

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

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Date of decision: 7th February, 2013

+ LPA No.77/2013, CM No.2247/2013 (stay), CM No.2248/2013 (for condonation of delay in filing), CM No.2249/2013 (exemption) & CM No.2250/2013 (for condonation of delay in re-filing)

DELHI TRANSPORT CORPORATION

..... Appellant

Through: Mr. Sumeet Pushkarna and Mr.
Gaurav Sharma, Advocates.

Versus

BHAGAT SINGH

..... Respondent

Through: None.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra court appeal impugns the judgment dated 24th September, 2012 of the learned Single Judge of this Court dismissing W.P.(C) No.619/2006 preferred by the appellant. The said writ petition was preferred by the appellant impugning the Award dated 22nd November, 2002 of the Industrial Adjudicator on the following reference:

“Whether the removal of Sh. Bhagat 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 holding the departmental enquiry held by the appellant to be not fair and proper or in accordance with the principles of natural justice and

further on the basis of the evidence led before the Industrial Adjudicator, holding the respondent workman to have not committed any misconduct for which enquiry was required and directing the appellant to reinstate the respondent workman with 75% of back wages.

2. The writ petition was preferred after three years and two months from the publication of the Award. The learned Single Judge vide the impugned judgment has dismissed the writ petition on this ground alone. It is held that the appellant had failed to show sufficient cause/reason for delay. It is further held that though no period is prescribed for invoking the writ jurisdiction under Article 226 of the Constitution of India but the same does not mean that the jurisdiction can be invoked as and when desired, and the appellant having not been vigilant of its rights, cannot be allowed to take advantage of its own wrong/delay.

3. In spite of the dismissal of the writ petition on the ground of delay, this appeal is accompanied with applications for condonation of delay of 56 days in filing and 20 days in re-filing this appeal. The reasons given for delay in preferring the appeal are administrative.

4. We have heard the counsel for the appellant.

5. The Supreme Court recently in *Post Master General Vs. Living Media India Limited* (2012) 3 SCC 563 has struck a different note about condoning delays on the part of government/governmental agencies and has held that such delays are not to be condoned. We are of the view that the petition preferred by the appellant itself having been dismissed only for the reason of the delay in preferring the same, the appellant and its officials ought to have treated the matter as a special one and ensured, that there is no delay at least in preferring the appeal against such dismissal of the writ petition. However, the appellant proceeded in the matter of filing the appeal at its pace and there is nothing to show that extra care, which was required to be taken, was taken.

6. We are even otherwise of the opinion that the facts of the present case do not require any interference.

7. The respondent workman was appointed as an Assistant Painter with the appellant w.e.f. 15th April, 1977. He was on 7th May, 1987 charged with unauthorized absence of 125½ days, during the period January 1986 to December 1986 and upon being found guilty, was dismissed from service on 15th January, 1988.

8. Though the counsel for the appellant, before us has argued (and which ground does not appear to have been taken in the writ petition or before the learned Single Judge) that the respondent workman raised the dispute after nearly eight years in the year 1996, but is unable to refute that during the said time application under Section 33(2)(b) of the Industrial Disputes Act, 1947 may have been pending.

9. The Industrial Adjudicator in the Award dated 22nd November, 2002 held that the absence of the respondent workman was treated by the appellant as leave without pay and the charge framed against the respondent workman also was of having obtained leave without pay for 125½ days on false basis. The Industrial Adjudicator further held that leave without pay did not amount to any misconduct and accordingly directed reinstatement with 75% of back wages.

10. Though undoubtedly, the judgment of this Court in LPA No.361/2002 titled ***Sardar Singh Vs. Delhi Transport Corporation*** on which reliance was placed by the Industrial Adjudicator was reversed by the Supreme Court in ***Delhi Transport Corporation Vs. Sardar Singh*** (2004) 7 SCC 574 but the dismissal of the writ petition by the learned Single Judge is not on merits but on the ground of the challenge by the appellant to the Award being barred by

time. The learned Single Judge has cited a number of judgments holding that such belated action beyond the period prescribed for suits is not to be entertained and that delay defeats equity. The examination by us is thus to be confined to this aspect only.

11. The appellant seeks to explain the long delay in preferring the writ petition by averring that the file of the present case got tagged along with other files with the counsel for the appellant before the Supreme Court who was conducting *Sardar Singh's* case and having thus remained undetected. The said explanation however does not inspire confidence. It is not in dispute that the respondent workman sought implementation of the Award and the appellant participated in the said proceedings and in which proceedings the appellant released 75% of back wages in accordance with the Award, up to the period 31st December, 2002. It is thus not as if the appellant was oblivious of the Award. The appellant in the proceedings for implementation of the Award was aware of the respondent workman enforcing the Award but still did not take any steps for over three years for impugning the Award. The learned Single Judge has thus held the explanation given by the appellant for delay, to be false and not *bona fide*.

12. We find no reason to differ.

13. Though the counsel for the appellant has referred to *Lipton India Ltd. Vs. Union of India (UOI)* (1994) 6 SCC 524, *State of Nagaland Vs. Lipok AO* (2005) 3 SCC 752 and to *State of Haryana Vs. Chandra Mani* (1996) 3 SCC 132 to urge that a lenient view in the matter of condonation of delay, specially in the case of State ought to be taken, but the facts of the present case are found to be gross. It cannot also be lost sight of that the dispute concerns a workman who got the relief against the dismissal after fourteen years and who has been seeking its implementation since then and inspite whereof, the appellant employer maintained stoic silence for over three years. The respondent workman in all likelihood would now have only a few years service left before his superannuation and we do not want to aggravate his miseries by admitting this appeal for consideration and during which time he may reach the age of superannuation. The Industrial Adjudicator on the basis of the evidence led before him, found that the respondent workman after his removal was earning only about Rs.1000/- per month from odd jobs and for which reason restricted the back wages to 75%. It cannot also be lost sight of that the monetary part of the Award as to 75% of the back wages already stands implemented and what remains now is only reinstatement and the wages for the period after the Award. Even if we were to entertain the

appeal, there can be no possibility, even in the event of the appellant succeeding in the appeal, of recovering back the monies which have already been paid. We are therefore of the view that the principle, the delays and negligence of the officials of the State causing prejudice to the State, cannot also be invoked inasmuch as the monetary part of the Award has already been implemented. Further, the appellant during the pendency of the writ petition must have paid Section 17B Wages and would again be liable to pay Section 17B Wages if this appeal were to be entertained. We are of the opinion that rather than the appellant continuing to pay the Section 17B Wages, the appellant should implement the Award and take work from the respondent workman for his remaining period of service.

13. We therefore do not find any merit in this appeal and dismiss the same.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

FEBRUARY 07, 2013

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