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

Date of Judgment: 7th May, 2018

+ W.P.(C) 2084/2006

D.T.C.

..... Petitioner

Through Mr. U.N.Tiwary, Advocate
versus

RUMAL SINGH

..... Respondent

Through Mr.Rakesh Kumar and
Ms.Anubha Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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C. HARI SHANKAR, J.

1. After hearing arguments in this matter, I had, *vide* order pronounced today, dismissed the writ petition, for reasons to be recorded thereafter. This judgment records the reasons for such dismissal.

2. The controversy is extremely narrow. While he was working as a Conductor with the petitioner – DTC, the respondent Rumal Singh was issued a charge sheet on 20th February, 1985, following which a departmental inquiry was held, which found the respondent guilty. The charge against the respondent, it may be noted, was of issuing tickets of denomination lesser than the fare collected from the passengers. Show Cause Notice dated 30th March, 1986, followed, culminating in the removal, of the

respondent, from the services of the DTC, *vide* order dated 16th May, 1986.

3. The respondent initiated an industrial dispute, which was referred, by the appropriate Government, to the Labour Court, *vide* order of reference dated 22nd May, 1987, containing the following single term of reference:

“Whether the termination of services of Sh. Rupal Singh is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

4. The Labour Court adjudicated the aforementioned reference *vide* award dated 7th January, 2000 and held the inquiry conducted by the DTC, against the respondent, to be vitiated for want of propriety and fairness. The DTC, thereupon, applied for permission to lead evidence before the Labour Court, to prove the charges against the respondent, which was allowed. No such evidence was however, led, resulting in the aforementioned award dated 7th January, 2000, whereby the Labour Court found that the DTC had been unsuccessful in leading any evidence to bring home, to the respondent, the charge against him. Consequently, the removal of the services of the respondent was held to be bad in law and the respondent was, thereby, held entitled to reinstatement in service. The back wages payable to the respondent were, however, restricted to 25%. The operative portion of the award dated 7th January, 2000, read as under:

“In view of the above discussion, the workman is entitled to reinstatement with 25% of back wages. Award is passed accordingly.”

5. The DTC accepted the said award dated 7th January, 2000, and did not choose to challenge it.

6. However, the respondent, aggrieved by, *inter alia*, the restriction, of the back wages awarded to him to 25%, petitioned this Court by way of WP (C) 4765/2001. Prayer (ii) in the said writ petition sought issuance of a direction, to the DTC, to pay full back wages to the respondent, *from the date of his removal from service till the date of his reinstatement*.

7. Without initiating any challenge to the award dated 7th January, 2000, the DTC, in a manner which, on the face of it, was patently arbitrary, sat on the said award, without implementing it. Mr Tiwary, appearing for the DTC, seeks to justify this disobedience, by his client, of the directions contained in the award, on the ground that the respondent had challenged the award, before this Court, in WP (C) 4765/2001, though he concedes that no order, interdicting or staying the implementation of the award, was passed by this court or by any other forum. Needless to say, the inaction, on the part of the DTC, in implementing the award dated 7th January, 2000, by reinstating the respondent in service *immediately*, and granting him 25% back wages, is not only unconscionable but *ex facie* contemptuous of the Labour Court. It is preposterous to suggest that the decision, of the respondent, to

move this Court against the award, dated 7th January, 2000, complaining that he ought to have been granted *more* than was granted by the award, could justify the DTC refusing to implement the award even to the extent it *granted* relief to the respondent. Such an attitude would smack of malice in fact and law, and of an intention to harass the respondent merely because he chose to petition this court.

8. Ultimately, the DTC reinstated the respondent in service, more than two years after the Award, with effect from 1st March, 2002.

9. While so reinstating the respondent in service, however, the DTC, for no earthly reason whatsoever, paid him only 25% of the wages payable to him *for the period after the passing of the award, till the date of reinstatement i.e., for the period 7th January, 2000 to 1st March, 2002.* On the face of it, there is no justification, whatsoever, for restricting the wages payable to the respondent, which he would have earned in full, had the DTC obeyed the directions contained in the award dated 7th January, 2000, and reinstated the respondent in service *immediately*, as stipulated therein. Having chosen, of its own will and volition, to keep the award unimplemented till 1st March, 2002, the DTC further chose to capitalise on its own default, by paying, to the respondent, only one-fourth of the wages due to him for the said period of delay, of which he was unjustly deprived.

10. On being queried in this regard, the response of Mr. Tiwary, appearing for the DTC, is yet again, that the DTC did not implement the award because it was under challenge, by the respondent, before this court, in WP (C) 4765/2001. In the absence of any challenge, *by the DTC*, to the award dated 7th January, 2000, and in the face of the fact that, *even in WP (C) 4765/2001, no orders, restraining the DTC from implementing the said award, to the extent it granted relief to the respondent, were ever passed*, this submission of Mr. Tiwary defeats comprehension.

