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

Date of decision: 18th September, 2018

+ **W.P.(C) 9831/2018, CAV 868/2018 & CM APPL.38294/2018**

DELHI TRANSPORT CORPORATION Petitioner

Through : Ms. Aldanish Rein and
Mr. Maheravish Rein, Advs.

versus

VINOD KUMAR Respondent

Through : Ms. Rashmi Priya and
Mr. N. Shokeen, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

CAV 868/2018

The caveator is represented and has been heard. Caveat notice, therefore, stands discharged.

W.P.(C) 9831/2018

1. On 11th July, 1995, the respondent, who was working as a conductor with the petitioner–DTC, was removed from service, which resulted in his instituting an industrial dispute, which culminated in award, dated 11th May, 2004, passed by the Labour Court. The operative portion of the award read thus:-

“I hold the attitude of the management to be high handed and motivated with a view to remove him from the service for no reason. In the light of above discussion, I hereby set aside the enquiry proceedings and enquiry report and hold that the termination of the workman on grounds of being absent

though he was on medical leave, is a perverse action and action of management terminating his services is liable to be set aside. DTC has not produced any evidence of gainful employment. In the view of the facts and circumstances, I hold that the termination of the services of the workman is illegal. Workman is entitled to be reinstated with full back wages.”

2. The petitioner assailed the said award, before this Court, by way of WP (C) 11691/2005, which was dismissed by order dated 15th February, 2010.

3. Pursuant thereto, the petitioner reinstated the respondent in service on 21st November, 2010, i.e., nearly six years after the award of the Labour Court.

4. The aforementioned order, dated 5th February, 2010, of this Court, dismissing WP (C) 11691/2005, was carried in appeal, by the petitioner, by way of LPA No.322/2010, which was disposed of *vide* order dated 12th August, 2010. It was noted, by the Division Bench in the said order, that, as the respondent stood reinstated, the only issue remaining to be considered was that of back wages. Paras 3 to 6 of the judgment of the Division Bench merit reproduction as under :

“3. It is worth noting, after the order passed by the learned Single Judge, the respondent-workman has been reinstated in service w.e.f. 21st April, 2010. We have been apprised by Ms. Arati Mahajan Shedha, learned counsel for appellant that the respondent-workman shall be retained in service. The respondent - workman who is present in person has assured that he will do his duty religiously.

4. Thus the only issue that remains to be adjudicated is with regard to the back wages.

5. Considering the facts and circumstances of the case and taking note of the decisions of Apex Court rendered in Union of India and Ors. Vs. Ramchander and Anr., (2005) 9 SCC 365; Allahabad Jal Sansthan Vs. Daya Shankar Rai and Anr., AIR 2005 SC 2371; J.K. Synthetics Ltd. Vs. K.P. Agrawal and Anr., (2007) 2 SCC 433; Uttarahchal Forest Development Corpn. Vs. M.C. Joshi, (2007) 9 SCC 353; Rajasthan Lalit Kala Academy Vs. Radhey Shyam, (2008) 13 SCC 248; U.P. State Brassware Corpn. Ltd. Vs. Uday Narain Pandey, AIR 2006 SC 586; U.P. SRTC Ltd. Vs. Sarada Prasad Misra, AIR 2006 SC 2466; Jagbir Singh Vs. Haiyana State Agriculture Mktg. Board, AIR 2009 SC 3004; Talwara Coop. Credit and Service Society Ltd. Vs. Sushil Kumar, (2008) 9 SCC 486; and Metropolitan Transport Corporation Vs. V. Venkatesan, (2009) 9 SCC 601, we are inclined to modify the order passed by the Labour Court and that of the learned Single Judge to the effect that instead of back wages in the entirety, the respondent-workman shall be entitled to 50% of back wages. The back wages shall be computed and paid to the respondent - workman within a period of six weeks hence.

6. With the aforesaid modification, the present appeal and applications stand disposed of with no order as to costs.”

5. On 25th August, 2017, an application, under Section 33-C(ii) was instituted by the respondent, before the Labour Court. It was asserted, by the respondent in the said application, that, though he stood reinstated in service, he had been paid only 50% of the wages from the date of his removal till the date of his reinstatement in service. The respondent contended that he was entitled to full back wages from the date of the award, i.e., 11th May, 2004, till the date of his reinstatement.

