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

+ LPA 411/2015

DELHI TRANSPORT CORPORATION Appellant

Through: Ms Latika Choudhary for Mrs. Avnish
Ahlawat, Adv.

versus

RATTAN LAL Respondent

Through: Mr G.S. Charya, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **25.01.2016**

1. This appeal is directed against a judgment and order of the learned Single Judge who rejected the appellant's (Delhi Transport Corporation, hereinafter referred to as "the DTC") writ petition challenging an award of reinstatement without back wages.

2. The respondent-workman was first employed by the DTC in 1983; he was charged with committing misconduct of unauthorized absence for the period 30.01.2003 to 10.07.2003. He justified the absence contending that his wife was seriously ill and that there was no one else to take care of her. In the ensuing departmental enquiry, the workman was held guilty as charged and the order dismissing him was issued on 05.04.2004. This became the subject matter of a reference to the Labour Court under Section 12 read with Section 10

of the Industrial Disputes Act, 1947. Vide the award dated 28.08.2010, the Labour Court, after considering all the material circumstances, i.e., the evidence with respect to the compelling circumstances justifying the workman's absence; his past record, as well as the regulations pressed into service by the DTC, concluded that though the charges were proved, the punishment imposed was excessive. Invoking its jurisdiction under Section 11A of the Industrial Disputes Act, the Labour Court altered the penalty from dismissal to withholding of two increments with cumulative effect. At the same time, the workman was denied back wages.

3. The Management of DTC filed W.P.(C) No.3635/2011 and relied upon Section 15(2) of the Delhi Road Transport Corporation Terms & Conditions of Appointment & Services Act, 1952 read with Delhi Road Transport (Amendment) Act, 1971 and contended that unauthorized absence was a serious misconduct that merited the severest punishment of dismissal. The DTC also relied upon the Supreme Court ruling in *Delhi Transport Corporation vs. Sardar Singh* (2004) 7 SCC 574 which had in turn taken note of para 4 of the Standing Order issued under para 15(1) of the Regulation of 1952. It was argued in essence that having regard to the workman's dismal past record as well as the unconvincing nature of the explanation, the penalty imposed by the Management was warranted.

4. The learned Single Judge, after considering and dismissing the reliance placed on *Sardar Singh* (*supra*), noted that though the Tribunal upheld the finding of misconduct, it nevertheless exercised

powers under Section 11A. The impugned judgment noticed the broad nature of the power under the provision and in support cited ***Krushnakant B. Parmar vs. Union of India & Anr.*** (2012) 3 SCC178 and ***Vijay Singh vs. The Management of DTC***, LPA No. 499/2009. It was concluded that having regard to the totality of the circumstances, i.e., including the past period, the award could not be said to be perverse. The learned Single Judge consequently concurred with and affirmed it.

5. It is argued by Ms. Chaudhary, learned counsel for the DTC, that the learned Single Judge did not take notice of the previous periods of unauthorized absence which was a considerable circumstance. Although the workman was issued with appropriate penalty, which at that time was deemed to be suitable having regard to the period or periods in question, the fact remained that his entire service record was replete with long periods of absence-mostly unauthorized. Given these facts and circumstances and that the Labour Court did, in fact, uphold the findings recorded by the Disciplinary Authority, invocation of the power to reduce the penalty, at least in this case, was unwarranted. Learned counsel reiterated the submissions based on the applicability of the ruling in ***Sardar Singh's*** case (*supra*).

6. This Court has considered the submissions. The record undoubtedly reveals that the respondent-workman had committed similar lapses or omissions in terms of the unauthorized absence in the past. The DTC had issued warnings and in some instances also

imposed penalty of withholding of increments (in two cases). In the present instance, the explanation given by the workman for the absence was that his wife was unwell. The DTC doubted it, questioning its genuineness. Whilst the medical record produced testified that the wife's suffering was due to depression, in the oral testimony, the workman mentioned that she was suffering from asthma.

7. This Court is of the opinion that this argument does not call for consideration given that the Labour Court accepted the Management's plea that the misconduct was in fact proved. What is in issue is the narrow question of whether the penalty of dismissal was so disproportionate as to warrant interference and consequently a substitution by the Labour Court. The judgment in ***Krushnakant B. Parmar*** (*supra*) and the textual reading of Section 11A indeed clarify that the power of the Court to substitute the penalty imposed upon any employee in an appropriate case is wide. Though not in the nature of unfettered power, these were advisedly conferred upon adjudicating powers like the Labour Court by virtue of an amendment to the Industrial Disputes Act. Prior to introduction of Section 11A, the Industrial Tribunals and Labour Courts possessed the power to substitute or to set aside the penalty only in the face of the findings of victimization, or unfair labour practice on the part of the Management. The excessive nature of penalties, however, was not within the ambit of jurisdiction of Labour Courts. This jurisdiction to re-appreciate the penalty was deemed appropriate by Parliament and

specifically conferred upon Labour Courts. The exercise of the power has to be contextualised in every given case. In the present case, the past record which has been repeatedly emphasized upon by the DTC, no doubt reveals that at least there had been five other instances when the workman had unauthorizedly absented himself. In several of them, warnings were issued to him and in couple of them the penalty of stoppage of two increments was imposed. The Labour Court, while exercising its power to substitute the penalty took into consideration this, as well as the DTC Office Order dated 08.04.1968, which apparently guided the DTC on how an employee complaining of illness, in his family, such as depression, is to be dealt with. This exercise of power was deemed a reasonable by the learned Single Judge who also considered the ruling in *Sardar Singh* (*supra*) cited by the DTC. Having regard to all these circumstances, we are of the opinion that the impugned order of the learned Single Judge does not call for interference.

The appeal is consequently dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

JANUARY 25, 2016
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