

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 06th July, 2017

Date of decision : 11th July, 2017

W.P.(C) 1272/2016

DELHI TRANSPORT CORPORATION

..... Petitioner

Through Mr. Sarfaraz Khan, Advocate

versus

RAM AVTAR

..... Respondent

Through Mr. Vinod Sharma, Advocate

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The Delhi Transport Corporation / the management / the petitioner herein vide the present W.P. (C) 1272/2016, has assailed the impugned Award dated 08.10.2015 of the learned Additional District & Sessions Judge, Presiding Officer, Labour Court-XIX, Karkardooma Court, Delhi in LIR/D No. 41/14 in a claim filed by the claimant / workman i.e. respondent herein Sh. Ram Avtar s/o Late Shri Chhabbu Lal before the Labour Court-XIX, Karkardooma Court, Delhi u/S 2-A(2) and under Section 2A(3) of the Industrial Disputes

Act, 1947 challenging the termination of his services, with a prayer for reinstatement, continuity in service, full back wages and all consequential benefits and litigation expenses on the ground that the management / the petitioner herein had illegally terminated his services,- whereby vide the impugned Award, the claim of the claimant / workman i.e. respondent herein to the present writ petition had been partially allowed and the claimant / workman i.e. respondent herein had been held entitled to the reinstatement in service, with continuity in service and all consequential benefits and also held entitled to 50% back wages from the date of the termination of his services.

2. Vide order dated 16.02.2016, the operation of the impugned Award had been stayed. The parties to the writ petition were also referred to the Lok Adalat for an amicable settlement, which however, as per the report of the Members of the Lok Adalat held on 11.02.2017 could not be resolved as none put in appearance on behalf of the management i.e. the appellant herein. When the matter was taken up for hearing on 06.07.2017, it was submitted on behalf of the claimant / workman i.e. the respondent herein that the claimant / workman i.e.

respondent herein had since superannuated on 31.03.2016 and that his son has expired and he sought an expeditious hearing and that the relief of the reinstatement in service had already become infructuous.

3. The prayer was thus confined to the 50% back wages from the date of the termination i.e. 31.1.2013 till the date of the superannuation i.e. 31.03.2016.

4. In view of the submissions made on behalf of either side and the undisputed facts on the record, it was considered appropriate to hear the parties on the merits of the writ petition.

FACTUAL MATRIX

5. The factual matrix brought forth from the record including the impugned Award dated 08.10.2015 of the learned Additional District & Sessions Judge Presiding Officer, Labour Court-XIX, Karkardooma Court, Delhi in LIR/D No. 41/14 and the averments made in the writ petition and submissions made, bring forth that the claimant / workman i.e. respondent herein joined the services of the petitioner as a driver for Heavy Motor Vehicle Services (HMV) and had been in service with the petitioner for more than 25 years but that his HMV driving license no. DL-0519790228995 expired on 01.01.2007 and

was not renewed by the concerned Transport Department for the reasons that the claimant / workman i.e. respondent herein was involved in a fatal accident case on 30.07.2007 and was facing trial in FIR no. 19/04 u/s 279/304-A IPC PS Geeta Colony of the Indian Penal Code, 1860.

6. Vide order no. 99, Clause (f) issued by the General Manager (Transport) vide memo bearing no. PLD-I-3(102)/63/11528 dated 07.10.1963, it was stated : -

“The drivers of the DTU shall get the benefit of the enhanced retirement age subject to their being found fit in every respect after a through medical examination by the medical Officer / Officers of the DTU every years. The first examination shall be carried out immediately after or before they have attained the age 55 years. If as a result of such medical examination they are found unfit for further service, they would be retired from the services of the Undertaking without any notice.”

7. The claimant / workman i.e. respondent herein is stated to have attained the age of 55 years in March, 2011. In terms of order no. 99,

Clause(F) issued by the General Manager (Transport) vide memo bearing no. PLD-I-3(102)/63/11528 dated 07.10.1963 detailed hereinabove, the drivers of the petitioner could get the benefit of the enhanced retirement age subject to their being found fit in every respect after a thorough medical examination by the Medical Officer / Officers but if they were found unfit by such medical examination, they were to be retired from the services of the Undertaking without any notice.

