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

+ **LPA 628/2018 & CM APPL. 46634/2018**

DELHI TRANSPORT CORPORATION Appellant
Through Ms. Avnish Ahlawat, Advocate.

versus

LAKHMI CHAND Respondent
Through None.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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12.11.2018

1. The Delhi Transport Corporation ('DTC') is in appeal before this Court against the judgement dated 11th September 2018 passed by the learned Single Judge dismissing W.P.(C) 1906/2015. In doing so, the learned Single Judge negatived DTC's challenge to an award dated 30th April 2014 passed by the Labour Court in F.24(2933)/92-Lab.31737-32 holding the termination of the respondent-workman's service by DTC on 9th August 1989 to be illegal and directing the payment to him of full wages till the date of his superannuation, i.e. 14th December 2001, excluding the intervening period from 24th April 1989 to 22nd February 1991, during which the Respondent admittedly remained in judicial custody.

2. The judgment of the learned Single Judge succinctly sets out the facts of the case in detail. In brief, the Respondent was regularly employed as a driver on 1st November 1974. He was arrested by the Rajasthan Police and remained in custody there between 24th April 1989 and 21st February 1991.

The DTC treated his period of absence as extraordinary leave without pay and held him to have deemed to have resigned from his post under Regulation 14(10)(c) of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations 1952 (hereinafter 'Regulations'). Subsequently, this very regulation was read down by this Court in ***DTC v. Om Kumar*** 95 (2002) DLT 425 to be unconstitutional to the extent it did not require the employee to be issued a notice prior to declaring him to have deemed to have resigned. As rightly pointed out by the learned Single Judge in the impugned judgment, this Court in ***Om Kumar*** "did not, therefore, strike down Regulation 14(10)(c) of the Regulations" but "merely read, into it, the requirement of compliance with the principles of natural justice, by affording an opportunity of hearing, to the workman concerned, before dispensing of his services on the ground of "deemed resignation". Thus "the invocation of Regulation 14(10)(c) was not held to be illegal per se, but that invocation of the said sub-Regulation, without complying with the principles of natural justice, by affording a prior opportunity of hearing to the workman concerned, was held to vitiate the decision." This decision was subsequently upheld by the Supreme Court. The learned Single Judge held that since the DTC had adopted the route of 'deemed resignation', there was no inquiry held for concluding that his absence was unauthorised.

3. In the initial round, the Labour Court, by its award dated 6th July 2004, agreed with DTC's contention that the Respondent should be deemed to have resigned. Aggrieved by that award, the Respondent filed W.P.(C) 20298/2005 in this Court. That writ petition came to be disposed of by a learned Single Judge on 23rd August 2012 holding *inter alia* that the

impugned award could not be sustained since the regulation under which the Respondent was interpreted by this Court in *Om Kumar* to mandatorily require compliance with the principles of natural justice. The learned Single Judge, by the said judgment, remanded the matter to the Labour Court to decide the reference in accordance with the law.

4. On remand, the Labour Court passed a fresh award on 30th April 2014 wherein *inter alia* it found, on facts, that “the management has not chosen to allege the misconduct of abandonment in the instant facts and circumstances of the case against the workman as also to lead any evidence at the first instance against the workman in the instant proceeding in this regard, i.e. to lead evidence on the point of misconduct *qua* alleged abandonment of service of the management on the part of the workman in terms of the instant reference and has chosen to merely rebut the case of the workman in this regard...”. The Labour Court discussed the evidence and concluded that “the above allegations of the management do not constitute and prove the factum of abandonment of service of the management on the part of the workman”. The above finding has been affirmed by the learned Single Judge in his judgment which is now impugned before this Court.

5. Ms. Ahlawat urged that the factum of abandonment of service by the Respondent was “admitted” and, therefore, the Labour Court was in error in holding that this has not been proved by the management.

6. The Court is unable to agree with the above submission. The Labour Court has pointed out in elaborate detail how none of the letters exhibited before the Court which were purportedly sent by the management to the

Respondent were actually proved to have been sent and received by him. They were all photocopies and not even confronted to the workman in his cross-examination. Consequently, the Court does not agree with the submission of Ms. Ahlawat that this was an “admitted” fact and, therefore, there was no purpose in holding any inquiry in this regard.

7. As pointed out by the learned Single Judge, with DTC having adopted the short cut of invoking regulation 14(10)(c) of the Regulations and holding the absence of the Workman to be a “deemed resignation” without issuing him a prior notice, it had to suffer the consequences of that decision being held to be illegal. What remained, therefore, was the termination of the services of a regularly employed workman without an inquiry which was plainly unsustainable in law.

8. The Court is unable to find any error having been committed either by the Labour Court or by the learned Single Judge.

9. The appeal and the application are accordingly dismissed.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 12, 2018

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