labour Authorities. Since conciliation efforts failed the matter was referred to the Labour Court by the appropriate Government vide reference no. F.24(3102)/93-LAB for adjudication. The dispute which was referred to the Labour Court was as follows:-

“Whether the termination of services of Shri Inder Singh by way of premature retirement is illegal and/or unjustified, and if so, to what relief is he entitled to and what directions are necessary in this respect.”

3. Before the Labour Court the respondent-workman had filed his statement of claim wherein he had pleaded that he had been illegally retired from service.

4. The petitioner-management filed its written statement and its main defence was that since the respondent-workman was found medically unfit by the medical Board he was prematurely retired from service with effect from 9th January, 1992 as per the rules of the Corporation.

5. The respondent-workman in his rejoinder claimed that he was not got medically examined after his re-instatement, as alleged by the petitioner-management in its written statement.

6. The learned Labour Court framed the following issues:-

- “(i) Whether workman was declared unfit by the D.T.C. Medical Board on 25.7.1991 as alleged in para no. 4 of the W.S. on merit.
- (ii) The what relief, if any, is the workman entitled in terms of reference?”

7. After examining the evidence adduced by the parties the learned Labour Court gave its Award on 12th November, 2003 in which it was observed in para no. 8 while disposing of issue no. 1 that “..... it is not open to the Court to go into the correctness of the decision of Medical Board..... It is here pertinent to mention that it is an admitted case of the workman that the workman was medically examined by DTC Board and declared unfit” (This observation was not disputed before me by the counsel for the respondent-workman). It was finally held that premature retirement of the workman was illegal and unjustified. The relevant paras of the impugned Award are re-produced below:-

“11. I have gone through the submissions of both the Ld. A.Rs of the parties and I agree with the contention of Ld. A.R. for the workman that the law is well settled by judgment of Baljeet Sing (supra) According to Sec. 47 of the Act, 1995, services of disabled workman is protected under the Act. The Management has no power to terminate or dispense with services of a workman or reduce in rank. The workman in the present case, is entitled to protection and benefits of the Act 1995 because his case is pending in the Court. I do not agree with the contention of Ld. A.R. for the Management that the prematurely retirement of the workman concerned the order of 1992, therefore, he is not entitled. The pendency of the case before the Court does not bar the benefit which has come to the way of the workman by the legislation in the year 1995. Hence workman Inder Singh is protected u/s 47 of the I. D. Act 1995.

12. The workman Inder Singh is protected u/s 47 of the Person with disabilities (equal opportunities, protection of rights and full participation) Act, 1995. The Management cannot dispense with services of the workman and liable to be shifted to some other place with same pay scale or service benefits or to suitable post till the age of superannuation. Hence, this issue is decided in favour of the workman and against the Management.

Termination of services of workman Inder Singh by way of premature retirement is illegal and unjustified. Accordingly, Govt. of National Capital Territory is directed to advise the Management to reinstate the workman Inder Singh with continuity of service along with full back wages and all the benefits. Further directed to management to post him on suitable post on same scale and rank. Award is passed and this reference is answered accordingly. It be sent to appropriate Govt. for publication.”

8. The petitioner-management felt aggrieved with the Award rendered by the learned Labour Court and so it filed this writ petition.

9. During the course of hearing, the learned counsel for the respondent-workman had placed reliance on a judgment of this Court in **“Delhi Transport Corporation Vs. Rajbir Singh”, 2003 VII AD (Delhi) 537** wherein it had been held that if some industrial dispute in respect of termination of services of an employee whose services had

been dispensed with due to some medical disability suffered by him while in service is pending adjudication at the time when the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 ('the Act of 1995' in short) came into force then the concerned employee would be entitled to the benefit under Section 47 of the said Act of 1995 irrespective of the fact that he had been found medically unfit much before this Act had come into force and had been prematurely retired also on medical grounds.

10. Section 47 of the Act of 1995 reads as under:

"47. Non-discrimination in Government employment. – (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

11. The learned counsel for the petitioner-management had very fairly submitted that in view of these two decisions of this Court relied upon by the counsel for the respondent-workman the petitioner-management has virtually no defence in the matter since the Act of

1995 had come into force sometime in the year 1996 and at that time the industrial dispute in respect of the pre-mature retirement of the respondent – workman was till pending adjudication in the Labour Court. However, it was also contended by the learned counsel that the relief of full back wages granted to the respondent-workman should be suitably reduced considering the fact that he had not worked from July, 1991 till 2008 when he had reached the age of 55 years which is the age of superannuation for drivers.

12. After having heard learned counsel for the parties and considering the fact that this Court in the above referred two judgments has already held that even if any employee of DTC becomes medically unfit for a particular post during his employment he gets the benefit of continuation in employment of any other post for which he is found to be medically fit and this exactly is the relief given to the respondent – workman in the present case this writ petition is liable to be dismissed. Secondly the award should have been given to the effect that the respondent-workman had been illegally and unjustifiably retired from service because the management had failed to establish its defence that the respondent-workman was actually unfit. I also do not find any merit in the submissions of the petitioner-management that some modification in the relief given by the Labour Court in respect of the consequential benefit of back wages should be given. There is no justification whatsoever given by the petitioner-management to reduce the payment of back wages. Respondent-workman had been illegally

deprived by the petitioner itself by not allowing him to perform his duties.

13. This writ petition is dismissed. The petitioner is also burdened with costs of ₹ 15,000/-.

P.K. BHASIN, J

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