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

Date of decision: 19th September, 2018

+ W.P.(C) 2081/2012

SHO RAM Petitioner
Through: Mr.Anuj Aggarwal, Adv. with
Mr.Ashutosh Dixit, Adv.

versus

DTC Respondent
Through: None

+ W.P.(C) 1614/2013

DELHI TRANSPORT CORPORATION Petitioner
Through: None

versus

SHO RAM Respondent
Through: Mr.Anuj Aggarwal, Adv. with
Mr.Ashutosh Dixit, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

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JUDGMENT (ORAL)

1. Despite these matters having been passed over and called at the end of the Board three times, there is no appearance on behalf of the DTC. Accordingly, the Court has proceeded to hear learned counsel for the petitioner-Sho Ram (in W.P.(C) 2081/2012) and decide both these matters.

2. These writ petitions, at the instance of workman-Sho Ram and the Delhi Transport Corporation (hereinafter referred to as “the DTC”), assail award dated 19th December, 2011, passed by the Industrial Tribunal, Karkardooma Courts (hereinafter referred to as “the learned Tribunal”).

3. The dispute which stands adjudicated by the impugned award, as raised by the workman-Sho Ram, has a history.

4. On 20th November, 1982, the workman was employed as Conductor with the DTC.

5. The workman, along with his colleagues, served a notice on the DTC, raising certain demands and, on the said demands not being met, proceeded on an indefinite strike from the midnight of 16th March, 1988. However, on 16th March, 1988, the DTC closed the gates of all their establishments.

6. This issue was carried to this Court by the workman in Suit No.583/1988, in which an order was passed, directing the DTC to allow the willing workers to enter the premises and discharge their duties. However, by the date of passing of the said order (21st March, 1988), the DTC had already terminated the services of the workman and his colleagues.

7. The workman filed a complaint, before the Industrial Tribunal, under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act”). However, the authorised representative,

appearing for the workman, made an erroneous statement, before the learned Tribunal, that the workman stood reinstated by the DTC, resulted in a no-dispute award on 4th April, 1992.

8. An application, filed by the workman for setting aside the said award, was also withdrawn.

9. The workman filed a fresh complaint, numbered 87/1996, before the learned Tribunal. *Vide* award dated 28th January, 2004, the learned Tribunal permitted the workman to raise a fresh dispute under Section 10 of the Act, where he aggrieved by the statement made by his authorised representative before the learned Tribunal on 4th April, 1992.

10. It was in these circumstances that a fresh industrial dispute was raised, by the workman, before learned Tribunal.

11. The dispute, as raised by the workman, was referred, by the appropriate government, for adjudication, to the learned Tribunal, with the following single term of reference:

“Whether the services of Sh. SHO Ram, s/o Sh. Pyare Lal have been dismissed by the management illegally and/or unjustifiably and if so, to what sum of money as monetary relief along with other consequential benefits in terms of existing Laws/Govt. Notifications and to what other relief is he entitled and what directions are necessary in this respect ?”

12. The workman contended, before the learned Tribunal, that the termination of his services was against the principles of natural justice and was otherwise illegal, having been effected without obtaining

approval, of the learned Tribunal, thereto, as required by Section 33 of the Act.

13. While denying the allegation that he had participated in the strike or instigated any co-worker, the workman also contended that, as an enquiry was pending before the Tribunal, his services could not have been dispensed with, without approval of the Tribunal as required by Section 33 (2) of the ID Act. The DTC had, therefore, it was sought to be contended, acted illegally in terminating the services of the workman without obtaining any such approval. In these circumstances, the workman prayed for reinstatement with full back-wages.

14. The DTC contested the claim of the workman, raising the following contentions in the process:

- (i) The claim was barred by delay and laches, having being raised 15 to 16 years after the cause of action had arisen.
- (ii) The Depot Manager was competent to dismiss any workman under him/
- (iii) The dismissal of the services of the workman was attributable to his having participated in an illegal strike.

15. The learned Tribunal framed the following issues, as arising for its consideration in the proceedings *vide* order dated 7th March, 2007:

- “1. Whether the claim of the workman is barred by principle of laches being filed after 15/16 years? OPM”

2. Whether the management has contravened the provisions of Section 33 of the ID Act as alleged in para no.12 of statement of claim, if so, to what effect? OPW

3. Whether the services of workman were terminated illegally? OPW

4. As per terms of reference. OPW.

5. Relief.”

16. In the proceedings before the learned Tribunal, the workman examined himself as WW-1. In his examination-in-chief by way of affidavit, the workman reiterated the contents of the Statement of Claim. In cross-examination, he categorically denied having participated in any illegal strike, and also contended that his authorised representative had inadvertently withdrawn his application under Section 33-A of the Act, as two cases, bearing the same name, were being simultaneously pursued.

