

\$~44

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 8069/2017, CM APPL. 33205/2017, CM APPL. 33206/2017
DELHI TRANSPORT CORPORATION Petitioner
Through Mr. Uday N. Tiwary, Mr. Sunil
Kumar Ojha, Advs.
versus

SRI BHAGWAN Respondent
Through Nemo.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **12.09.2017**

CM APPL. 33205/2017

CM APPL. 33205/2017 is an application filed on behalf of the petitioner seeking exemption from filing the complete records. The same is allowed, subject to just exceptions.

The application is disposed of.

W.P.(C) 8069/2017, CM APPL. 33206/2017

Initial submissions made on behalf of the petitioner.

Vide the present petition, the petitioner assails the impugned Award dated 19.05.2017 in LIR No. 6702/16 of the learned Pilot Court, POLC-XVII, Karkardooma Courts, Delhi whereby the reference no. F.24(62)/09/Lab./CD/38 dated 31.07.2009 issued by the Government of NCT of Delhi, to the effect : -

***“Whether the removal of Sh. Sri Bhagwan S/o Late Sh.
Raghu Nath from the service by the management vide***

order no. AI(T)/CS-13/93/1093 dated 12.04.1993 is illegal and/or unjustified; and if so, to what relief is he entitled?”

was answered to the effect that the management i.e. the present petitioner herein had successfully established misconduct against the claimant, and the impugned Award had also taken into account the adverse entries against the workman and also held to the effect that the termination of the services of the workman was appropriate in view of the established misconduct against the workmen of his unauthorized absence of 148 days, but held that the claimant had since expired and as a consequence thereof, he having joined the management in 1984 and his services having been terminated in 1993, the length of his service had not taken into account and his order of termination though not illegal, was harsh and not justified.

Inter alia vide paragraph 21 in relation to the aspect as to what relief be granted, it was observed whilst observing that the order of termination was harsh in view of his length of service from 1984 to 1993 to the effect that the claimant had also expired and the relief of reinstatement was thus ruled out but taking into account the length of service of the claimant, the order dated 12.04.1993, passed by the management of removing him from service was slightly modified to the extent that the claimant shall be deemed to have retired on 12.04.1993 and that all the reitremental and consequential benefits like pension (pension be not given if he had opted for no pension) with direction to the management to pay the said benefits to the claimant within a month from the date of the publication of the award failing which it

would be liable to pay interest on it @9% per annum from date of the Award dated 19.05.2017 till its realization.

On behalf of the petitioner, it has been submitted that there has been a gross violation of the powers under Section 11A of the Industrial Disputes Act, 1947 in as much as the misconduct of the claimant having been established by way of his unauthorized absence of 148 days, the relief as granted vide the impugned Award ought not to have been granted.

Taking into account the length of the admitted service of the workman, which was from 1984 to 1993 and the factum that the claimant in the instant case has already expired, in the specific facts and circumstances of the instant case, it is not considered appropriate to modify the impugned Award dated 19.05.2017 in any manner.

The petition is thus dismissed.

ANU MALHOTRA, J

SEPTEMBER 12, 2017/mk