

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

% *Judgment Reserved on: 07.09.2018*
Judgment Pronounced on: 03.12.2018

+ **W.P. (C) 5705/2001**

DELHI TRANSPORT CORPORATION Petitioner

Through: Mr.U.N. Tiwary, Adv.

versus

MADAN LAL & ANR. Respondents

Through: Ms.Rashmi B. Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. The impugned award dated 01.03.2001 passed by the court of learned Presiding Officer, Industrial Tribunal No.III, Delhi ('Industrial Adjudicator') is the subject matter of challenge in this writ petition filed by the petitioner (management) under Article 226 of the Constitution of India.

2. By the impugned award, the premature retirement of the respondent no.1 (workman) was held to be illegal and unjustified. The Industrial Adjudicator directed '*that the pre-mature retirement of the workman is illegal and unjustified and he is entitled for his re-employment with continuity of service with full back wages at the rate*

which he was drawing as driver and he will be entitled for the post which he can perform in alternative post of driver.'

3. Admittedly, the workman was appointed by the management as a driver on 27.10.1980. He sustained injuries on 22.09.1986. Para no.3 of the impugned award records that *'However, it is not disputed that workman has sustained the injury during the course of his duty.'* The workman was examined by the DTC Medical Board on 26.12.1986, which recommended that he be given non-driving duties for a period of three months w.e.f. 26.12.1986. Accordingly, respondent no.1 worked in the Ticket Section on medical grounds for the period from 03.01.1987 to 30.10.1987, 26.02.1988 to 29.02.1988 and 01.03.1988 to 10.03.1988. He was further examined by the Medical Board on 08.02.1990 and again the Medical Board opined that the workman is not fit for driving duties for a period of three months. The Medical Board on 08.05.1990 declared the workman to be permanently unfit for the post of driver. By office order dated 10.09.1992, the management, on the basis of the report of the Medical Board dated 08.05.1990, permanently retired the workman from the services with immediate effect under Clause 10 of the D.R.T.A (Conditions of Appointment and Service) Regulations, 1952.

4. The workman filed a civil suit no.169/1992 for declaration and injunction against the management challenging the said order. The learned Civil Judge, Delhi by judgment and decree dated 26.07.1994 decided the preliminary issue *'whether the suit of the plaintiff is*

maintainable?’ against the workman holding that ‘the plaintiff cannot legitimately ask the Civil Court to entertain his dispute because the remedy provided by the Special Statute is not so effective. What the plaintiff had alleged in this case may not be a discharge, dismissal or retrenchment but it is definitely termination of his services and, therefore, it is an industrial dispute at least under S.2(A) and as such the Civil Court has absolutely no jurisdiction to decide the dispute which is an Industrial Dispute at least by fiction within the meaning of S.2A of Industrial Dispute Act.’

5. After the rejection of the plaint, the workman filed his Statement of Claim before the Conciliation Officer, Delhi on 26.02.1996. On failure of the conciliation proceedings, a reference No.F.24(621)/98-Lab. u/s. 12 of the Industrial Disputes Act, 1947 (ID Act) was made vide order dated 06.03.1998 by the Government of NCT of Delhi to the Industrial Tribunal with the following terms: -

“Whether the premature retirement of Shri Madan Lal is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect”?

6. The Industrial Adjudicator, while answering the reference as mentioned above, has relied upon a judgment of the learned Single Judge of this Court in **Baljeet Singh Vs. DTC, 83 (2000) DLT 286**, holding that the services of the drivers, who are disabled during the course of their employment could not have been dispensed with and discriminated with other drivers and skilled workmen.

7. The learned counsel for the Management contended that the Hon'ble Supreme Court in **Anand Bihari and Others Vs. Rajasthan State Road Transport Corporation, Jaipur, through its Managing Director and Another, 1991 (1) SCC 731**, has laid down the principle that in cases where alternative employment is not possible, appropriate compensation in accordance with law may be paid to the person concerned. He submitted that in pursuance of the judgment referred by the Hon'ble Supreme Court in **Anand Bihari's** case (*supra*), the management issued guidelines for providing compensation and other benefits to the prematurely retired employees by a circular dated 13.11.1995 followed by another circular dated 11.10.1996. He contended that the Management had paid Rs.20,705.30 as compensation under the scheme to the workman. He further contended that a Division Bench (DB) of this Court in **Delhi Transport Corporation Vs. Harpal Singh, (2009) 156 DLT 481** has held that the provision of Section 47 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('Disability Act') cannot be given retrospective effect, though it was also held that in pending proceedings the benefit of provision can certainly be extended to. He also relied upon another DB judgment of this Court in **Tejender Kumar v. Union of India & Anr., WP(C) 2636/1999, decided on 25.09.2012**, summarizing the applicability of Section 47 of the Disability Act as under:

“23. From the aforesaid two judicial decisions, the law relating to applicability of Section 47 of the Act in a given case can be summarized as under:-

I. Where a government employee acquires a disability after coming into force of the Act Section 47 of the Act would apply in such cases.

