

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

+ Judgment delivered on: January 27, 2016

% **W.P.(C) No.6910/2004**

DELHI TRANSPORT CORPORATION Petitioner
Through: Mr. Anand Nandan and Mr. D. S. Mishra,
Advocates.

versus

SH. DEV RAJ SINGHRespondent
Through: Mr. R.K. Bachchan, Advocate.

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 Article 226 of the Constitution of India for issuance of a Writ of Certiorari for quashing/setting aside the impugned order dated 26.02.2003 passed by the learned Presiding Officer, Industrial Tribunal-II, Karkardooma Courts, Delhi (*hereinafter referred to as the 'learned Labour Court/Industrial Adjudicator'*) in O.P. No. 334/93 under Section 33(2)(b) of Industrial Disputes Act, 1947.

2. The brief facts set out by the petitioner-management is that, the petitioner-management on finding irregularities in attendance which amounted to lack of interest of the respondent-workman, i.e., Shri Dev Raj Singh in the year 1991 on his availing 93 ½ days of LWP (leave without pay) came out with a petition under Section 33(2)(b) of the Industrial Disputes Act, 1947. The respondent-workman, i.e., Shri Dev Raj Singh was employed with the petitioner-management as a body fitter, B. No. 5773, T. No. 8082 w.e.f. 15.04.1983. The petitioner-management issued charge-sheet against the respondent-workman on 15.05.1992 and the allegation in the charge-sheet is as under:-

“That he has been found irregular in attendance in the year 1991 as he availed as many as 93 ½ days LWP during the year 1991 which amounts to lack of interest in the Corporation’s work and habitual absenteeism.”

3. The petitioner-management alleges that the aforesaid irregularity of the respondent-workman amounts to misconduct within the meaning of para 4(ii), 19(h) and (m) of the standing orders governing the conduct of DTC employees and also amounts to misconduct as per Section 15(2) of the DRTA Act. Thereafter, the disciplinary authority removed the respondent-workman from the service vide order dated 26.05.1993 and remitted full one month’s wages to him by way of money orders No. 3222 and 3223.

4. The respondent-workman filed his reply to the application of the petitioner-management in which the respondent denied the charges levelled against him. On the pleadings before the learned Industrial Adjudicator, the preliminary issue was framed on 24.10.1994, i.e., *“Whether the applicant held a legal and valid enquiry against the respondent according to principles of natural justice?(OPA)”* and after giving fair opportunities to both the parties, the said issue was decided in favour of the respondent-workman and against the petitioner-management on 02.09.1996.

5. The learned Industrial Adjudicator thereafter on the basis of the pleadings of the parties further framed the following issues:

“1. Whether the respondent committed the misconduct for which he was charge sheeted?

2. Relief.”

and after giving fair opportunity of evidence on the aforesaid issues to both the parties, the learned Industrial Adjudicator passed the impugned order dated 26.02.2003. Hence, giving rise to the present Writ Petition.

6. The learned counsel for the petitioner-management has drawn the attention of this court that the respondent-workman has availed 93 ½ days of leave without pay which is in violation of the para 4(ii), 19(h) and (m) of the standing orders governing the conduct of DTC employees and also amounts to misconduct as per Section 15(2) of the DRTA Act.

Consequently, the petitioner-management dismissed the respondent-workman and thereafter the petitioner-management filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 for the approval of its action. The termination of the respondent-workman is not on the basis of the victimization but it is the consequence of the act of the respondent-workman who availed 93 ½ days of leave which amounts to misconduct itself.

7. The learned counsel for the petitioner-management further submitted that the proceedings carried out by the learned Industrial Adjudicator is wrong. The learned Industrial Adjudicator adopted a different procedure while deciding the Industrial Dispute, whereas instant is a case where there is no victimization on the part of the petitioner-management and the impugned order dated 26.02.2003 passed by the learned Industrial Adjudicator is wrong and liable to be set aside and relied upon the judgments of this Court, i.e., *Delhi Transport Corporation vs. Rambir Singh & Anr.*, W.P.(C) No. 1120/2002, decided on 23.12.2010 and *Delhi Transport Corporation vs. Shyam Lal.*, W.P.(C) No. 3633/2004, decided on 01.07.2010.

8. On the other hand, the learned counsel for the respondent-workman has submitted that there was no misconduct on the part of the respondent-workman. He further submits that the respondent-workman has availed only authorized leave for which he cannot be penalized for doing nothing

and the learned Industrial Adjudicator has rightly dismissed the approval application under Section 33(2)(b) of the Industrial Disputes Act, 1947 and in support of his arguments, the learned counsel for the respondent-workman has relied upon the judgment pronounced by the Division Bench of the Delhi High Court in the case of ***Delhi Transport Corporation vs. Shri Bhawar Lal, LPA 641/2010 & 645/2010***, decided on 15.09.2010.