17. Deposing on behalf of the DTC as MW-1, Mr. B. S. Chauhan, Depot Manager, reiterated, in his examination-in-chief by way of affidavit, the contents of the written statement filed by the DTC. In his cross-examination, he denied the allegation that that the gates of the depot were closed from 17 to 21st March, 1988. He, however, candidly admitted the fact that, before removing the workman from the services of the DTC, the approval of the learned Tribunal had not been obtained, but contended that the law did not require the DTC to do so.

18. The learned Tribunal proceeded to decide the dispute referred to it by the impugned award dated 19th December, 2011.

19. Insofar as the objection of delay and laches is concerned, the present judgement is not required to be burdened by any detailed allusion thereto, as the workman had specifically been granted liberty, by the learned Tribunal, in its order dated 28th January, 2004, to file a fresh application before it. The said order was never challenged and, consequently, attained finality.

20. On the merits of the case before it, the learned Tribunal noted the concession, made by learned counsel appearing for the DTC, to the effect that no enquiry had been conducted, by the DTC, against the workman.

21. Noting the fact that dismissal of the workman, from service, was effected without obtaining permission of the learned Tribunal, it was specifically found that the said dismissal infringed Section 33 of the Act.

22. The consequence of such infraction, it was noted, had necessarily to be reinstatement with consequential benefits. Having so held, however, the learned Tribunal proceeded to observe that, as the workman had only two months left to superannuate (on 31st January, 2012) and had not responded to the offer purportedly extended, by the DTC, to join duties, he would not be entitled to any back wages.

23. It is the above award that has resulted in these twin proceedings, one at the instance of the workman and other at the instance of the DTC.

24. Needless to say, the DTC assails the award by contending that the workman's claim, before the learned Tribunal, ought to have been rejected.

25. The workman, *per contra*, submits that the cases of other workers, who had allegedly participated in the strike, with him, on 16th March, 1988, had also been carried to this Court, by the DTC, in a batch of writ petitions, which were decided by a common judgement on 3rd February, 2005. The awards passed by learned Tribunal, in the cases of the said workmen, had directed reinstatement with full back wages. The DTC challenged the said awards by way of individual writ petitions, which, as noted above, were decided by a common judgement dated 3rd February, 2005. This Court, speaking through Swatanter Kumar, J. (as his Lordship then was) held that the award of the Labour Court, passed under Section 33-A of the Act, suffered from no infirmity. The said writ petitions were, therefore, dismissed.

26. Against the said order of Swatanter Kumar, J., a batch of Letters Patent Appeals (LPAs) were filed, by the DTC, which were also dismissed by a judgement dated 21st August, 2006, authored by Mukul Mudgal, J. (as his Lordship then was).

27. The case of the said workmen was further carried, by the DTC, to the Supreme Court, in a batch of writ petitions which, consequent to grant of leave, were converted into Civil Appeals, the lead matter being Civil Appeal No.1817/2010 (***DTC v. Jagbhushan Lal***). At the time of filing of this writ petition, these appeals had been admitted with an interim direction to deposit 50% of the back wages payable to

the said workmen. However, learned counsel appearing for the petitioner has produced, before me, an order, dated 2nd August, 2017, whereby the said appeals stand dismissed. Consequently, all the said workmen, with the exception of the petitioner, are beneficiaries to the full quantum of back wages.

28. The petitioner has, in the interregnum, crossed the age of superannuation.

29. Having heard learned counsel for the petitioner at length, and perused the record, I find no substance, whatsoever, in the writ petition filed by the DTC. The finding, of the learned Tribunal, that the termination of the services of the workman was violative of Section 33 of the Act, is equally unexceptionable, as is the consequential observation, by the learned Tribunal, that the necessary sequitur, to the said finding, would be reinstatement of the said workmen with all consequential benefits.

30. Having so held, I am of the view that learned Tribunal was clearly unjustified in holding that the workman would not be entitled to any back wages, merely because in its perception, he had declined an offer by the DTC to re-join the services. In any case, there can be no justification for discriminating the case of the present workman *vis-a-vis* his compatriots, who, by virtue of the orders passed by the various judicial fora, culminating in the order/judgement dated 2nd August, 2017 (*supra*) of the Supreme Court, have been beneficiaries of full back wages. The case of the petitioner cannot be distinguished from the cases of the said workmen in any manner whatsoever.

31. For the aforesaid reasons, these writ petitions are disposed of as under:

- (i) WP(C) No.1614/2013, filed by the DTC, is dismissed.
- (ii) WP(C) No.2081/2012, filed by the workman, is allowed to the extent that the workman is held entitled to full back wages, between the date of his termination, i.e. 24th March, 1988, till the date when he would have superannuated, being 31st January, 2012.

32. Needless to say, his retiral benefits would also be computed on the same basis.

33. The DTC is directed to disburse, to the workman the benefits which would enure to him, consequent to the above decisions, within a period of four weeks from the date of communication, by the workman, to the DTC, of a certified copy of this judgement.

34. There shall be no orders as to costs.

C.HARI SHANKAR, J

SEPTEMBER 19, 2018

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