11. The sin committed by the respondent, in the perception of the DTC, appears to be that, like Oliver Twist, he committed the impertinence of “asking for more”, resulting in the DTC deciding not to grant him even that, which the Labour Court had awarded to him and which was his, therefore, as of right.

12. Be that as it may, the respondent, in the circumstances, moved an application, under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act”), for issuance of a direction, to the DTC, to disburse, to him, the remaining 75% of the wages due to him *from the date of the award till the date of his reinstatement, i.e. from 7th January, 2000 till 1st March, 2002*.

13. When the aforementioned application, of the respondent, came up before the Labour Court on 24th September, 2004, the following order was recorded:

“Present:- A.R. for the workman and A.R. for the Management.

Heard on the claim, which is for wages of salary due to the workman for the period from date of Award till his reinstatement i.e., 7.1.2000 to 1.3.2002. Admittedly, the DTC has already paid 25% of the wages for the period. The dispute now is for remaining 75%. The workman has filed calculation, and the DTC has also filed calculation. *The ld. AR of the DTC does not dispute the liability to pay 75% of remaining balance of 75% of salary wages to workman, within a period of two months. To come up for payment in court on 1/12/2004.”*

(Emphasis supplied)

14. Surprisingly, however, when the matter was next listed before the Labour Court on 15th March, 2005, the DTC sought to contest the claim of the respondent, alleging that the respondent was not entitled to any arrears for the period 7th January, 2000 to 1st March, 2002. At the same time, a chart of the amount corresponding to 75% of the respondent's wages for the period 7th January, 2000 to 1st March, 2002, was also submitted by the DTC, which disclosed the amount to be ₹ 1,34,102/-.

15. The Labour Court, in the circumstances, directed the DTC, *vide* the impugned order dated 15th March, 2005, to pay, to the respondent, the aforementioned amount of ₹1,34,102/-(apparently wrongly typed in the last para of order as “₹ 1,34,1021/-”) immediately.

16. The DTC has chosen to challenge the said order before this Court, by means of the present writ petition.

17. During the pendency of these proceedings, WP (C) 4765/2001 came up before a learned Single Judge of this Court, and was dismissed for default and non-prosecution, *vide* order dated 1st May, 2017, which read thus:

“Impugned Award of 7th January, 2000 directs reinstatement of petitioner with 25% back wages. In this petition, full back wages are sought. When this petition was taken up for regular hearing on 26th April, 2017, none had appeared on behalf of petitioner and a direction was issued to inform counsel for the parties about the pendency of this petition. Petitioner’s counsel has been informed. Still, none appears on behalf of petitioner even in the post-lunch session.

In view of aforesaid, this petition is dismissed in default.”

(Emphasis supplied)

18. Appearing for the petitioner, Mr.U.N.Tiwary, learned counsel, advanced the following two contentions:

(i) Prayer (ii) in WP (C) 4765/2001 sought issuance of a direction, to the DTC, to pay full back wages to the respondent from the date of his removal i.e. from 16th May, 1986, till the date of his reinstatement. This would, of necessity, also cover the period between the date of the award till the date of respondent’s reinstatement in service, i.e. the period involved in the present proceedings. In view of the dismissal of WP (C) 4765/2001, the respondent’s right to prosecute these proceedings stood foreclosed, and his right to claim full wages, for the period from the date of the

award, i.e. 7th January, 2000, till the date of his reinstatement, i.e. 1st March, 2002, extinguished.

(ii) The Labour Court erred in directing payment, to the respondent, of ₹ 1,34,102/- without adjudicating, in the first instance, the respondent's claim under Section 33-C(2) of the Act.

19. *Per contra*, Mr. Rakesh Kumar, learned Counsel appearing for the respondent, would seek to contend that the disputes in WP (C) 4765/2001 and in the present case, were different. The scope of WP (C) 4765/2001, he would seek to point out, was much wider. Para (ii) of the prayer, in the said writ petition, he submits, related to the entire quantum of back wages from the date of dismissal till the date of reinstatement whereas, in the present case, the respondent is not seeking any arrears for the period prior to the date of award of the Labour Court i.e. prior to 7th January, 2000.

20. Having heard learned counsel and perused the record, I am of the view that there is no substance, whatsoever, in the present writ petition, which has, in fact, needlessly involved the respondent in an entirely unnecessary litigation, resulting in avoidable wastage of precious judicial time, which could have been expended in adjudicating more deserving disputes, involving genuine and *bona fide* grievances.

21. The award dated 7th January, 2000 – which was never challenged and has, consequently, attained finality – was clear in its terms. It directed reinstatement of the respondent with 25% *back wages*. The “back wages” referred to in the said order would, obviously, only refer to wages prior to 7th January, 2000. *Having not chosen to challenge the award, it was incumbent on the petitioner to reinstate the respondent immediately, and pay him full wages for the period after 7th January, 2000.* The petitioner, however, did not do so for reasons which it appears, at the very least and affording the DTC the benefit of doubt, to be misguided.