8. On 30.01.2013 vide Show Cause Notice bearing letter no. NND/N.F.L (Driver/2012/2180) dated 08.11.2012 issued by the petitioner to the claimant / workman i.e. respondent herein, he was informed that his HMV (Heavy) driving license had been cancelled by the Transport Corporation due to the fatal accident and as he had been working on the basis of LMV (Light motor vehicle) and he was called upon to present the renewed HMV (Heavy) driving license within a week or else in terms of the office order no. 99, Clause(F) issued by the General Manager (Transport) vide memo bearing no. PLD-I-3(102)/63/11528 dated 07.10.1963 and in terms of the petitioner's Head Quarter's letter No. PLD-III(Driver)/Misc/2012/3419 dated

02.11.2012, the petitioner stated that it would not be possible to continue the services of the claimant / workman i.e. respondent herein and that further action according to rules would be taken against him.

9. A further Show Cause Notice dated 07.12.2012 was once again issued to the claimant / workman i.e. respondent herein to present his HMV (Heavy) driving license in terms of the office order no. 99, Clause(F) issued by the General Manager (Transport) vide memo bearing no. PLD-I-3(102)/63/11528 dated 07.10.1963 and in terms of the petitioner's Head Quarter's letter No. PLD-III(Driver)/Misc/2012/3419 dated 02.11.2012, having been detailed in the said Show Cause Notice that if the same was not so produced, it would not be possible for the petitioner to continue with the services of the claimant / workman i.e. respondent herein and that action would be taken as per rules.

10. The claimant / workman i.e. respondent herein further failed to produce any HMV (heavy) driving license before the Competent Authority of the petitioner.

11. Another Show Cause Notice bearing letter no. NND / N.F.L. (Driver)/13/14 dated 03.01.2013 was issued to the claimant / workman

i.e. respondent herein by the petitioner and once again he was called upon to produce his HMV (Heavy) driving license within a week in terms of the office order no. 99, Clause(F) issued by the General Manager (Transport) vide memo bearing no. PLD-I-3(102)/63/11528 dated 07.10.1963 and in terms of the petitioner's Head Quarter's letter No. PLD-III(Driver)/Misc/2012/3419 dated 02.11.2012.

12. The claimant / workman i.e. respondent herein vide his letter exhibited as Ex.WW1/2 before the Labour Court-XIX, Karkardooma Court, Delhi in which he admitted that his HMV (Heavy) driving license had expired on 30.01.2007 stated that he was facing trial in FIR no. 19/04 u/s 279/304-A IPC PS Geeta Colony of the Indian Penal Code, 1860 and that he had applied for renewal of his HMV (Heavy) driving license but the concerned department till then had not renewed his HMV (Heavy) driving license.

13. The HMV (Heavy) driving license of the claimant / workman i.e. respondent herein was however not renewed by the Transport Authority and it was thus submitted by the petitioner that the claimant / workman i.e. respondent herein having failed to produce his HMV (Heavy) driving license, the petitioner was left with no option but to

compulsorily retire the petitioner.

14. Vide letter no. NND/NFL (Driver)/Ramavtar/2013/389 dated 30.01.2013, the claimant / workman i.e. respondent herein stood retired from the services of the petitioner corporation.

15. The claimant / workman i.e. respondent herein challenged the compulsory retirement order before the Assistant Labour Commissioner and conciliation proceedings were taken up which were not fruitful and thus the Conciliation Officer issued certificate No. ID/109/ALC/CD/2013/5/97 dated 23.12.2013 to approach the Labour Court for adjudication of the industrial dispute pursuant to which the claimant / workman i.e. respondent herein filed his statement of claim dated 21.03.2014 before the Labour Court against the Management / the petitioner herein, which was registered as LIR/D No. 41/14 seeking withdrawal of his retirement and sought relief of his reinstatement.