II. Where a government employee acquires a disability prior to coming into force of the Act but his services are terminated after coming into force of the Act, Section 47 of the Act would apply in such cases.

III. Where a government employee acquires a disability and his services are terminated prior to coming into force of the Act, Section 47 of the Act would not apply in such cases for the reason the Act does not have retrospective operation.”

8. He urged that in the present case the workman was prematurely retired from the services w.e.f. 10.09.1992 and the civil suit for declaration and injunction filed by him was dismissed by the learned Civil Judge, Delhi on 26.07.1994. He submitted that the Disability Act came into force w.e.f. 07.02.1996 and since at that time no proceedings were pending, the benefit of Section 47 is not available to the workman in terms of these two judgment of this Court.

9. Per contra, it is argued by the learned counsel for the workman that the award has been rendered by the Industrial Adjudicator on appreciation of evidence and in consonance with the *dicta* laid down by this court in the case of **Baljeet Singh (supra)**, which clearly covers the facts of the present case. She has further relied upon a

judgment of this court in **DTC Vs. Jagroop Singh, WP (C) 5100/2013 decided on 12.02.2014**, and a judgment of the Hon'ble Supreme Court in **Narender Kumar Chandla Vs. State of Haryana and Others, (1994) 4 SCC 460**, to urge that the management is under an obligation under Article 21 of the Constitution of India to protect the right to livelihood of the workman and the employer must make several endeavours to adjust the workman to a role wherein the employee would be suitable to discharge his duties.

10. He argued that technically, no proceedings were pending between the workman and the management as on the date of the enforcement of the Act as civil suit was rejected on 26.07.1994, however, the workman admittedly filed a Statement of Claim on 26.02.1996 before the Conciliation Officer, Delhi and on failure of the conciliation proceedings, reference was made to the Industrial Tribunal by the Govt. of NCT of Delhi on 06.03.1998, which ultimately culminated into the impugned award dated 01.03.2001. He urged that the reference made by the Government of NCT of Delhi to the Industrial Tribunal on 06.03.1998 will relate back to the date of premature retirement i.e. 10.09.1992 and therefore, the benefits of Section 47 of the Disability Act are bound to be given to such workmen.

11. I have heard the learned counsel for the parties.

12. At the outset, it is pertinent to mention that during the pendency of this writ petition the workman has expired on 11.02.2016 and his legal heirs were brought on record on 15.11.2017.

13. In **Anand Bihari (supra)**, the Hon'ble Supreme Court has evolved a scheme to provide relief to such workmen who are incapacitated to work as drivers but are not rendered incapable of taking any other job either in the Corporation or outside, and for those workmen who are at an advanced stage in their lives and it would be difficult for them to get a suitable employment outside. Para 15 of the said judgment reads as under: -

*“15. In view of the helplessness shown by the Corporation, we are constrained to evolve a scheme which, according to us, would give relief as best as it can to the workmen such as the ones involved in the present case. While evolving the scheme and giving these directions we have kept in mind that the workmen concerned are incapacitated to work only as drivers and are not rendered incapable of taking any other job either in the Corporation or outside. Secondly, the workmen are at an advanced age of their life and it would be difficult for them to get a suitable alternative employment outside. Thirdly, we are also mindful of the fact that the relief made available under the scheme should not be such as would induce the workmen to feign disability which, in the case of disability such as the present one, viz., the development of a defective eyesight, it may be easy to do. **Bearing in mind all the aforesaid factors, we direct the Corporation as follows:***

(i) The Corporation shall in addition to giving each of the retired workmen his retirement benefits,

offer him any other alternative job which may be available and which he is eligible to perform.

(ii) In case no such alternative job is available, each of the workmen shall be paid along with his retirement benefits, an additional compensatory amount as follows:

(a) where the employee has put in 5 years' or less than 5 years' service, the amount of compensation shall be equivalent to 7 days' salary per year of the balance of his service;

(b) where the employee has put in more than 5 years' but less than 10 years' service, the amount of compensation shall be equivalent to 15 days' salary per year of the balance of his service;

(c) where the employee has put in more than 10 years' but less than 15 years' service, the amount of compensation shall be equivalent to 21 days' salary per year of the balance of his service;

(d) where the employee has put in more than 15 years' service but less than 20 years' service, the amount of compensation shall be equivalent to one month's salary per year of the balance of his service;

(e) where the employee has put in more than 20 years' service, the amount of compensation shall be equivalent to two months' salary per year of the balance of his service.

