

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

+ Judgment delivered on: September 18, 2015

% **W.P.(C) No. 2164/2004**

DELHI TRANSPORT CORPORATION

..... Petitioner

Through: Mr. Uday N. Tiwari and Mr. Sunil Ojha,
Advocates.

versus

RAJINDER SINGH

.....Respondent

Through: Mr. Mahesh Srivastava, with Mr.
Vaibhav Manu Srivastava, Advocates.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. The present petitioner, i.e., Delhi Transport Corporation (*hereinafter referred to as the 'petitioner-management'*) has preferred the present Writ Petition under Articles 226 and 227 of the Constitution of India assailing the validity of order dated 15.09.2003 passed by the Presiding Officer, Industrial Tribunal No. III, Delhi (*hereinafter referred to as the 'learned Tribunal/Industrial Adjudicator'*), in O.P. No. 16/06, wherein the learned Tribunal dismissed the approval-application made by

the present petitioner under Section 33(2)(b) of the Industrial Disputes Act, 1947.

2. The brief facts stated are that as per the allegations of the petitioner-management, the respondent-workman, i.e., Shri Rajinder Singh, on 08.03.1988, was found misconducting himself, while on duty as conductor in Bus No. 1050 at Route No. 082, by non-issuance of tickets, keeping with him used and unauthorised tickets, and offering illegal gratification of Rs. 10/- each to the checking officials.

On the basis of the report of Shri Raj Singh and Shri Kanhiya Lal, TIs, the respondent-workman was suspended from duty w.e.f. 12.04.1988 and subsequently, he was served with the charge-sheet No. SPD/AI(T)/CS-851/88 dated 04.05.1988. During the enquiry, the respondent-workman claimed to be innocent, and as per the allegation of the petitioner-management, the statements of Shri Puran Mal, ATI, T.No.17320, Shri Mam Chand, T.I., T.No.19267, Shri Inder Singh, ATI, T.No.11046, Shri Swaroop Singh, T.I., T.No.3779, Shri Banshi Lal, ATI, T.No.20160, Shri Krishnan Kumar, ATI, T.No.18351, Shri R.K. Sharma, AVI, Shri Raj Singh, T.I., T.No. 3818 and Shri Kanhiya Lal, T.I., T.No. 3805, were recorded.

The enquiry officer, after going through the aforesaid statement, reached the conclusion that charges levelled against the respondent-workman were proved and subsequently, the same was forwarded to the

Depot Manager, Shadipur Depot for imposing proper punishment. The Depot Manager, Shadipur Depot by virtue of powers delegated to him, issued a show-cause notice No. SPD/AI(T)/88/2643, dated 04.05.1989, directing the respondent-workman to show cause as to why he should not be removed from services of the petitioner-management. The respondent-workman filed his reply vide letter dated 17.05.1989 and the Depot Manager, Shadipur after going through the reply and defence taken by the respondent-workman passed the removal order dated 15.06.1989 and also remitted one month's wages by money order, i.e., M.O. No. 2760 & 2761 dated 15.06.1989 as required under Section 33(2)(b) of the Industrial Disputes Act, 1947. An approval application under Section 33(2)(b) of the Industrial Disputes Act, 1947 was also filed before the learned Tribunal for approval of the action taken, i.e., removal of the respondent-workman from services of the petitioner-management.

The learned Tribunal vide order dated 15.09.2003 rejected the approval application and the order of removal of the respondent-workman was set-aside.

Aggrieved by the aforesaid order dated 15.09.2003, the petitioner, i.e., Delhi Transport Corporation, has preferred the present Writ Petition.

3. The learned counsel appearing on behalf of the petitioner-management has pointed out that the learned Tribunal went wrong and acted in haste while closing the evidence on behalf of the petitioner-

management. The learned counsel has further pointed out that sufficient opportunity was not given to the petitioner-management to lead its evidence and the same was closed on the next date of hearing which is *ipso facto* sufficient to remand back the matter to the learned Tribunal to record the evidence of the petitioner and give proper finding after recording the evidence.

The learned counsel for the petitioner has further pointed out that the respondent-workman, in this case, is not entitled to any back-wages, as he has failed to discharge the burden regarding his unemployment after his removal from service. The learned counsel in support of his contentions has relied on the following judgments:

- a) Managing Director, Balasaheb Desai Sahakari S.K. Ltd. vs. Kashinath Ganapati Kambale, (2009) 2 SCC 288.***
- b) Kendriya Vidyalaya Sangathan and Another vs. S.B. Sharma, (2005) 2 SCC 363.***
- c) United Bank of India vs. Sidhartha Chakraborty, (2007) 7 SCC 670.***

On the other hand, the learned counsel appearing on behalf of the respondent-workman has opposed the contentions of the learned counsel for the petitioner-management and submitted that no misconduct is proved on record and the onus of proving misconduct lies on the petitioner-management. Therefore, the workman is deemed to be in the

employment of petitioner-management and consequently, he is entitled to full back-wages.