PROCEEDINGS REPORTS OF THE LABOUR COURT

16. Issues were framed before the Labour Court on 12.05.2014 to the effect : -

“1. Whether the workman was unlawfully and

illegally superannuated before his age of superannuation? OPW

2. Whether the workman was not having a valid driving license for driving heavy vehicles and was not keeping good health for which he was retired before time as per rules? OPM

3. Whether the workman is entitled for reinstatement in service? OPW

4. Any other relief.”

17. An opportunity was granted to either side by the Labour Court to lead evidence and after arguments were addressed, the Labour Court held that the claimant / workman i.e. respondent herein was entitled to the reinstatement in service, with continuity in service and all consequential benefits and also held him entitled to 50% back wages from the date of the termination of his services.

18. Inter alia, vide paragraph no. 15 of the impugned Award, it was observed to the effect that

“This order was based on office order no. 99, Clause (F) dated 07.10.1963. It is significant to note that

Clause (f) of the aforesaid memo dated 07.10.1963 does not specifically provide for requirement of HTV license. It provides for medical examination and fitness of drivers every year after their attaining the age of 55 years.”

19. Inter alia, reference was also made to the verdict of this Court in DTC Vs. Pradeep Kumar & Anr., 146 (2008) Delhi Law Times 40 relied upon by the claimant / workman i.e. respondent herein to the effect that the Office Orders and Standing Orders ought not to be read in such a rigid manner as to cause unreasonable prejudice to a party, as long as the ultimate object sought to be achieved is fulfilled. It was thus contended that to interpret the word ‘immediately’ used in the Office Order and Standing Order so strictly was contrary to their intent and purport.

20. The petitioner placed reliance on the Head Quarter’s letter No. PLD-III(Driver)/Misc/2012/3419 dated 02.11.2012 was to the effect: -

“DELHI TRANSPORT CORPORATION

GOVERNMENT OF NCT OF DELHI

I.P. ESTATE, NEW DELHI

Dated : 02-11-2012

No. PLD-III/(Driver)/Misc./2012/3419

It has been observed that some drivers whose driving license (HMT) has been cancelled by the Transport Department of Govt. of NCT of Delhi for causing fatal accidents are continuing in service who are in possession of LMV license issued by STA, Delhi while performing light duties on staff car, jeep, van attached to the even of non-availability of sufficient number of light vehicle with the DTC, even after attaining the age of superannuation, i.e. 55 years earmarked for driver's category of above.

Clause (f) of O.O. No. 99 issued by the then General Manager (Transport) vide memo bearing no. PLD-I/(102)/63/11528 dated 7.10.1963 provided as under :-

“The drivers of the DTU shall get the benefit of the enhanced retirement age subject to their found fit in every respect after a thorough medical examination by

the Medical Officer/Officers of the DTU every year after they had attained the age of 55 years. The first examination shall be carried out immediately after or before they had attained the age of 55 years. If as a result of such medical examination, they are found unfit for further service, they would be retired from the services of the Undertaking without any notice”.

As per Recruitment Rules laid down for the post of driver, a person who is considered for appointment in the Corporation is supposed to have HMV driving license with PSV badge issued by STA, Delhi throughout his service being rendered with the Corporation. In case he does not have the HMV driving license with him. He would not have been entitled to continue in employment. In any case he cannot go beyond the age of 55 years.

In view of the above, it has now been decided by the Corporation that such drivers who are not in possession of HMV driving license may be retired with prospective effect on attaining the age of 55 years earmarked for driver's category

as the services of these drivers cannot be utilized on line duty of a bus driver any more by DTC. Every such driver be given notice with this circular that in the absence of HMV license they will not be allowed to continue in service beyond age of 55 years.