The salary will mean the total monthly emoluments that the workman was drawing on the date of his retirement.

(iii) If the alternative job is not available immediately but becomes available at a later date, the Corporation may offer it to the workman provided he refunds the proportionate compensatory amount.

(iv) The option to accept either of the two reliefs, if an alternative job is offered by the Corporation, shall be that of the workman."

14. Following the judgment in **Anand Bihari's case** (*supra*) admittedly the management brought two circulars dated 13.11.1995 and 11.10.1996, copies of which are placed on record. For the purpose of an effective disposal of this writ petition, the circular dated 11.10.1996 is reproduced as under: -

"DELHI TRANSPORT CORPORATION
(A GOVT. OF N.C.T. OF DELHI)
I.P. ESTATE: NEW DELHI.

No. PLD-II (Remustering/Absorption/96/2221
dated 11.10.96

C I R C U L A R

It has been decided by the D.T.C. Board vide its Resolution No. 116/96 (item No.94/96) that the existing scheme of payment of compensation as circulated vide Office Order issued vide No. PLD-III (Remustering/Absorption)/95/3318 dated 13.11.1995 to those employees who are rendered medically unfit by the D.T.C. Medical Board for the posts they were appointed, on their pre-mature retirement on medical grounds, may continue to be followed, subject to the following modifications:

- i) **In case of injury caused by accident arising out of and in the course of employment and as a result which an employee is incapacitated for the work which he was capable of performing at the time of accident resulting in total disablement, shall be rehabilitated either in the equivalent post of lower subject to the conditions that he fulfils the requisites of educational qualification and is medically fit for the new post.**
- ii) the definition of total disablement shall be the same as specified in Section 2(i)(1) of the Workmen's Compensation Act, 1923.
- iii) p/d cases already decided prior to Sept. 1992 need not to be re-opened.
- (iv) Appointment under this scheme shall be afresh.

The Board also resolved that the words 'salaries per year or part thereof' of the balance of service may be inserted in the clauses (a), (b), (c), (d) and (e) of the scheme dated 13.11.1995 and year of service or part thereof in excess of 6 months or more be rounded into a complete year for the purpose of payment of compensation on pre-mature retirement on medical grounds. Practd of a year of service, if it is less than 6 months, be ignored.

The Board has also authorized the Chairman-cum-Managing Director to sanction compensation under the scheme as approved vide Resolution No. 72/95 dated 19.7.95 and also authorized to make appointment under this scheme.

All Unit Officers are requested to take necessary action accordingly and forward the cases

to Headquarters giving requisite information in the format given overleaf.

Sd/-
(M.P. Arya)
Senior Manager (Personnel)

All H.O.Ds.
All Unit Officers
Manager (Accounts) Pay, H.O.
Incharge Medical Board
All PLD Group I/Cs.
M.File.”

15. In the present case, the workman was declared to be permanently unfit by the Medical Board for the post of driver saying that *‘the board is of the opinion that he is unfit permanently for the post of driver w.e.f. 8.5.1990’*. Earlier on 26.12.1986, the workman was examined by the Medical Board, which declared him fit for non-driving duties for three months. Pursuant to his medical examination, he was, admittedly, assigned duty in the Ticket Section from 03.01.1987 to 30.10.1987, 26.02.1988 to 29.02.1988 and 01.03.1988 to 10.03.1988. As per the medical reports, the workman was declared not fit for driving duties only but was found fit for non-driving duties and was accordingly assigned work in the Ticket Section. It is not the case of the management that the workman did not perform his duties in the Ticket Section up to its expectations. In these circumstances, it was obligatory on the part of the management to retain him at the Ticket Section where he was already posted before he was prematurely retired by order dated 10.09.1992. The Hon’ble Supreme Court in **Anand Bihari’s case** (*supra*) has emphasised that the

Corporation shall offer such workman an alternative job, which may be available and which the workman is also eligible to perform. It is not the case of the management that the workman was not eligible to work at the Ticket Section or any other department of the management. Even in the subsequent judgment titled as **Narender Kumar Chandla Vs. State of Haryana & Ors., (1994) 4 SCC 460**, a case where employee became physically incapacitated due to disease held that *'Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties.'*

