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

+ W.P.(C) 5561/2011

DTC

..... Petitioner

Through: Mr. Sarfaraz Khan and Mr. Ataur
Rahmaan, Advocates.

versus

RAJBIR SINGH

..... Respondent

Through: Mr. Vinod K. Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

19.08.2016

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1. This petition impugns the Award dated 04.11.2009 of the learned Labour Court in ID No.354/1996 whereby the petitioner has been directed to pay the respondent's legal heirs his full back wages for the period commencing from the date of his dismissal on 27.07.1994 till his demise. It is the petitioner's case that the Award is erroneous because the workman was absent from duty for 71 days without any sanctioned leave. Pursuant to an inquiry it was decided that the workman be removed from service. An application was made under Section 33(2)(b) to the Industrial Tribunal under the Industrial Disputes Act, 1947 seeking permission/ approval for the termination of service of the respondent. The permission was declined. In the meanwhile, the workman had filed a complaint regarding his termination of service and had sought compensation for back wages on which an Award was passed on 03.08.2004 directing the reinstatement of the workman with

full back wages to be paid to his LR's. The management preferred two writ petitions before this Court, being WPC No.18018/2005 and WPC No.17565/2005, which were disposed off with the direction to the trial court to hear the matter afresh and decide the same on merits, giving due opportunity to the parties. The present impugned Award dated 04.11.2009 is a result of the subsequent adjudication which has directed the payment of back wages. In the impugned Award two issues were framed:

- (i) Whether the inquiry was not conducted according to the principles of natural justice and therefore not fair and proper and valid, and
- (ii) As per terms of reference. Whether removal of Shri Rajbir Singh from service by the Management is illegal and unjustified and if so to what relief he is entitled.

2. The first issue has been returned in favour of the petitioner management. Apropos the second issue, the Award concludes that the removal from service for being absent from duty for 71 days was disproportionate to the misconduct because the workman had submitted his leave application along with medical certificate of sickness and fitness; therefore, the extreme action of his dismissal from service was inappropriate and unwarranted.

3. Mr. Sarfaraz Khan, the learned counsel for the petitioner submits that the workman had not adduced any evidence apropos his leave applications, nor did he produce any medical certificate while applying to the Management for grant of his leave. Therefore, for a workman to consistently stay away from work for 71 days, is most unbecoming of the workman and is akin to abandoning work. He relies on the judgment of the

Supreme Court in *DTC vs. Sardar Singh*, (2004) 7 SCC 574, which holds that in case of continuous absence from duty without sanctioned leave for a long tenure, the burden lies on the employee concerned to prove that the said absence was not intentional.

4. The Court notices that the impugned order has recorded that for his illness from 26.06.1993 to 30.06.1993, the workman had submitted a leave application along with a medical certificate, but he had done no duty from 01.07.1993 and was subsequently removed from service on 27.07.1994 pursuant to an inquiry which found him guilty of misconduct. The learned counsel for the petitioner refers to the evidence of the workman, tendered as exhibit WW1/A dated 21.05.1999, which reads as under: -

“From the aforesaid the admission is clear. It is clearly admitted that by the workman himself that he had not annexed any copy of the applications, medical certificates or witness certificate along with affidavit in the Court. He admitted that he did not remember the names of the doctor from who he had taken the medical certificate and fitness certificate. He had stated that he had not availed leave of 71 days voluntarily but was actually not taken on duty for these days.”

5. However, it is not in dispute that there is nothing on the record to show that the workman had presented himself for the work on any subsequent day after the 71 days for which he was absent. If he was treated as being absent or was denied work despite his presenting himself for duty, he should have made representations to that effect. In the absence of any such material, the aforesaid contention of the respondent that he was

declined to be assigned any duty, is untenable and is accordingly rejected.

6. Furthermore, the Court finds that the conclusion for payment of back wages is without any basis, especially in view of the ratio of the judgment of the Supreme Court in *DTC vs. Sardar Singh*, (2004) 7 SCC 574 which, referring to the DTC Manual and Standing Orders regarding leave from duty of its employees, held: -

“7. In all these cases almost the whole period of absence was without sanctioned leave. Mere making of an application after or even before absence from work does not in any way assist the employee concerned. The requirement is obtaining leave in advance. In all these cases the absence was without obtaining leave in advance. The relevant paras of the Standing Orders read as follows:

“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 DTS. In no case shall 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

service with the organisation.

19. *General provisions.* – Without prejudice to the provisions of the foregoing Standing Orders, the following acts of commission and omission shall be treated as misconduct:

(a)-(g) * * *

(h) Habitual negligence of duties and lack of interest in the authority's work."

8. Clause 15 of the Regulations so far as relevant reads as follows:

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

(i)-(v) * * *

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

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

9. When an employee absents himself from duty, even without sanctioned leave for a very long period, it prima facie shows lack of interest in work. Para 19(h) of the Standing Orders as quoted above, relates to habitual negligence of duties and lack of interest in the authority's work. When an employee absents himself from duty without sanctioned leave, the authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's

work. Ample material was produced before the Tribunal in each case to show as to how the employees concerned were remaining absent for long periods which affects the work of the employer and the employee concerned was required at least to bring some material on record to show as to how his absence was on the basis of sanctioned leave and as to how there was no negligence. Habitual absence is a factor which establishes lack of interest in work. There cannot be any sweeping generalisation. But at the same time some telltale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings.”

7. In a case pertaining to the absence of an employee of the petitioner for 72 days in *Delhi Transport Corporation vs. Rishi Prakash (Delhi)*, 2010 (3) SLR 228, this Court has held that it did not find any reason for interference from removal of service of this employee.

8. The Court is of the view that continuous seventy one (71) days of absence from duty is a fairly long period and that too without any intimation to the employer. It would tantamount to being habitual absence and would be covered under the term ‘habitual absence from duty’. An employer, specially one providing public amenities, like public transport in the present instance, needs to have ready and dedicated personnel for the public services to be rendered. Habitual absence of its employees, indiscipline of roster call and uncertainty of availability of requisite personnel to provide the optimum public service, would seriously impair the functioning of such a service provider. The absence of the respondent was unjustified. The employer’s decision to remove him from service was for sound and valid reasons. The

impugned order has erred in deciding the permission for his removal from service. Therefore, it is set aside.

9. The learned counsel for the respondent submits that during the pendency of this writ petition monies deposited in the Court were withdrawn by two LR's of the deceased workman namely by Smt. Balbiri, respondent No.2 and Baby Suman, respondent No.3 and it may not be recovered from them. Since then monies are said to be very small amounts paid to the LR's, who are stated to be economically disadvantaged, it may not be possible and would otherwise be a cumbersome exercise to even endeavour to recover the same. The Court is of the view that considering the pendency of litigation for over 16 years from the date of the Award of 03.08.2004, recovery of small amounts from the LR's of the deceased workman would not be just. In the circumstances, there shall be no recovery of the said amounts. However, the amount lying deposited with this Court shall be released to the petitioner upon an application being made before the Registrar General.

10. The writ petition is disposed off in the above terms.

NAJMI WAZIRI, J

AUGUST 19, 2016/hs