

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 08th September, 2017

Date of decision : 27th August, 2018

W.P.(C) 7922/2017

DELHI TRANSPORT CORPORATION Petitioner
Through: Mr. Kamal Kant Jha, Advocate

versus

BIR SINGH Respondent
Through: *Nemo*

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner, i.e., the Delhi Transport Corporation assails the impugned order dated 12.05.2017 of the learned Pilot Court/ POLC-XVII, KKD, Delhi in LCA No.59/17 and vide the instant petition seeks that the said order be set aside. Vide the impugned order dated 12.05.2017 on a petition, LCA No.59/17 filed by the workman under Section 33-C(2) of the Industrial Disputes Act, 1947 for wages under Section 17-B of the said enactment from 01.03.2016 to 31.05.2017, the workman i.e. the respondent to the present petition was held entitled to wages under Section 17-B of the Industrial Disputes Act, 1947 up to 30.04.2017 which worked out to Rs.1,72,380/- from which there is a mandatory deduction for CPF to the tune of Rs.10,690/- and

after deduction of the amount, the total computation worked out to Rs.1,51,690/- in favour of the claimant i.e. the workman and there were directions issued vide the impugned order dated 12.05.2017 directing the management i.e. DTC i.e. the petitioner herein to pay Rs.1,51,690/- to the workman within a period of one month from the date 12.05.2017 failing which it would be liable to pay interest on the same at the rate of 9 per cent per annum till its realization.

2. As per averments made in the petition, the workman i.e. the respondent to the present petition was employed as a driver of the petitioner in the year 1982 and was removed from service on 06.03.1992 for the reason that on 09.12.1990, he along with another driver bearing Batch No.1541 went to the Control Room and asked for allotment of duty and when they were not allotted duty, these persons started abusing and creating obstruction in the workman's Control Room and threw away the attendance register and office register of the Control Room and tore page no.68. The workman i.e. the respondent to the present petition challenged his removal from service by filing I.D. No.325 of 2006 titled as **"Sh. Bir Singh Vs. M/s. Delhi Transport Corporation"** before the learned Labour Court, Karkardooma Courts, Delhi and vide award dated 06.01.2011 in the said I.D. No.325 of 2006, the workman was held entitled to reinstatement in service and it was ordered that the workman i.e. the respondent to the present petition was held entitled to 25 per cent of the wages from the date of receipt of the reference i.e. on 21.10.2003 till his reinstatement in service. Admittedly as indicated vide the averments made in the petition and the impugned order dated

12.05.2017 in LCA No.59/17 of the Pilot Court/ POLC-XVII, KKD, Delhi, the DTC i.e. the petitioner herein filed a Writ Petition (C)8073/2011 in this Court challenging the said award dated 06.01.2011 in I.D. No.325 of 2006 on which notice was issued to the respondent/ workman and the respondent thereafter moved an application under Section 17-B of the Industrial Disputes Act, 1947 qua which application vide order dated 20.09.2012 as indicated by the averments in the present petition and in the impugned order dated 12.05.2017, the management was ordered by this Court under Section 17-B of the Industrial Disputes Act, 1947 to pay the claimant i.e. workman i.e. the respondent to the present petition, the minimum wages or the last drawn wages whichever were higher and the management i.e. the petitioner herein continued to make the payment in terms of the order of this Court dated 20.09.2012 in Writ Petition (C)8073/2011 but stopped making the payment of the wages to the respondent/ workman from March, 2016 onwards inasmuch as the respondent/ workman had completed the age of 55 years on 02.02.2016 which the management i.e. DTC i.e. the present petitioner claimed was the age of superannuation of a driver working with the petitioner herein, i.e., DTC in normal course.

3. The respondent/ workman as per the averments made in the petition and as indicated vide the impugned order, thus, filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947 for computing of wages under Section 17-B of the Industrial Disputes Act, 1947 before the Labour Court, KKD Delhi vide LCA No.59/17 and the workman claimed that he had never been produced before the

Medical Board by the DTC and thus was deemed to be in the service of the management till the age of 58 years and thereafter 60 years. The management/ DTC i.e. the petitioner herein before the learned Pilot Court, POLC-XVII, KKD, Delhi challenged the said claim in LCA No.59/17 and contended that the workman having attained the age of superannuation of 55 years on 02.02.2016 was not entitled to any wages under Section 17-B of the Industrial Disputes Act, 1947 from March, 2016.

