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

+ **LPA 82/2016, CM APPL.4489-4490/2016**

DELHI TRANSPORT CORPORATION Appellant
versus
RANBIR SINGH Respondent

LPA 83/2016, CM APPL.4491-4492/2016

DELHI TRANSPORT CORPORATION Appellant
versus
RANBIR SINGH Respondent

Appearance: Mr. Manish Garg with Mr. Hitesh K. Bagri, Advocates for
appellant in both cases.

None for the respondents in both cases.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **08.02.2016**

1. The appellant Corporation (hereafter referred to as "DTC") questions the common judgment and order of the learned Single Judge dated 19.11.2015 by which he dismissed two petitions (W.P.(C) No.16065/2004 and W.P.(C) No.16346/2004). The DTC had by the first of those petitions, i.e., W.P.(C) 16065/2004 challenged the order of 03.03.2003 of the Industrial Tribunal by which the departmental enquiry initiated against the respondent/workman was held to be vitiated. Consequently, its application under Section 33 (2) (b) in the Industrial Disputes Act, 1947 (hereafter referred to as "Act") was rejected. The second writ petition challenged the Award of 16.07.2003 by which the Labour Court directed reinstatement of the workman with 50% backwages.

2. The appellant alleged that the workman, a conductor serving in its employment, whilst on duty in a bus plying from Delhi to Jammu, collected the correct fare but issued the tickets of lower denominations with the intention of retaining the difference. In the departmental proceedings, the Transport Inspector and the Assistant Transport Inspector, who were part of the checking staff deposed. The enquiry report held that the charges were established. Acting upon it, the DTC removed the workman from service. His appeals to the higher authorities were unsuccessful.

3. Since unconnected industrial disputes were pending, the DTC preferred an application under Section 33 (2) (b) of the Act. Independently, the workman also approached the Labour Court claiming reference to an individual claim under Section 10 of the Act. In the first proceeding, i.e., under Section 33 (2) (b), the Labour Court ruled that the enquiry conducted was unfair and permitted the DTC to lead evidence. On an overall appreciation of the materials, the Labour Court concluded that misconduct was not proved due to lack of evidence crucial to establish it. The DTC's application for permission under Section 33(2)(b) was consequently dismissed and the workman was directed to be reinstated with 50% back wages.

4. Before the learned Single Judge, the DTC relied upon the Supreme Court's decision in *State of Haryana v. Ratan Singh*, 1977 (2) SCC 491 as well as the subsequent decisions to say that given the standard of proof, i.e., preponderance of probability, insistence on recording of evidence of the passengers was unnecessary. It was argued besides that the grant of 50% back wages was unwarranted in the circumstances of the case. The Single Judge held as follows: -

"In the instant case, petitioner has failed to get the preliminary evidence of passengers recorded. In Vikram Kumar (supra), not only

the statements of passengers were recorded but even the said statement was got signed by the Transport Inspector. In Subhash Chander (supra), it has been held that zero tolerance is to be shown to dishonest conduct of the employees. There is no doubt about it but there has to be basic and preliminary evidence to prove the charge of misconduct. So far as quantum of sentence is concerned, decision in Subhash Chander (supra) would apply but not to a case like the instant one, which lacks evidence.”

The impugned judgment thereafter proceeded to consider the peculiar circumstances and rejected the DTC's contentions.

5. Learned counsel for the DTC submitted firstly that adequate opportunity to cross examine its witnesses was provided to the workman during the course of the enquiry and that the line of questioning taken indicated that there could have been no doubt with respect to the workman's guilt vis-a-vis the charges levelled. It was urged that given the law declared in *Ratan Singh (supra)*, the Labour Court - and later the learned Single Judge's conclusion that in the absence of any evidence by the passengers concerned, the enquiry could not validly conclude the arguments of guilt, was unwarranted.

6. Learned counsel argued next that the mere circumstance that the workman remained out of employment did not automatically entitle him to back wages since there was no material to show that he was not gainfully employed. Learned counsel also pointed to the findings of the learned Single Judge in this regard.

7. The factual discussion would reveal that findings of the enquiry were doubted by the Labour Court. This Court cannot find fault with that decision. The reliance placed by the DTC's management upon the line of cross examination, appears on the surface, to be convincing but really is not so. The Labour Court noticed that apart from the testimony of the two officials who were part of the checking staff, there was no other material

either in the form of names of the passengers, or their statements, on the record. In these circumstances, this Court is of the opinion that with regard to the insufficiency of the materials on record, the concurrent findings bind the DTC. So far as the question of back wages is concerned, one is left wondering how the workman can prove that he was *not* gainfully employed, i.e., a negative. The Single Judge noticed that according to the DTC, the workman owned only a small patch of agricultural land and that though he perhaps earned some meagre form of income, he had two handicapped children to support. In the circumstances, therefore, the grant of 50% back wages was just and fair. We entirely concur with this exercise of discretion and hold that the appeals are meritless; they are accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

FEBRUARY 08, 2016

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