

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

Reserved On: December 08th, 2017

Pronounced on: December 11th, 2017

+ **WP (C) 8184/2004**
DTC

.... Petitioner

Through: Ms.Manisha Tyagi, Adv.

Versus

KISHAN KUMAR

.....Respondent

Through: Mr.J.P. N. Shahi, Adv.

+ **WP (C) 18045/2006**

DTC

.... Petitioner

Through: Ms.Manisha Tyagi, Adv.

Versus

KISHAN KUMAR

.....Respondent

Through: Mr.J.P. N. Shahi, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

%

1. These two writ petitions arise out of cognate proceedings between Delhi Transport Corporation (hereinafter referred to as “the DTC”) and Sh. Kishan Kumar (hereinafter referred to as “the workman”) who was employed as a conductor with the DTC. As the recital of facts hereinafter would reveal, W.P. (C) 8184/2004 has effectively been rendered redundant, and the outcome of the said writ

petition really has no significance in so far as the parties to the lis are concerned.

2. It is not necessary, in view of the fact that the dispute has been reduced, by supervening events, to few basic essentials, to delve deep into the controversies between the parties. A bare overview would suffice.

3. The workman, who was employed as a conductor with the DTC, was issued a charge-sheet dated 18th June 1992, alleging that he had defaulted in issuing tickets to passengers, sought to avoid the checking staff and misbehaved with them. A detailed inquiry followed, whereafter show cause notice, dated 17th August 1992 was issued, to the workman, directing him to show cause as to why he be not removed from the services of the DTC. This was followed by an order dated 17th September 1992, remitting one months' salary to the workman and removing him from the services of the DTC.

4. As required by law, an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), was filed before the learned Tribunal, seeking approval, of the learned Tribunal, to the decision to remove the workman from service.

5. The said application was rejected, by the learned Tribunal, *vide* order dated 10th March 2003.

6. W.P (C) 8184/2004 was filed before this Court by the DTC, impugning the aforementioned order, dated 10th March 2003, of the learned Tribunal, whereby the application of the DTC, under Section 33(2)(b) of the Act was rejected. *Vide* order dated 25th September 2006, this Court stayed the operation of the said order, subject to payment of Rs.5,000/-, to the workman, towards litigation expenses. The said interim order continues till date.

7. In the interregnum , a substantive industrial dispute was raised, by the workman, challenging his removal from service, which was referred, by the Secretary (Labour), Government of National Capital Territory of Delhi, for adjudication to the learned Tribunal *vide* order dated 16th June 1994, with the following term of reference;

“Whether the removal of Shri Kishan Kumar from services is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

8. Pursuant to the said reference, Statement of Claim was filed by the workman on 15th January 1996, and reply, thereto, was filed by the DTC, to which rejoinder was filed by the workman. In view of the subsequent developments, reference to the averments contained in the pleadings therein stands obviated.

9. The learned Tribunal framed two issues, arising for its consideration, viz.

“Whether the enquiry got conducted by the Management against the Workman was fair and valid?
To what relief, if any, is the workman entitled in terms of reference?”

10. Issue No. 1 i.e. whether the inquiry against the workman was fair and valid, was treated as a preliminary issue and decided, against the DTC and in favour of the workman, *vide* order dated 28th September, 2004.

11. In view of the fact that, despite the said decision, the DTC was entitled to prove the misconduct by leading evidence before the learned Tribunal, an application for the said purpose, was moved by the DTC. The said application was dismissed *vide* order dated 05th March 2005.

12. No challenge was ever ventilated by the, DTC, to the said order dated 05th March 2005. Neither does the present writ petition contain any prayer for setting aside the said order.

13. Following upon the said aforementioned orders dated 28th September 2004 and 05th March 2005, the learned Labour Court proceeded, *vide* order dated 04th October 2005, to hold that the termination of the workman, by the DTC, had been effected illegally/unjustifiably and, consequently, directed reinstatement of the workman with 50% back wages, continuity of service and all other legal benefits.

14. Clearly, in view of the fact that the substantive industrial dispute, raised by the workman, has been decided, in his favour, *vide* the aforementioned Award dated 04th October 2005, and the said Award is under challenge before me, in W.P (C) 18045/2006, nothing

survives in W.P (C) 8184/2004. Even if the challenge by the DTC, in W.P (C) 8184/2004, to the order, dated 10th March 2003 (*supra*), passed by the learned Tribunal under Section 33(2)(b) of the Act is to sustain, the industrial dispute raised by the workman, against the order of removal from service would, nevertheless, survive for adjudication. That adjudication has such, taken place, resulting in an outcome favourable to the workman, and the Award dated 04th October 2005, rendered therein, is under challenge in W.P (C) 18045/2006. As such, W.P (C) 8184/2004 does not, as already noted, survive for consideration.

