

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

+ **W.P.(C) 8468/2007**

Judgment reserved on: 16.04.2015

Judgment pronounced on: 20.04.2015

D.T.C.

..... Petitioner

Through: Mr.Sumit Chander and Mr.Siddhartha
Nagpal, Advocates with Mr.Vikram
Singh, Conductor

versus

PRITAM LAL

..... Respondent

Through: Mr.H.K.Chaturvedi, Advocate

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. In this case the petitioner has challenged the order of the industrial tribunal dated 11.11.1998. Vide this order the tribunal had permitted the petitioner to withdraw its approval application and dismiss the same as being withdrawn.

2. The brief facts of this case are that the respondent was employed as a Driver and a chargesheet was issued on 16.02.1993 on account of his alleged unauthorised absence from 03.03.1992 to 10.02.1993 and also of his alleged total absence for 461 days. A detailed enquiry was conducted. On 12.07.1993, on the basis of enquiry report a show cause notice was issued

proposing the punishment of removal from service. Vide order dated 22.07.1994, the respondent was dismissed from service and he was allegedly paid one month notice pay. An application under Section 33 (2) (b) of the Industrial Tribunal Act (hereinafter referred to as 'the I.D.Act') being O.P.No.166 of 1994 was filed before the industrial tribunal. During the pendency of the said approval application the workman had also raised an industrial dispute bearing I.D.No.186/1995 before the labour court on a reference from the appropriate government dated 18.07.1995. On 09.06.1998, the labour court passed an ex-parte award. Thereafter on 02.10.1999 in execution proceedings of the industrial dispute award the accounts of the petitioner for an amount of Rs.1,54,172/- were attached.

3. The impugned order dated 11.11.1998 has been assailed on several grounds on merit including that the action of the petitioner was not tested on merit and the court had failed to appreciate that allowing the LCA application would tantamount to settling the wrong law especially in light of findings of the fact in favour of the management in LCA 91/2006. It is submitted that the impugned order cannot be sustained in the eye of law. It is further contended that it will unnecessarily burden the petitioner which is a public funded transport utility service provider and would adversely affect

the financial health of the petitioner. It is prayed that the impugned order dated 11.11.1998 passed in O.P.166/1994 be set aside.

4. The claim is contested by the respondent/workman. At the outset, it is submitted that the present petition is barred by law of delay and laches as the petition has been filed after nine years from passing of the award dated 09.06.1998 in I.D.No.186/1995. It is further contended that the present writ petition is not maintainable since the impugned order does suffer with any illegality.

5. I have heard the arguments of the learned counsels for the parties and perused the record.

6. From the perusal of the impugned order it is apparent that during the proceedings on that day i.e. 11.11.1998 an order of the labour court in I.D.No.186/1995 dated 09.06.1998 was put up before the court whereby the order of removal of the workman from service, pertaining to which the petitioner had sought the approval in the said court by way of an application under Section 33 (2) (b) of the I.D. Act, had been set aside and the workman was ordered to be reinstated with full back wages. When this fact was asserted before the court, Mr.V.K.Kalra appearing on behalf of the petitioner/D.T.C. Certain submissions noted in order are as under:

“In view of this development Mr.Kalra states that in case assurance is given on behalf of the respondent that no proceedings will be initiated against DTC, he is ready to withdraw this approval application, which in any case appears to have been infructuous. Mr.Yadav states that since the workman has been ordered to be reinstated there is no question of now his taking any proceedings against the management in case this approval application is withdrawn and which, as rightly submitted by counsel for DTC, has become infructuous also and further that even if the said award is set aside in appeal, if it is filed, the respondent would still not take any action against the management.”

7. Subsequent to that the learned counsel appearing on behalf of the petitioner/D.T.C. also made a submission before the court which was recorded by the court as under:

“In view of this assurance of the respondent, Mr.Kalra states that this approval application may be dismissed as withdrawn.”

8. It is in view of these submissions made by the counsel for the petitioner before the labour court that it passed the order of dismissing the application as withdrawn. The labour court passed the following order:

“Accordingly, this application of the DTC is dismissed as withdrawn. The respondent will be bound by the undertaking of his AR given today, as aforesaid.”

9. It, therefore, is clear that in the present case the approval application

under Section 33 (2) (b) of the I.D.Act registered as O.P.No.166/1994 was dismissed for the reasons that it was withdrawn by the petitioner.

10. No order on merit was passed. No illegality in order of permitting petitioner to withdraw its case.

11. The present petition is an utterly frivolous petition. Hence, while dismissing the same, a cost of Rs.25,000/- is imposed on the petitioner to be deposited in the Delhi High Court Employees Welfare Fund.

12. The writ petition stands disposed of in the above terms.

**DEEPA SHARMA
(JUDGE)**

APRIL 20, 2015
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