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

+ W.P.(C) 7996/2012

SAHAB KAUR

..... Petitioner

Through: Mr. Swastik Singh, Adv.

versus

THE CHAIRMAN, DELHI TRANSPORT  
CORPORATION

..... Respondent

Through: Mr. Uday N. Tiwary and Mr. Sunil Kr.  
Ojha, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**ORDER**

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**17.08.2016**

1. This petition impugns the award dated 22.12.2011 passed by the Industrial Tribunal, Karkardooma Courts, Delhi in OP No. 87/92, which allowed the respondent's claim under Section 33(2)(b) of the Industrial Disputes Act, 1947. It is not in dispute that Late Mr. Devinder Singh, husband of the petitioner had not reported for duty for 207 days consecutively. Therefore, pursuant to an inquiry, he was dismissed from services; the dismissal was approved by the impugned award which held that the said workman's conduct was irresponsible.

2. The learned counsel for the petitioner submits that Late Mr. Devinder Singh had duly intimated the respondent of the reasons for his continued absence, hence the Tribunal had erred in holding to the contrary. He refers to the evidence led by way of affidavit, before the Industrial Tribunal, wherein the workman had stated that he had been sending his sickness/ medical certificates by post as well as through his representatives, all of which were delivered to the respondent. However, the learned counsel is

unable to show any such postal receipt or acknowledgement of representation by the management. Consequently, his contention being only a bald submission not supported by any documentary evidence was rightly rejected in the impugned award.

3. It is contended on behalf of the petitioner that the case against the workman (husband of the petitioner) was only that he had remained on leave without pay, therefore, all that was required to be done by the respondent was to regularize his leave without pay. He could not have been dismissed from service. Therefore, the finding of the Tribunal that the conduct of the workman was irresponsible, is unfounded.

4. The learned counsel for the respondent relies upon the dicta of the Supreme Court in *Delhi Transport Corporation vs Sardar Singh (2004) 7 SCC 574* which held as under:

“....12. The Tribunal proceeded in all these cases on the basis as if the leave was sanctioned because of the noted leave without pay. Treating as leave without pay is not same as sanctioned or approved leave...”

5. It may well be that the respondent processed the workman's case on leave without pay, nevertheless it would not preclude the respondent from treating the absence same as an unauthorized leave and, therefore, amounting to misconduct. In these circumstances, the Court finds no reason to interfere with the impugned award. The petition is with merit and is accordingly dismissed.

**NAJMI WAZIRI, J**

**AUGUST 17, 2016/kk**