4. India, being a welfare state, the legislature created a mechanism to promote a better relationship between the workmen and management to promote industrial peace and harmony to achieve higher productivity through the enactment of the Industrial Disputes Act, 1947. The anxiety of the legislature was to give protection to the workman against victimisation or unfair labour practices with the preservation of employer's bonafide right to maintain discipline and efficiency in the industry. Section 33(2)(b) of the aforesaid Act puts the condition on the management to get their action against the workman approved by the Industrial Adjudicator to avoid unnecessary dispute or multiplicity of litigation between the parties in presence of the already pending dispute between the parties before the Industrial Adjudicator.

5. In the instant case, the allegation of petitioner-management against the workman is that the respondent-workman, i.e., Shri Rajinder Singh was found misconducting himself, while on duty as conductor in Bus No. 1050 at Route No. 082, by non-issuance of tickets, keeping with him used and unauthorised tickets, and offering illegal gratification of Rs. 10/- each to the checking officials.

The report to this effect was prepared by Shri Raj Singh and Shri Kanhiya Lal, and the respondent-workman was put under suspension and

later he was removed from the services of the petitioner-management on 15.06.1989 and the petitioner-management filed application of its action for approval under section 33(2)(b) of the Industrial Disputes Act, 1947 before the Industrial Adjudicator as a dispute was already pending between the workman and the petitioner-management. After receiving the notice, respondent-workman filed his reply and the preliminary issue, i.e., ‘whether the applicant held a legal and valid enquiry against the respondent according to the principles of natural justice?’ was framed on 23.11.1989.

On 24.05.1990, the petitioner-management’s witness’s statement was not recorded and case was adjourned to 07.06.1990, on which date the petitioner-management was given opportunity to lead its evidence against the workman and thereafter, the matter was adjourned to 08.10.1990, 04.02.1991, 03.07.1991, 22.01.1992, 25.09.1992, and at last, the Industrial Adjudicator imposed cost on the petitioner-management on 09.03.1993 and the matter was adjourned to 14.07.1993, and then to 22.11.1993 on which date, cost of Rs. 100/- was paid to the authorised representative of the respondent-workman but the petitioner-management again could not examine the witness on their behalf as their authorised representative was not present and the matter was adjourned to 11.03.1994 and thereafter to 13.02.1995, 25.07.1995, 13.02.1996, 11.07.1996, 12.08.1996, 23.09.1996, 30.10.1996, 05.12.1996,

13.12.1996, 10.01.1997, 27.01.1997, 06.03.1997, 02.01.1998, 15.04.1998, 10.07.1998, 21.10.1998, 07.01.1999, 16.03.1999, 19.08.1999, 11.02.2000, 12.07.2000, 26.07.2000, 02.11.2000, 01.02.2001, 16.04.2001, 27.08.2001, 15.02.2002, and 05.07.2002, on which date cost of Rs. 500/- was paid by the management but no witness on behalf of management was present and the Industrial Adjudicator was left with no option but to close the evidence on the issue of enquiry and Industrial Adjudicator decided the preliminary issue in favour of the respondent-workman and against the management for want of evidence.

6. Here, with great anguish, it is pointed out that the petitioner-management, which was seeking approval of the action taken in the year 1989, i.e., removal from service of the respondent-workman, failed to examine witnesses and lead evidence, and the Industrial Adjudicator was left with no option but to close the evidence after a period of 13 years. The aforesaid order dated 05.07.2002 of closing down the evidence and deciding the issue of enquiry in favour of the respondent-workman and against the management has not been challenged by the petitioner-management. Rather, the petitioner-management opted for contesting the matter on merits on 05.07.2002 itself, and the matter was listed for evidence on merits for 22.11.2002. On 22.11.2002, one Shri Hardwari Lal, authorised representative for the management, and the workman were present. No management-witnesses were present and Shri Hardwari

Lal, authorised representative of petitioner pleaded no instruction on behalf of management further leaving the Industrial Adjudicator with no other option except to close the petitioner-management's evidence on merits and the case was fixed for respondent-workman's evidence for 09.04.2003. The said order dated 22.11.2002 is reproduced as under:

“22.11.02 Pr- Sh. Hardwari Lal, Ld. AR
Workman, Sh. Rajinder Singh in person

No MW is present. Ld. AR submits that none has responded from the department. There is no instruction to him. The management has already availed several opportunities but failed to lead ME despite imposing cost. ME is closed on merits. Now put up for evidence of workman and arguments on 09.11.03.”