This has the approval of the competent authority

*Sd/-
(A.K. Goyal)
Chief General Manager (P)”*

21. As per the said circular dated 02.11.2012, drivers of the corporation, who did not have HMV (Heavy Motor Vehicle) driving licenses were to be retired with prospective effect from their duties on attaining the age of 55 years as their services could not be utilized on line duty as a bus driver of the DTC and it was further stated thereunder that the drivers be given a notice that in the absence of HMV (Heavy Motor Vehicle) driving license, they would not be allowed to continue in the services beyond the age of 55 years. In the instant case, the services of the claimant / workman i.e. respondent herein were terminated w.e.f. 30.01.2013 vide letter no. NND/NFL (Driver)/Ramavtar/2013/389 dated 30.01.2013 due to the non

production of the HMV (Heavy Motor Vehicle) driving license in terms of the petitioner's Head Quarter's letter No. PLD-III(Driver)/Misc/2012/3419 dated 02.11.2012.

22. The claimant / workman i.e. respondent herein as per the said order itself would have attained the age of 55 years on 14.03.2013 with his date of birth being 15.03.1956. The learned Additional District & Sessions Judge Presiding Officer, Labour Court-XIX, Karkardooma Court, Delhi has observed in the impugned Award to the effect that even in the absence of HMV (Heavy Motor Vehicle) driving license, the management / the petitioner herein has utilized the services of the claimant / workman i.e. respondent herein for the driving of the LTV and that even though it was true that the claimant / workman i.e. respondent herein should have taken steps at the earliest for the renewal of the HMV (Heavy Motor Vehicle) driving license, the claimant / workman i.e. respondent herein had brought to the notice of the management / the petitioner herein that he had applied for the renewal of the driving license on 17.12.2012 but since the management / the petitioner had allowed him to continue his services for a period of two years whilst availing of his services for LMV, he

did not get the same renewed till the Office Order dated 12.02.2012 (apparently a reference to the Office Order dated 02.11.2012) came to be issued.

23. Vide the impugned Award, the learned Additional District & Sessions Judge Presiding Officer, Labour Court-XIX, Karkardooma Court, Delhi further observed to the effect that even the management / the petitioner herein had opted not to continue utilizing the services of the claimant / workman i.e. respondent herein on completion of his age of 57 years for the reasons that he was not having HTV license, the management / the petitioner herein should have conducted a domestic enquiry and then ordered for his pre-mature retirement from service but the record did not reveal that any domestic enquiry was conducted before passing the impugned order of the termination of his services dated 31.01.2013. The learned Additional District & Sessions Judge Presiding Officer, Labour Court-XIX, Karkardooma Court, Delhi had thus held that the services of the claimant / workman i.e. respondent herein were illegally terminated services of the claimant / workman i.e. respondent herein and thus it was held that the claimant / workman i.e. respondent herein was to retire on attaining the age of 60

years and has yet not been gainfully employed and no evidence being led by the management / the petitioner herein to show that he had been gainfully employed, the learned Additional District & Sessions Judge Presiding Officer, Labour Court-XIX, Karkardooma Court, Delhi deemed it to be a fit case to order for reinstatement of the claimant / workman i.e. respondent herein in service as a driver, with continuity of the service and all consequential benefits and also held him entitled to back wages but only to the extent of 50% from the date of termination.

CONTENTIONS RAISED IN THE WRIT PETITION

24. Arguments were addressed on behalf of the management / the petitioner herein by their learned counsel Mr. Sarfaraz Khan, Advocate and on behalf of the claimant / workman i.e. respondent herein by learned counsel Mr. Vinod Sharma, Advocate. Whereas on behalf of the management / the petitioner herein, it was urged that the impugned Award dated 08.10.2015 of the learned Additional District & Sessions Judge Presiding Officer, Labour Court-XIX, Karkardooma Court, Delhi be set aside, on behalf of the claimant / workman i.e. respondent herein, it was urged that the order of the reinstatement in

service, with continuity in service and all consequential benefits and 50% back wages from the date of the termination of his services be upheld and be directed to be implemented, in as much as, it was submitted that the services of the claimant / workman i.e. respondent herein had been illegally terminated.