9. The whole case hinges around whether availing 93 ½ days LWP (leave without pay) in the year 1991 by the respondent-workman amounts to misconduct?
10. Admittedly, the petitioner-management has framed Rules/Standing Orders governing conduct of employees of the Delhi Transport Corporation, which are as follows:

“15. Conduct, Discipline and Appeal:- (1) Conduct:- The Delhi Road Transportation Authority may from time to time issue standing orders governing the conduct of its employees.

A breach of these orders will amount to misconduct.

(1) (A) Suspension pending enquiry or criminal investigation etc. the appointing authority or any officers delegated with powers by the appointing authority in this behalf may place an employee under suspension.

(i) Where a disciplinary proceeding against him is contemplated or is pending; or

(ii) Where a criminal proceeding against him in respect of any offence is under investigation or trial.

A statement setting out in detail the reason for such suspension shall be supplied to the employee within a week from the date of suspension.

(1) (B) An employee who is placed under suspension under sub clause (1A) above, shall during the period of such subsistence allowance at the rate indicated suspension be paid in clause 15 (4) (a) (b).

2. Discipline:- (a) The following penalties may for misconduct or for a good and sufficient reason be imposed upon an employee for the Delhi Road Transport Authority:-

(i) Censure including reprimand and warning.

(ii) With holding of increments or promotion including stopping at an efficiency bar.

(iii) Reducing to a lower post or time scale or to a lower stage in a Recovery from pay or the security or any other dues of the whole or part of any pecuniary lose caused to the Delhi Road Transport Authority by negligency default shall include damage to or loss of stores expressly entrusted to the person concerned for custody.

(iv) time scale.

(v) Suspension.

(vi) Removal from the service of the Delhi Road Transport Authority.

(vii) Dismissal from the service of the Delhi Road Transport Authority.

(viii) Fines as provided in the payment of Wages Act...”

“Under para 15(1) of D.R.T.A. (Conditions of Appointment and Services) Regulations, 1952, the following standing orders are issued, governing the conduct of the Authority’s Employees. A breach of these orders by any employee will amount to misconduct and make him liable to disciplinary action referred to in para 15(2) of the said Regulations:-

1. INTERPRETATION:- In these Standing Orders the term ‘Authority’ means the Delhi Road Transport Authority and the term ‘Employees’ menas an employee of the Authority.

2. DUTIES OF THE EMPLOYEE:-

(i) All the employees of the authority shall perform such duties and carry out such functions as may be entrusted to them by the Authority or the General Manager or any other authorised officer of the Authority.

(ii) All employees shall serve the authority in such capacity and in such place (within the sphere of the operation of the Authority's services) as they may from time to time be directed. All the employees shall serve the organisation faithfully and shall not give out secrets and confidential information about the working etc. to unauthorised persons. They shall make their utmost endeavour to promote the interests of the Organisation and show courtesy in their contacts with public.

4. ABSENCE WITHOUT PERMISSION:-

(i) An employee shall not absent himself from his duties without having first obtained the permission from the Authority or the competent officer except in the case of sudden illness. In the case of sudden illness, he shall send intimation to the office immediately. If the illness lasts or is expected to last for more than 3 days at a time, applications for leave should be duly accompanied by a medical certificate, from a registered medical practitioner or the Medical Officer of the D.T.S. in no case an employee leave station without prior permission.

(ii) Habitual absence without permission or sanction of leave and any continuous absence without such leave for more than 10 days shall render the employee liable to be treated as an absconder resulting in the termination of his services with Organisation.

19. GENERAL PROVISIONS:- Without prejudice to the provisions of the foregoing Standing Orders, the following sets of commissions and mmission shall be treated as misconduct:-

a) Willful insubordination or disobedience by an employee individually or in combination with others, to any official order of a superior employee;

- b) *Theft, fraud or dishonesty in connections with the Authority business or property;*
- c) *Wilful damage or loss to Authority's goods or property;*
- d) *Taking or giving bribe or any illegal gratifications; other than a complimentary present of flowers or fruit or similar articles of trifling value;*
- e) *Habitual late attendance without permission;*
- f) *Habitual breach of any rules, law, instructions or orders etc. applicable to the employees of the Authority;*
- g) *Disorderly behaviour on the premises of the Authority;*
- h) *Habitual negligence of duties and lack of interest in the Authority's work;*
- i) *Striking work or in inciting others to strike work in contravention of the provisions of the law applicable to the D.T.S.*
- j) *Habitual indebtedness, as evidenced by receipt of frequent 'Attachment' orders from the court;*
- k) *Any offence involving moral turpitude which is punishable under the I.P.C. ;*
- l) *All employees who may be arrested for any reason shall intimate the fact of arrest to their official supervisor immediately, even though they might have subsequently been released on bail. Failure on the part of any employee to so inform his official superiors will render him liable to disciplinary action on this ground alone, apart from the action that may be called for on the out come of the police case against him.*
- m) *Any other acitivity not specifically coverd above, but which is prima facie detrimental, to the interests of the organisation.*”(Underlining supplied)

11. The charge levelled against the respondent-workman by the petitioner-management is as under:

“That he has been found irregular in attendance in the year 1991 as he availed as many as 93 ½ days LWP during the year 1991 which amounts to lack of interest in the Corporation's work and habitual absenteeism.”

