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

% **Decided on: 05.02.2016**

+ LPA 75/2016 & C.M.No.4113/2016

DELHI TRANSPORT CORPORATION Appellant
Through: Ms.Avnish Ahlawat, Advocate
versus

RAJ PAL Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

1. The appellant i.e. Delhi Transport Corporation is aggrieved by an order of the learned Single Judge dismissing its writ petition. In that writ petition the corporation had challenged an award of the labour court made on 07.05.2013. The award – adverse to the corporation, answered a reference dated 11.11.1992 and held that the respondent/workman was terminated illegally and unjustifiably from its employment. The facts are that the workman, a driver, was in employment of the corporation from 09.09.1975 and while so he met with an accident on duty on 03.12.1990, and suffered disability. The corporation's medical board advised light duty to the workman and he was assigned the job of a Clerk in a store. It was contended by the workman that on 19.02.1992 when he went to resume his duties he

was not allowed to do so. The management's position was that on the workman's request on the previous date, a letter was sought to be served on him advising him to go for medical check up which he refused to accept. In these circumstances, an industrial dispute was made; conciliation efforts failed. Eventually, reference was made by the appropriate government to the labour court.

2. Reference was unanswered on two previous occasions and had rather a chequered history which is not relevant for the present purposes. Ultimately, the award was focused on the point of reference i.e. whether the workman was prevented from joining duties and whether it amounted to termination? Before the Labour Court the claim made was that the management had examined one witness MW1 who deposed in his affidavit and relied upon various documents. This witness conceded that the workman had suffered an accident and was advised light duties. Ex.MW1/6 was placed on the record which suggested that the workman was requested for medical check up on 18.02.1992. The management also relied upon a letter issued the next date i.e. Ex.MW1/7 issued by the Depot Manager asking the workman to appear before the medical board. The workman's case was that this letter was never served on him. The MW1 admitted that he was unaware whether it was served or otherwise. He also admitted to the fact relevant attendance register was not placed on the record. In these circumstances, the Labour Court concluded that the defence of the management i.e. that the workman refused to accept the letter calling upon him to report for medical check up was not proved. After

considering the circumstances, the labour court concluded that there was an unjustified termination in the circumstances of the case.

3. It was contended before the learned Single Judge that the labour court was unduly swayed by the fact that management terminated the services of the workman in 1999, after culmination of show cause notice for absence for a 10 months period during 1997 and 1998. The learned Single Judge by an elaborated judgment considered all the factual materials including the previous litigation history in this case. The impugned judgment records as follows:

16. Learned Labour Court rightly observed that it is not duly proved as to whether the workman refused to accept this letter Ex.MW1/7. There is no report on Ex. MW1/7 that it was ever tendered to the workman or that it was refused by him. Name of the person who might have tendered the same to the workman is not disclosed by the management either in the written statement or even in the affidavit of MW1. Moreover, it is not the case of the management that the letter was sent at the residential address of the workman. Keeping in view the admitted fact that the workman himself prayed for his check up by the Medical Board of the Management on 18.2.1992, it is difficult to believe that he would refuse to accept W.P.(C) 10//2014 Page 8 of 11 Ex.MW1/7 and refused to undergo medical examination.

17. According to the workman, when he was not allowed to join duties on 19th February, 1992, he made a complaint whereupon the matter was referred to the conciliation officer. It is nowhere the case of the management that any notice was given to the workman to join his duties after 19th February, 1992 or that it issued any charge sheet against him for his unauthorized absence from duty and conducted any domestic inquiry in this regard. For the first time in the written synopsis filed by the DTC, it is alleged that the respondent was issued a

charge sheet dated 1st January, 1993 for remaining absent w.e.f. 19th February, 1992 to 9th December, 1992. Such a plea was never taken by the petitioner before any forum, although, as seen above, the litigation between the parties is pending since the year 1992 till date. Even here, it is not clarified as to what was the fate of this charge sheet. It is alleged that another charge sheet for absence from November, 1997 to May, 1998 was issued and in that inquiry, he was removed from his services w.e.f. 19th November, 1999. If a charge sheet was issued on 1st January, 1993, no explanation is forthcoming as to why it was not taken to its logical end. Moreover, why the department maintained silence since 1992 till 1998 when the charge sheet for remaining absent from duty from November, 1997 to May, 1998 for a period of 212 days was issued where after, he was removed from his services w.e.f. 19th November, 1999. The initiation of disciplinary proceedings against the respondent belies its own stand that he was not reporting for duty from 19th February, 1992 onwards and it only shows that a paper formality was being completed to show that his services had actually been terminated in the year 1999 and not in the year 1992.

4. The learned Single Judge noticed that the corporation had not made out a case that the workman had voluntarily abandoned his service. Rather tellingly she observed:

19. On the other hand, although the management has alleged that it never terminated the services of the workman but there is nothing on record to show that despite the fact that the matter was reported to the Labour Department by the workman, any letter was written to the workman calling upon him to join the duties. In fact, after 19th February, 1992, no action was taken against the workman till the year 1998 when it was alleged that after issuing a charge sheet, his services were terminated. Under the circumstances, the learned

Labour Court rightly came to the conclusion that the workman was refused to join duty by the management w.e.f. 19th February, 1992 without any justifiable reason which amounts to termination. This finding does not warrant any interference.

5. The learned Single Judge in these circumstances after noticing that the workman had attained the prescribed age of superannuation i.e. 30.09.2006, directed that the Labour Court's award for reinstatement should be appropriately modified and that a direction to pay back wages from 19.02.1992 till the age he attained superannuation i.e. 30.09.2006, was appropriate in the circumstances.

6. It is contended by Ms.Ahlawat, learned counsel for the corporation that the learned Single Judge overlooked important salient facts. Learned counsel relied upon the statement of MW1 made in the Labour Court and reply/written statement before the labour court in the reference and emphasised that the workman's employment was never in doubt and in the circumstances, the court had to infer that he was wilfully absent for the entire period. Consequently, a direction to reinstate the workman was unjustified. Learned counsel also submitted that the question of a subsequent show cause notice and termination made on 19.02.1992 was never an issue.

7. The facts on the record concurrently reveal that the management's case was in effect that the workman deliberately and wilfully absented himself from 19.02.1992 onwards. In the reply to the statement of claim (in the reference), in para 5 the corporation denied the workman's case and clearly stated that he was disentitled to reinstatement. As noticed earlier – correctly observed by the Single

Judge – there was no material placed on record by the corporation to justify that the workman was ever asked to report back or assigned duties after 19.02.1992. In the circumstances, the findings of the labour court that the management's action in preventing the workman from rejoining duties was not lawful, is correct. In effect it amounts to *de facto* termination without cause. The learned Single Judge has, in our opinion, very reasonably balanced the equities and directed back wages for the period 19.02.1992 till the date of superannuation of the workman at 25%. No interference is called for in the impugned judgment. The appeal along with pending application is therefore dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

FEBRUARY 05, 2016

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