22. In fact, the authorized representative who appeared for the DTC, before the Labour Court on 24th September, 2004, was eminently fair, in not disputing the liability, of the DTC, to disburse, to the respondent, the remaining 75% of the wages due to him for the period 7th January, 2000 to 1st March, 2002. It is questionable whether, in the face of the said concession – which, was in order, and in keeping with the law – the DTC can even prosecute the present writ petition. Not surprisingly, Mr. U.N. Tiwary appearing for the petitioner, has no substantial arguments to advance, to contest the case of the respondent, on merits. The submissions of Mr. Tiwary, as noticed in para 18 *supra*, require only to be stated, to be rejected, for a number of reasons.

23. Firstly, in placing reliance on WP(C) 4765/2001, by the respondent and the dismissal thereof for default and non-prosecution, Mr. Tiwary fails to realize the fact that the present

proceedings are by way of a challenge, *by the DTC*, to the order, dated 15th March, 2005, awarding, to the respondent, the remaining 75% of the wages payable to him from the date of the award, i.e. 7th January, 2000, till 1st March, 2002, when he was reinstated in service. It is for the DTC, therefore, as the petitioner in the present case, to justify its challenge, and the DTC cannot, quite obviously, seek to piggyback on a claim, by the respondent, for full back wages, from the date of his removal till the date of his reinstatement, to prosecute its own writ petition.

24. Secondly, in the absence of any challenge, by it, to the Award dated 7th January, 2000, the DTC cannot but comply with it, entirely and completely. No judicial order, interfering with the said Award, has been passed till date. The Award has, to be scrupulously obeyed, and there is no escape for the DTC therefrom.

25. Thirdly, a reading of the order, dated 1st May, 2017, whereby WP (C) 4765/2001 was dismissed, correctly notes that the dispute, in that case, was whether the respondent was entitled to full back wages, or only to 25% thereof. It was in this context that full wages were claimed, in prayer (ii) of that petition, from the date of termination to the date of reinstatement of the respondent.

26. Fourthly, in any event, WP (C) 4765/2001 has not been adjudicated on merits, and stands dismissed in default. The onus, on DTC, to prosecute its writ petition, and justify non-payment, to the respondent, of full wages, for the period from the date of the

award, i.e. 7th January, 2000, till 1st March, 2002, when the DTC complied with the award and reinstated the respondent in service, therefore, continues, and remains miserably undischarged. As is apparent from the discussion hereinabove there cannot, in fact, be any rational or justifiable explanation, for the said default on the part of the DTC, which amounts to taking advantage of its own wrong.

27. As regards the second limb of the challenge, by Mr. Tiwary, to the impugned order dated 15th March, 2005, to the effect that, before directing payment, the respondent, of the remaining 75% of the wages payable to him for the period from the date of the award to the date of his reinstatement in compliance therewith, the Labour Court had first to adjudicate the application, of the respondent, under Section 33-C of the Act, I find no substance in the said submission either. The authorised representative of the DTC had, on 24th September, 2004, admitted the liability of the DTC. The figure cited by the Labour Court in the impugned order dated 15th March, 2005, was taken from the calculations provided by the DTC itself.

28. Even otherwise, given the fact that the award dated 7th January, 2000 directed *immediate* reinstatement of the respondent, and the petitioner, without challenging the said award chose, for no rhyme or reason, to delay implementation of the said award till 1st March, 2002, there can be no justification to deny, to the respondent, the remaining 75 % of the wages due to him for the

period 7th January, 2000 to 1st March, 2002. Any such denial would amount to permitting DTC to capitalize on the delay in compliance by it, of the directions contained in the Award, without making any challenge thereto. This is obviously impermissible.

29. For all the above reasons, the present writ petition, which is entirely frivolous and without merit, is dismissed. In view of the entirely unfair and inequitable nature of the present litigation, involving a petty amount and least expected from an organisation such as the DTC, I would have been inclined to award costs, save for the fact that, while pronouncing the operative part of this judgement in court this morning, I did not award any.

30. Payment, in accordance with this judgment, is directed to be made within a period of four weeks from the date of receipt by the DTC of a certified copy hereof, failing which the DTC would be liable to pay interest, to the respondent, @ 18 % per annum.

31. Needless to say, this judgement does not opine, directly or indirectly, on the entitlement, of the respondent, to full back wages from the date of his removal from service till the date of the award, i.e. till 7th January, 2000. Subject to the respondent taking steps to re-ignite that controversy, that dispute may, possibly survive for another day.

**C.HARI SHANKAR
(JUDGE)**

MAY 07th, 2018
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