12. As per the charge, the respondent-workman availed 93 ½ days leave without pay (LWP) in the year 1991. The leave, i.e., 93 ½ days leave without pay (LWP) availed by the respondent-workman is authorised leave, which was accorded in favour of the respondent-workman by the competent authority of the petitioner-management.
13. As per para 4(ii) of the standing orders governing the conduct of DTC employees, an employee cannot go on leave without prior permission or sanctioned leave for more than ten days and if he does so he would be treated as an absconder resulting in the termination of his services with the organisation.
14. Instant is the case of availing 93 ½ days leave without pay (LWP). The Hon'ble Supreme Court in the case of *Delhi Transport Corporation vs. Sardar Singh, AIR 2004 SC 4161* has held that one of the exceptions to the case of unauthorised absence is absence due to sudden illness. As per para 4(ii) of the standing orders governing the conduct of DTC employees, an employee cannot go on leave without prior permission or sanctioned leave for more than ten days but there is no period prescribed for permitted/authorised leave.
15. In the present case, the respondent-workman was sanctioned 93 ½ days leave without pay by the sanctioning authority of the petitioner-management. The sanctioning authority of the petitioner-management

after going through the reasons for availing the leave sanctioned the same in favour of the respondent-workman to the extent of 93 ½ days leave without pay in the year 1991. There is no ground pleaded by the petitioner-management that the respondent-workman with malafide intention hatched a conspiracy with the sanctioning authority in obtaining the leave without pay for a period of 93 ½ days.

16. In the absence of such an allegation from the side of the petitioner-management, the leave, i.e., 93 ½ days leave without pay, so granted by the petitioner-management in the year 1991, is deemed to be accorded in favour of the respondent-workman on the basis of the grounds alleged therein in the exceptional circumstances.

17. Once the authorised leave is granted, the same cannot be the ground of misconduct on the part of the respondent-workman for causing deviation from duty/lack of interest in the work with the petitioner-management. Reliance is placed on the judgment in the case of *Delhi Transport Corporation vs. Shri Bhawar Lal (supra)* wherein the authorised leave was not treated to be misconduct.

18. The plea of the learned counsel for the petitioner-management that the learned Industrial Adjudicator went wrong while dealing with the approval application under Section 33(2)(b) of the Industrial Disputes Act, 1947 and the reliance placed on the judgments of *Delhi Transport Corporation vs. Rambir Singh & Anr. (supra)* and *Delhi Transport*

Corporation vs. Shyam Lal.(supra) loses its significance as there is no specific method for determination of the dispute pertaining to the approval application under Section 33(2)(b) of the said Act. However, the application has to be dealt summarily and in the instant case the learned Industrial Adjudicator has rightly dealt with the matter after giving due opportunity to the parties and reached to the right conclusion. Therefore, the abovementioned plea of the petitioner-management is of no consequence.

19. Here, a dismissal is unfair on the part of the petitioner-management who have gone through the reasons for availing the leave of the respondent-workman at the first stage and accorded the leave which crystallised into authorised leave. Therefore, the availing of the abovementioned leave, i.e., 93 ½ days leave without pay, is violative of the rules will not sustain in the eyes of law without taking any steps to investigate whether the leave granted was the result of conspiracy or the leave availed is the subject matter of fraudulent action on the part of respondent-workman. Consequently, the authorised leave is not a misconduct on the part of the respondent-workman. It is expected that the canons of good industrial practice must be followed. Lord Mackay once stated in Polkey's case:

“the statutory test shows that at least some aspects of the manner of the dismissal fall to be considered whether a dismissal is unfair since the action of the

employer in treating the reason as sufficient for dismissal of the employee will include at least part of the manner of the dismissal.”

20. As discussed above, this Court while exercising its power of judicial review under Article 226 of the Constitution of India finds no merit in the present Writ Petition and there is no illegality or perversity in the impugned order dated 26.02.2003. Consequently, the same is dismissed.

The Lower Court record be sent back along with one copy of this Judgment. No orders as to costs.

I.S. MEHTA, J

JANUARY 27, 2016

j