ANALYSIS

25. On a consideration of the entire available record and submissions made on behalf of either side and the impugned Award dated 08.10.2015 of the learned Additional District & Sessions Judge Presiding Officer, Labour Court-XIX, Karkardooma Court, Delhi in LIR/D No. 41/14,- and taking into account the factum of the services of the claimant / workman i.e. respondent herein having been engaged for the purposes of HMV (Heavy Motor Vehicle) and taking into account the factum that his license had admittedly expired on 31.07.2007 and was not renewed by the Transport Authority because of the claimant / workman i.e. respondent herein being involved in a fatal accident case on 30.07.2007 and was facing trial in FIR no. 19/04 u/s 279/304-A IPC PS Geeta Colony of the Indian Penal Code, 1860 and the Transport Authority had reservation to renewal of the driving

license, which was thus not renewed and taking into account the factum that the Corporation i.e. the management / the petitioner herein gave ample opportunity to the claimant / workman i.e. the respondent herein vide vide Show Cause Notice bearing letter no. NND/N.F.L (Driver/2012/2180) dated 08.11.2012, Show Cause Notice dated 07.12.2012 and Show Cause Notice bearing letter no. NND / N.F.L. (Driver)/13/14 dated 03.01.2013 to produce the renewed HMV (Heavy Motor Vehicle) driving license, which was not so renewed by the Transport Authority, taking into account letter No. PLD-III(Driver)/Misc/2012/3419 dated 02.11.2012 of the petitioner's Head Quarter whereby the services of the drivers of the Delhi Transport Corporation, who had been engaged for driving HMV and who did not possess license for the same and whose licenses had been cancelled by the transport corporation for causing fatal accidents,- pursuant to which the drivers whose licenses for driving the HMV with PSV badge were not renewed by the State Transport Authority, and also the factum that vide office order no. 99, Clause(F) issued by the General Manager (Transport) of the petitioner vide memo bearing no. PLD-I-3(102)/63/11528 dated 07.10.1963 the employment of a

driver in such a case could not be utilized any further beyond the age of 55 years, merely because the claimant / workman i.e. respondent herein during the period when the Show Cause Notice bearing letter no. NND / N.F.L. (Driver)/13/14 dated 03.01.2013 was issued to him to produce his renewed HMV (Heavy Motor Vehicle) driving license continued to work despite his having attained the age of 55 years in March, 2011 itself, cannot be granted any benefit for continuing in service beyond the age of 55 years in terms of the office order no. 99, Clause(F) issued by the General Manager (Transport) vide memo bearing no. PLD-I-3(102)/63/11528 dated 07.10.1963, though he admittedly did not possess the renewed HMV driving license after 31.7.2007.

26. In these circumstances, it is held that there was no illegality in the termination of the services of the claimant / workman i.e. respondent herein vide letter no. NND/NFL (Driver)/Ramavtar/2013/389 dated 30.01.2013 whereby the respondent stood retired from the services of the petitioner's Corporation w.e.f. 31.01.2013 in accordance with cause (F) OO No. 99, issued by the General Manager (Transport) vide memo bearing no.

PLD-I-3(102)/63/11528 dated 07.10.1963.

CONCLUSION

27. In view thereof, the impugned Award dated 08.10.2015 of the learned Additional District & Sessions Judge Presiding Officer, Labour Court-XIX, Karkardooma Court, Delhi in LIR/D No. 41/14 directing the claimant / workman i.e. respondent herein for his reinstatement in service, with continuity in service and all consequential benefits, which has since become infructuous and the entitlement of the claimant / workman i.e. respondent herein to 50% back wages from the date of the termination of his services, is thus set aside.

28. However as was submitted during the course of the arguments addressed on behalf of the petitioner, the claimant / workman i.e. respondent herein would be entitled to all the retirement benefits due to him from the date of his retirement i.e. 31.03.2013.

29. The petition is disposed of accordingly.

ANU MALHOTRA, J

JULY 11th, 2017/mk