4. On 08.05.2017, in the course of LCA No.59/17, the following issues were framed:-

1. *Whether the claimant is entitled to computation of wages? OPW.*
2. *Relief.*

5. Vide the impugned order dated 12.05.2017, it was observed to the effect that only a legal issue was involved, no evidence was to be led by the parties inasmuch as the management/ DTC i.e. the petitioner herein had placed on record the calculation sheet which had been admitted as correct by ARW and was exhibited as Ex.W1. In the course of the submissions made in LCA No.59/17, it was submitted that the workman was born on 02.02.1961 and attained the age of 55 years on 02.02.2016 and according to the management as per the DRTA (Conditions of Appointment & Services) Regulations, 1952, the age of retirement of a driver is 55 years if he is not found medically fit to continue after medical examination and that thus, he was not entitled to any wages under Section 17-B of the Industrial Disputes Act, 1947 from March, 2016 onwards.

6. Vide the impugned order dated 12.05.2017 in LCA No.59/17, it was observed to the effect that in view of the verdict of this Court in **“DELHI TRANSPORT CORPORATION VS. RAMESH CHAND”** in LPA No.89 of 2012; **“DELHI TRANSPORT CORPORATION VS. RAMESH CHANDER”** in LPA No.191 of 2012; **“DELHI TRANSPORT CORPORATION VS. SURESH CHAND”** in LPA No.174 of 2012; decided on 11.05.2012 by the Hon’ble Division Bench of this Court, in which the very same issue was considered and adjudicated upon, it had been held that the age of superannuation of a driver of the DTC was 58 years with the condition that after attainment of the age of 55 years, the workman was required to undergo medical examination and if found fit, was allowed to continue for one more year which process was to continue till the attainment of the age of 58 years but that after attaining the age of 58 years, the discretion lay with the management whether it would allow a driver to continue or not up to the age of 60 years. Vide the verdict in **“DELHI TRANSPORT CORPORATION VS. RAMESH CHAND”**; (supra), the Hon’ble Division Bench of this Court further held that if the DTC did not conduct the medical examination of a driver after attaining the age of 55 years, it was the management who was to suffer and not the driver for the default of the management in not getting the medical examination of the driver conducted. The observations of the Hon’ble Division Bench of this Court in **“DELHI TRANSPORT CORPORATION VS. RAMESH CHAND”**; (supra) in Para 10 were relied upon in the impugned order which read to the effect:-

“It was, therefore, for the DTC to conduct medical examination, in case the DTC found doubt in the medical health of the respondent workman which could have determined as to whether as on 4.10.2006 and thereafter on 4.10.2007 and 4.10.2008 the respondent workman was medically fit or not. This medical examination is to be done by the Medical Officer/Officer of the DTC. Therefore, it was for the DTC to call upon the workman to undergo this medical examination. If it is not done, the workman cannot be blamed therefore and there cannot be any presumption against the workman to the effect that he was not medically fit in every respect. For the non-action of the DTC in doing so would amount to giving advantage to the workman by the DTC for its own lapse/inaction. Therefore, in these cases, we have to presume that the workmen were enjoying robust health which could have given them the benefit of raised age of superannuation of 58 years.”

7. Vide the impugned order, it was further observed to the effect that the management had not sent any letter to the claimant/ workman i.e. the respondent to the present petition directing him to appear before any Medical Board for medical examination and that was the fault of the management for which the claimant could not be blamed. Thus, the claimant as already observed elsewhere hereinabove vide the impugned order dated 12.05.2017 was held entitled to Section 17-B wages up to 30th April, 2017 with directions to the management to pay