15. Turning now, to W.P (C) 18045/2006, the prayer clause contained therein reads thus:

“In view of the above facts and circumstances of the case, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

(a) Pass a writ or certiorari or any other appropriate writ/direction or order to quash the order dated 28.09.2004 and award dated 4.10.2005 in I.D. No. 561/1994 passed by the Ld. Presiding Officer, Industrial Tribunal, Delhi.

(b) Pass such other directions or order as may be deemed fit and proper in the facts and circumstances of the case in favour of the petitioner”.

16. The challenge in W.P (C) 18045/2006 is, therefore, directed against the order, dated 28th September 2004 and Award dated 04th October 2005, passed by the learned Labour Court/Tribunal. Inasmuch as the challenge, to the order dated 28th September 2004, is concerned, I do not find any merit therein. It is, in fact, startling that the grounds, urged in the writ petition, do not contain a single averment, or submission, which could support any challenge to the order dated 28th

September 2004. The learned Labour Court has, in the said order, held the inquiry, against the workman, to have been conducted in an unfair and invalid manner, as it was commenced on 05th August 1992, evidence was recorded on the next date, i.e. 06th August 1992, the inquiry was concluded on the next date i.e. 07th August 1992 and findings were returned by the Inquiry Officer on 11th August 1992. The entire inquiry, therefore, was completed within 3-4 days, and only seven days were granted, to the workman, to complete the evidence in his favour. The learned Labour Court has found the inquiry conducted thus to infract the principles of natural justice and fair play and, the said finding being a finding of fact and not *ex facie* vitiated by perversity, I do not find any justification to interfere therewith.

17. The challenge, to the order dated 28th September 2004, passed by the learned Labour Court is, therefore, rejected.

18. The DTC was undoubtedly entitled to apply for permission to prove the charge against the workman, by leading evidence before the learned Labour Court, even after the aforementioned order dated 28th September 2004, had gone against it. The DTC did so, and the application moved by it was dismissed by the learned Labour Court, *vide* order dated 05th March 2005.

19. Ms. Manisha Tyagi, learned counsel for the petitioner, candidly concedes that the said order, dated 05th March 2005, was never challenged by the DTC. The order, which has been challenged, is only

the consequential Award dated 04th August 2005, which, in view of the aforementioned orders dated 28th September 2004 and 05th March 2005, holds the termination of the workman, from service, to be illegal and unjustified, and, consequently, directs his reinstatement with 50% back wages and other benefits as already stated hereinabove. The order, dated 05th March 2005, has remained unchallenged, as has already been noted hereinbefore. Needless to say, the present writ petition does not ventilate any challenge to the said order either.

20. The order dated 28th September 2004, being in my view, perfectly valid and the order dated 05th March 2005 having remained unchallenged, it is obvious that the challenge to the impugned Award dated 04th October 2005 has necessarily to fail.

21. W.P (C) 18045/2006 is, therefore, dismissed.

22. While the inevitable consequence, of such dismissal, would be that the respondent will be entitled to the benefit of the impugned Award dated 04th October 2005, the law as it stands today is that, in such cases, lump sum compensation should be awarded instead of reinstatement.

23. This is a case in which the charges against the workman were serious and the DTC has ultimately failed only owing to the lackadaisical manner in which it has prosecuted the case, without ventilating any substantial challenge to the order dated 28th September 2004 and without challenging the order dated 05th March 2005, at all.

In the circumstances, I am of the view that the interests of justice would be met if lump sum compensation of Rs. 2 lakhs is given to the respondent workman.

24. Resultantly, these writ petitions are disposed of as under:-

- (i) W.P (C) 8184/2004 is disposed of as having been rendered infructuous/redundant.
- (ii) W.P (C) 18045/2006 is disposed of by modifying the impugned award by substituting the relief, granted therein to the workman, by a lump sum compensation of Rs. 2 lakhs to be paid to the workman within a period of four weeks from the date of receipt, by the petitioner of a certified copy of this judgment.

25. There shall be no order as to costs.

C. HARI SHANKAR, J.

DECEMBER 11, 2017

neelam