

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

Date of decision: May 03, 2017

(i) + W.P.(C) 4957/2000

(ii) + W.P.(C) 5884/2011

DELHI TRANSPORT CORPORATION Petitioner

Through: Mr. Uday N. Tiwari & Mr. Sunil
Kumar Ojha, Advocates

Versus

OMBIR SINGH Respondent

Through: Ms. Raavi Birbal, Amicus Curiae
Counsel & Mr. Ankit Prashar,
Advocate with respondent in
person

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

ORAL

%

1. In the above captioned first petition, the challenge is to impugned order of 12th March, 1999, vide which approval to punishment of *removal from service* inflicted upon the respondent-workman has not been granted while dismissing petitioner- Delhi Transport Corporation's application under Section 33 (2) (b) of *The Industrial Disputes Act, 1947*.

2. In the above captioned second petition, the challenge is to the order of 9th March, 2010 vide which Reference has been answered in favour of respondent-workman holding that removal of workman from service is unjustified and petitioner- Delhi Transport Corporation (*hereinafter referred to as the 'DTC'*) has been directed to reinstate the respondent-

workman with continuity in service on the same post but without back wages.

3. The above captioned two petitions spring out from the departmental inquiry held on account of unauthorized absence of respondent-workman for three months or so. Since challenge to the impugned orders in these two petitions is on identical grounds, therefore, with the consent of counsel for the parties, these two petitions have been heard together and are being decided by this common judgment.

4. The facts already noted in the impugned Award of 9th March, 2010 need no reproduction. Suffice to note that respondent-workman was appointed as Conductor on 29th October, 1983 and was permanently employed and upon conclusion of the departmental inquiry, he was removed from service on 16th December, 1992. The preliminary issue regarding adherence to principles of natural justice in conducting the inquiry has been answered against the petitioner-DTC and an opportunity was granted to the petitioner-DTC to adduce evidence. It is a matter of record that petitioner-DTC had got examined two witnesses to prove the inquiry report and misconduct of workman. Trial court has considered the reply given by respondent-workman to the Show Cause Notice in the light of Supreme Court's decision in *Delhi Transport Corporation Vs. Sardar Singh* (2004) 7 SCC 574 and has concluded that no reasons are forthcoming as to how reply given by respondent-workman is unsatisfactory or that how respondent-workman had lost interest in working with the petitioner-DTC. Impugned Award holds that respondent-workman had a justifiable cause in remaining on leave due to illness of his mother and information of his mother's illness was given to

the petitioner-DTC and so, his removal from service is unjustified and hence, his reinstatement with continuity of service but without back wages has been ordered.

5. Learned counsel for petitioner-DTC submits that once respondent-workman had admitted his guilt, then there was no question of holding a full-fledged inquiry, as the conclusion reached by Inquiry Officer was sound and trial court has erred in misinterpreting Supreme Court's decision in *Sardar Singh (supra)* to direct reinstatement of respondent-workman and so, approval for workman's removal from service ought to have been granted and Reference ought to have been answered against the respondent-workman. Lastly, it is submitted by learned counsel for petitioner-DTC that merely because period of absence has been treated to be '*leave without pay*' would not mean that misconduct of respondent-workman gets washed away. To submit so, attention of this Court is drawn to paragraph No.10 to 12 of Supreme Court's decision in *Sardar Singh (supra)*. Reliance is also placed upon Supreme Court's decision in *L & T Komatsu Ltd. Vs. N. Udayakumar* (2008) 1 SCC 224 to submit that dismissal of workman from service on account of 105 days' absence from duty was held to be justified. Thus, it is submitted that petitioner's application under Section 33 (2) (b) of *The Industrial Disputes Act, 1947* ought to be allowed and Reference deserves to be answered against respondent-workman and penalty of removal of respondent-workman from service be restored.

6. Learned Amicus Curiae counsel for respondent-workman vehemently submits that respondent-workman's reply to the Show Cause Notice has been arbitrarily rejected by petitioner-DTC by cryptically

observing that reply is not found to be satisfactory and that no fresh point has been raised by respondent-workman. It is further submitted that Reply given by respondent-workman is self explanatory, as it discloses the reason for his absence and is duly accompanied by the medical proof. It is submitted on behalf of respondent-workman that decision in *L & T Komatsu Ltd. (supra)* is not applicable to the instant case, as in the said case absence was not on account of illness. It is further submitted that no proper departmental inquiry was conducted as mandated by Supreme Court in *Delhi Transport Corporation Vs D.T.C. Mazdoor Congress & ors.* AIR 1991 SC 101. Reliance is also placed upon Supreme Court's decision in *D.K. Yadav Vs. J.M.A. Industries Ltd.* (1993) 3 SCC 259 to submit that it is the duty of employer to act in a just and fair manner and an opportunity to produce the medical certificate at the time of inquiry ought to have been granted and had it been done so, then there was no case for initiation of departmental inquiry, as absence of respondent-workman was well justified. Counsel for respondent-workman also places reliance upon Supreme Court's decision in *Engineering Laghu Udhog Employees Union Vs. Judge, Labour Court and Industrial Tribunal & anr.* (2003) 12 SCC 1 to submit that where principles of natural justice are not being complied with, then in such cases, compensation ought to be granted even if termination of service is found to be valid. Lastly, it is submitted that impugned orders do not suffer from any patent illegality and so, are not required to be interfered with and these two petitions ought to be dismissed. Nothing else is urged by either side.

7. Upon hearing both the sides at length and on in depth consideration

of evidence and the decisions cited, I find that reliance placed by counsel for petitioner-DTC upon Supreme Court's decision in *L & T Komatsu Ltd. (supra)* is of no avail because the absence of respondent-workman in the said case was not on account of illness and there was unauthorized absence fifteen times and so, *dismissal from service* was found to be justified. Reliance placed by counsel for respondent-workman upon Supreme Court's decision in *D.T.C. Mazdoor Congress (Supra)* is of no avail to a case like the instant one of admission of absence of respondent-workman from duty. Supreme Court in *Sardar Singh (supra)* pertinently observed that mere long absence from duty *per se* does not show respondent-workman's lack of interest in work. In the instant case, respondent-workman's absence from duty was justified as his mother was ill.

8. Supreme Court in *L & T Komatsu Ltd. (supra)*, has reiterated that it is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability.

9. Pertinently, in the instant case, the reason for respondent-workman's absence from duty of about three months was on account of illness of his mother and medical certificate regarding illness of his mother is also on record. In such a situation, the Inquiry Officer / authority concerned was not justified in concluding that reply to the Show

Cause Notice was not satisfactory. It is no doubt true that by treating period of absence from duty as 'leave without pay' would not mean that misconduct gets absolved but the fact that reply to Show Cause Notice has not been considered in the right perspective, persuades this Court to interfere with the impugned Award.

10. In the considered opinion of this Court, respondent-workman's *removal from service* is patently unjustified and the trial court has rightly refused to approve respondent-workman's *removal from service* but has erred in granting reinstatement though without back wages. In light of Supreme Court's decision in *Engineering Laghu Udhyog Employees Union (supra)*, it is deemed appropriate to substitute the relief of reinstatement granted to respondent-workman with compensation, which is quantified at ₹2,00,000/-. Impugned Award stands modified in the above terms and impugned order of 12th March, 1999 is accordingly sustained. Petitioner-DTC is directed to deposit the compensation of ₹2,00,000/- with the Registrar General of this Court within four weeks and thereafter, it be transmitted directly into the bank account of respondent-workman upon his providing the bank account particulars.

11. With aforesaid directions, both the petitions stand disposed of while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

MAY 03, 2017

r