On 09.04.2003, the workman had examined himself as WW.1 and none appeared on behalf of the petitioner-management. The petitioner-management did not challenge the order of the Industrial Adjudicator dated 22.11.2002, on which date, the management-evidence on merits was closed. Rather, they further participated in further proceedings on 08.09.2003 and filed the written arguments and finally, the learned Industrial Adjudicator/Industrial Tribunal No. – III, passed the impugned order dated 15.09.2003.

7. The contention of the learned counsel for the petitioner-management that sufficient opportunity was not given to the management to lead evidence on merits is not convincing and the plea loses its significance in presence of the opportunities given to the petitioner-management on several dates. Moreover, nothing is stated on behalf of

the petitioner-management as to why the petitioner-management has not challenged the order of the Industrial Adjudicator dated 05.07.2002 and 22.11.2002 which have now attained finality *qua* against the petitioner-management. No steps to summon the witnesses were taken by the petitioner-management. If the plea of the petitioner-management is accepted, there is every possibility of the petitioner-management, venture the procedural adventurism against the respondent-workman, particularly in the instant case, where the Industrial Adjudicator himself was left with no option except to close the evidence of the petitioner-management on two occasions and thereafter, passed the impugned order.

8. The contention of the learned counsel for the petitioner-management that the respondent-workman is not entitled to back-wages as he has not specifically pleaded that he was not gainfully employed elsewhere after his removal from service in view of the aforementioned judgments i.e., *Managing Director, Balasaheb Desai Sahakari S.K. Ltd. vs. Kashinath Ganapati Kambale*, (2009) 2 SCC 288, *Kendriya Vidyalaya Sangathan and Another vs. S.B. Sharma*, (2005) 2 SCC 363, and *United Bank of India vs. Sidhartha Chakraborty*, (2007) 7 SCC 670, is not convincing.

In the instant case, the petitioner-management was under a legal obligation to take the mandatory approval under Section 33(2)(b) of the Industrial Disputes Act, 1947 from the Industrial Adjudicator. If the order

of removal of workman from the services is not approved by the Industrial Adjudicator, the position of the workman remains to be that of an unblemished workman entitling him to all the benefits to which a workman is entitled under the law. It is evident from petition under Section 33(2)(b) of the Industrial Disputes Act, 1947 itself that the approval application is moved on behalf of the management and not on behalf of respondent-workman. Therefore, the onus always lies on the petitioner-management to obtain approval of its action taken and if the same fails, the status of the workman remains to be a workman, same as under section 2(s) of the Industrial Disputes Act, 1947. It has been so held by the Hon'ble Supreme Court of India in the case titled as ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma and Ors., 2002 (2) SCC 244***, which is reproduced as under:

*“14. Where an application is made under Section 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not, etc. **If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed.** The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. **If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available.***

This being the position there is no need of a separate or specific order for his reinstatement.” (emphasis supplied)

9. The judgments relied upon by the petitioner-management, i.e., *Managing Director, Balasaheb Desai Sahakari S.K. Ltd. (Supra)* and *Kendriya Vidyalaya Sangathan (Supra)* are not helpful to the petitioner-management as the above-mentioned cases do not pertain to Section 33(2)(b) of the Industrial Disputes Act, 1947. So far as the other case relied upon by the petitioner-management, i.e., *United Bank of India (Supra)* is concerned, paragraph 10 of the aforesaid judgment shows that the same was passed in peculiar circumstances, wherein the Apex Court restricted the quantum of back-wages to Rs. 2 lakh, after taking into account the peculiar facts of the case and the background in which the disciplinary action was taken against the workman therein, and the position in law as it stood at the relevant time when the order of dismissal was passed.

In the instant case, the approval application on behalf of the petitioner-management under Section 33(2)(b) of the Industrial Disputes Act, 1947 has been rejected by the Industrial Adjudicator. The provisions of Section 33(2)(b) of the aforesaid Act protects the interest of the workman and it is a shield against victimisation and unfair labour practices by the management during the pendency of a dispute. The status

of the respondent-workman remains to be that of a workman as defined under Section 2(s) of said Act.

Therefore, this being the position of law, the workman-respondent is entitled to all the consequential benefits including back-wages as given to a workman under Section 2(s) of the said Act. Reliance is placed on the judgment rendered by the Division Bench of this Court in the case titled as *Delhi Transport Corporation vs. Pradeep Kumar, LPA Nos. 278 and 284/2008, decided on 28.05.2008*. Consequently, the respondent-workman is entitled to all consequential benefits, to which he would have been entitled, had the removal order not been passed against him. Hence, once the approval application filed by the management is dismissed, the concerned workman is deemed to be in service and this makes the respondent-workman entitled to back-wages too and there is no need of a separate or a specific order of the back-wages.

10. As such, this Court while exercising its power of judicial review finds no illegality or perversity in the impugned order dated 15.09.2003. Consequently, the present Writ-Petition is dismissed. No order as to costs.

I.S.MEHTA, J

SEPTEMBER 18, 2015

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