Rs.1,51,690/- as directed thereby. On the records of the present petition as filed by the petitioner herein, i.e. the management of the DTC, is also the order dated 09.08.2017 in Miscellaneous 672/2017 vide which the order dated 09.08.2017 was directed by the Pilot Court/ POLC-XVII, KKD, Delhi to form an integral part of the judgment dated 12.05.2017 which has been impugned through the present petition observing to the effect that the badge number of the workman which had been mentioned by the claimant as 11608 would read as 11668 and that the date of birth of the claimant having been admitted by both sides to be 02.01.1961 in place of 02.02.1961. The date of birth of the claimant i.e. workman i.e. the respondent to the present petition would thus read as 02.01.1961 in the impugned judgment dated 12.05.2017. Furthermore, vide the said order dated 09.08.2017, the mandatory CPF deduction mentioned was Rs.10,690/- which comes out to Rs.20,690/- and was thus the order dated 12.05.2017, i.e. the impugned order was rectified to the effect that the amount to be deducted as CPF from the calculation chart was Rs.20,690/- with it however having been observed to the effect that the total amount to be paid to the claimant i.e. workman i.e. respondent to the present petition was Rs.1,51,690/- which was the same amount as detailed in the impugned order dated 12.05.2017.

8. Vide the present petition, the petitioner contends that the learned Pilot Court/ POLC-XVII, KKD, Delhi had failed to appreciate that the petitioner/ management could not be blamed for the failure of the respondent to appear before the Medical Board and to get his fitness check up as the respondent was not in the service nor under

control of the petitioner and that it was for the workman to have sought his medical examination and that as the workman was not entitled to automatic extension of service for taking the benefit under Section 17-B of the Industrial Disputes Act, 1947, the impugned order was unsustainable and be set aside.

9. The submissions were made in this behalf of behalf of the petitioner on 08.09.2017. On a consideration of the submissions that have been made in the petition and observations in the impugned order dated 12.05.2017 rectified vide order dated 09.08.2017 in LCA No.59/17, inasmuch as admittedly, there was no medical examination conducted of the workman- Bir Singh, i.e., the respondent to the present petition whose date of birth is 02.01.1961 as rectified vide order dated 09.08.2017 of the Pilot Court/ POLC-XVII, KKD, Delhi in Miscellaneous 672/2017 and corrections made vide order dated 09.08.2017 form an integral part of the judgment dated 12.05.2017, the claimant i.e. the workman having attained the age of 55 years on the date 02.02.2016, with the management having admittedly not got any medical examination conducted of the workman to ascertain his fitness coupled with the management having not sent any letter to the claimant/ workman directing him to appear before any Medical Board for medical examination, as rightly held vide the impugned order dated 12.05.2017 in LCA No.59/17, in view of the verdict of the Hon'ble Division Bench of this Court dated 11.05.2012 in LPA No.89/2012, LPA No.191/2012 & LPA No.174/2012 in such a case as it was for the DTC, i.e., the present petitioner to call upon the workman to undergo the medical examination to ascertain whether he

was medically fit or not after he attained the age of 55 years which had not been so done by the management, the workman could not be blamed for the same and no presumption could be drawn against the workman i.e. the respondent to the present petition that he was not medically fit in every respect and that thus, as the age of superannuation of the workmen in the DTC under the DRTA (Conditions of Appointment & Services) Regulations, 1952 has been held to be 58 years vide the verdict of the Division Bench of this Court in “**DELHI TRANSPORT CORPORATION VS. RAMESH CHAND**” in **LPA No.89 of 2012**; “**DELHI TRANSPORT CORPORATION VS. RAMESH CHANDER**” in **LPA No.191 of 2012**; “**DELHI TRANSPORT CORPORATION VS. SURESH CHAND**” in **LPA No.174 of 2012** decided on 11.05.2012, it is apparent that there is no infirmity whatsoever in the impugned order dated 12.05.2017 of the Pilot Court/ POLC-XVII, KKD, Delhi in LCA No.59/17 as rectified vide order dated 09.08.2017 of the said Court in Miscellaneous 672/2017. There is thus, no merit in the petition.

10. The present petition, i.e., W.P.(C) 7922/2017 and the accompanying application CM.No.32728/2017 are both thus dismissed.

ANU MALHOTRA, J

AUGUST 27, 2018
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