16. The principle laid down in **Anand Bihari's** case was reiterated by the Hon'ble Supreme Court in **Sohan Lal vs. State of Haryana & Ors., AIR 2013 SC 1767** and para 9 of the judgment reads as under: -

"9. In Anand Bihari (supra), this Court was confronted with the issue of termination of the services of a large number of drivers in Rajasthan State Road Transport Corporation on account of a singular medical disability, namely, defective/poor eyesight, a disability attributable to the stringent nature of the duties performed. On consideration of the totality of the facts of the case before it in Anand Bihari (supra), this Court directed Rajasthan State Road Transport Corporation to frame a "scheme" to deal with such cases. Specifically, it was directed that before dispensing with the services of an employee on medical grounds attributable to the

service rendered, an attempt must be made to find alternative employment to accommodate the workman/employee, failing which, additional compensation is to be paid for the period of service left at the rates indicated in the order of the Court.”

17. Even otherwise, the management is bound to follow its own circular dated 11.10.1996 for which directions were issued by this court in **Phool Chand Vs. Delhi Transport Corporation, W.P. (C) 4100/1995**, decided on 28.04.1998.

18. Alternative employment was initially granted to the workman by the management and he was posted in the Ticket Section where he worked for quite some time and there was no complaint with regard to his performance. No defence is taken by the management that prior to terminating his services on 10.09.1992, no alternative employment for the workman was available or possible. Therefore, in the light of the judgment of Hon'ble Supreme Court in **Anand Bihari (supra)** and **Narender Kumar Chandla (supra)** and judgment of this court in **Phool Chand (supra)** and by its own circular dated 11.10.1996 the management was liable to provide and accommodate the workman on some alternative post instead of taking the harsh step to retire him prematurely.

19. In view of the above, I do not find any illegality or infirmity in the impugned award. Moreover, during the pendency of the writ petition, the workman had already attained the age of superannuation on 30.04.2003 and hence the petitioner is liable to pay his salary and

all benefits since 10.09.1992 till 30.04.2003 treating him in service throughout and all retiral benefits. He expired on 11.02.2016 and his legal heirs were brought on record.

20. It is a case where the management has failed to comply with the directions of the Hon'ble Supreme Court as laid down in **Anand Bihari's case (supra)** decided on 20.12.1990. Initially, it provided an alternative job to the workman in the Ticket Section till 10.03.1988 but soon after he was removed from service on 10.09.1992. Before removing him from service, it did not make any effort to provide him with an alternative employment in terms of **Anand Bihari's case (supra)**. The workman filed his statement of claim on 26.02.1996 before Conciliation Officer and on 06.03.1998, the reference was made by the Government of NCT of Delhi to the Industrial Arbitrator as to whether the premature retirement of the workman is illegal and/or unjustified. Meanwhile, **Narender Kumar Chandla (supra)** came to be decided by the Apex Court on 04.02.1994; Management issued a circular dated 11.10.1996 following **Anand Bihari's case; Phool Chand (supra)** was decided by this Court on 28.04.1998 and **Baljeet Singh (supra)** on 10.12.1999. The management continued to fight the reference tooth and nail – which ultimately resulted in the impugned Award dated 01.03.2001 – and boldly filed this writ petition on 21.11.2001 assailing the award. At every stage from the date of pre-maturely retiring the workman till now, the management has failed to introspect and examine the legal position. The result is an unnecessary loss for the public exchequer, waste of precious court

time and undue mental and physical pain and agony to the workman and his family members. It is a case where an enquiry is required to be conducted against the officers of DTC who have dealt with the file of the workman to retire him prematurely, contest the reference and file the writ petition, but this Court restrains itself to order the same as many of them might have retired and it will only waste more time and money. The petition is dismissed with costs of Rs.1,00,000/- to be deposited with the Registry, which shall be payable equally to all four Legal Heirs of the workman. Amount shall be kept in FDRs for a period of three years. The petitioner shall make payment of all dues of the workman as per award till 30.04.2003 and each and every retiral benefit to his LRs within one month failing which interest @ 18% per annum shall be payable from each payment become due.

21. Before parting with the judgment, this court is of the view that the DTC must revamp its legal department. Unnecessary or indiscriminate litigation not only clogs the justice delivery system but also burdens the public exchequer and wastes precious time of the courts. The DTC, being one of the major litigants in the High Court in challenging the orders of the Industrial Tribunals and Labour Courts, must examine all its writ petitions and assess if they are worth being continued on settled position in law and take a final call within three months.

(VINOD GOEL)
JUDGE

DECEMBER 03, 2018
"shailendra"