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

Date of Decision: December 15, 2015

+ W.P.(C) 4620/2003 & C.M. 8018/2003

D.T.C. Petitioner

Through: Mr. Sarfraz Khan, Advocate

versus

KARTAR SINGH Respondent

Through: Mr. Anil Mittal, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Respondent was employed as a Conductor by petitioner in October, 1978 and on 17th May, 2003, while on duty, respondent was found to have not issued the tickets to the passengers but had collected the due fare from them. For this misconduct, a departmental inquiry was held and vide order of 11th October, 1994, service of respondent was terminated. A Reference regarding termination of respondent's service was made to the Labour Court on 10th November, 1995 and preliminary issue regarding the domestic inquiry being vitiated was framed by the trial court on 29th January, 1997 and vide order of 10th July, 2002, this issue was decided against the petitioner- DTC while holding that the inquiry stood vitiated. It is a matter of record that order of 10th July, 2002 was not challenged by petitioner-DTC. In the aforesaid order of 10th July,

2002, it is specifically noted that petitioner had not prayed in the written statement that they should be allowed to lead evidence regarding the misconduct of respondent and so, trial court had framed the issue as to what relief respondent is entitled to.

The second issue of respondent's removal from service being justified stands answered by trial court vide impugned Award of 4th October, 2002 in which it has been directed that respondent be reinstated with continuity of service and full back wages.

During the course of hearing, it was brought to the notice of this Court that in terms of the impugned Award, full back wages of about ₹5,00,000/- have been already paid to respondent till the date of the Award. However, vide order of 29th August, 2003 in this petition, operation of the impugned Award was kept in abeyance but respondent's application under Section 17-B of *The Industrial Disputes Act* was allowed and in terms thereof, respondent is said to have received an amount of ₹4,50,000/- till respondent's retirement on 31st January, 2012.

Upon hearing and on perusal of the impugned Award, order of 10th July, 2002 and the material on record, I find that since petitioner had not sought requisite permission in the written statement, therefore, petitioner was rightly not allowed to prove the misconduct. In view of dictum of the Apex Court in *Karnataka State Road Transport Corpn. Vs. Lakshmiev Amma (Smt.) & anr.* (2001) 5 SCC 433, I find no palpable error in the impugned Award of 4th October, 2002.

A Coordinate Bench of this Court in *Nai Dunia Urdu Weekly Newspaper Vs. P.O. Labour Court No. X & ors.* 2006 SCC OnLine Del 1055 had modified the payment of full back wages with 50% of the back

wages.

Another Coordinate Bench of this Court in *Ramesh Kumar Rawat Vs. The Management of M/S Northern Scales Company* 2012 SCC OnLine Del 2790, while relying upon Apex Court's decision in *Mahboob Deepak Vs. Nagar Panchayat, Gajraula* (2008) 1 LLJ 855 SC had granted the relief of reinstatement in service but considering the fact that the workman had not worked for many years, had awarded 50% of the back wages.

In *Reetu Marbles Vs. Prabhakant Shukla* (2010) (2) SCC 70, Apex Court has reiterated as under:-

“17. Before advertng to the decisions relied upon by the learned counsel for the parties, we may observe that although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken by the court realising that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched.”

While taking a realistic view in the instant case, I deem it appropriate to modify the impugned Award to the extent that instead of full back wages, respondent would be entitled to 50% of the back wages from the date of termination till retirement. Let the compliance of this

judgment be made within a period of three months.

With aforesaid directions, this petition and application are disposed of while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

DECEMBER 15, 2015

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