6. The said application of the respondent, under Section 33-C(ii),

stands adjudicated by the impugned award dated 16th February, 2018.

7. The petitioner sought to contend before the Labour Court – and seeks to contend before this Court as well – that they were not justified in limiting the payment of wages to the respondent to 50% for the entire period from the date of his removal till the date of his reinstatement, in view of the order dated 12th August, 2010 (supra) passed by the Division Bench of this Court in LPA No.322/2010.

8. The Labour Court did not agree with the said submission as advanced by the present petitioner, i.e., the respondent before it. It was held that, as the award was published on 18th August, 2004, it had become enforceable on 18th September, 2004. Reliance was placed, by the Labour Court, on a judgment of this Court in *DTC v. Satbir Singh, 2013 SCC Online Del 1452*.

9. Interestingly, after recording the said findings, the Labour Court holds, in the concluding part of para 11 of the impugned award, as under :

“11. The management did not place on record any communication made by, it to the claimant asking him to join back duty. In fact, the management had never offered him duty despite coming into the force of the award. Instead it filed writ petition no. 11691/2005 which was ultimately dismissed on 05.02.2010. He was allowed to join duty only on 01.06.2010 and thereafter, it filed LPA only against back wages. It was the fault of the management that it did not allow claimant to join duty before 01.06.2010. Taking into account the proposition of law propounded by High Court in *DTC Vs. Satbir Singh* (supra), it is held that the claimant is entitled to 100% back wages from the date of enforcement of award till reinstatement i.e. 18.09.2004 to 26.05.2010.

It is correct that the High Court had reduced back wages from 50% in order dated 12.08.2010 passed in LPA but that order was in consequence to the 100% back wages award of the labour court dated 11.05.2004. As per Award, the claimant was granted 100% back wages from the date of removal till the date of award. That amount was corrected as 50% in LPA so, there is no force in the contention of ARM that the management was to give only 50% back wages to claimant from the date of removal till the date of order passed in LPA.

50% of the back wages from 18.09.2004 to 25.05.2010 have already been paid to claimant. As per calculation chart, Ex.MWI/1, admitted by ARW as correct, the total computation which remains to be paid, comes out to Rs. 562448/-. Both parties are agreeing on that amount. So, the net computation in favour of the claimant comes out to Rs. 562448/-.”

It is surprising that, after both parties have agreed before the Labour Court, that the net amount payable to the respondent was Rs.5,62,448/-, the petitioner has nevertheless, moved this court and has sought to contest the present writ petition.

10. Be that as it may, I find no infirmity in the impugned award. The interpretation placed by the petitioner, on the order dated 12th August, 2010, of the Division Bench of this Court in LPA No.322/2010 is misconceived, to say the least.

11. The “back wages” to which the said order refers, obviously relates to the back wages as awarded by the Labour Court in its award dated 11th May, 2004. In the said award, the Labour Court had directed reinstatement with full back wages. During the pendency of LPA No.322/2010, the respondent was reinstated in service. It is in this backdrop that the Division Bench observed, in its judgment, that

the only issue remaining to be decided was that of back wages, and modified the order of the learned Tribunal by limiting the back wages to 50%.

12. It is obvious that the back wages, which stood limited to 50%, were the back wages as awarded by the Tribunal, and cannot relate to any period after the passing of the award.

13. There is no order, passed by any judicial authority, which can justify limiting the back wages payable to the respondent for the period between the date of the award and the date of his actual reinstatement i.e., 11th May, 2004 to 21st April, 2010, to 50%. I cannot read the order, dated 12th August, 2010, in LPA No.322/2010, as lending itself to any such interpretation.

14. As such, I find no infirmity in the decision of the Labour Court, awarding the remaining 50% wages, which was payable to the respondent, for the period from 11th May, 2004 to 21st April, 2010.

15. Resultantly, the present writ petition is dismissed *in limine*, as totally devoid of merit, with no orders as to costs.

CM APPL.38294/2018

In view of the judgment passed in the writ petition, this application does not survive for adjudication, and is dismissed accordingly.

C.HARI SHANKAR, J

SEPTEMBER 18, 2018

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