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

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Date of Decision: 23rd May, 2019

+ W.P.(C) 1569/2018

DELHI TRANSPORT CORPORATION Petitioner
Through Mr.Aldanish Rein, Mr.Maheravish
Rein, Mr.Shamshravish Rein,
Advocates

versus

SH. MOOL CHAND Respondent
Through Sh. Somesh Chandra Jha, Mr.Anand
Darshan, Advocates

**CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA**

J U D G M E N T (O R A L)

CM APPL.43159/2018

1. The respondent is seeking wages under Section 17B of the Industrial Disputes Act. The respondent has deposed on affidavit filed along with the application that he has been unemployed since the date of termination. The application is allowed and the petitioner is directed to pay wages to the respondent from the date of the application i.e. 11th October, 2018 upto date.

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2. The petitioner has challenged the award of the Labour Court whereby Labour Court has awarded reinstatement with 100% backwages to the respondent.

3. The respondent was working as a Conductor with the petitioner. On 06th July, 2014, the respondent was on duty on Bus No.DL-1PC-7096 which was checked by checking staff at Old Delhi Railway Station at 6:23 A.M. when the respondent was found with 14 punched tickets of Rs.15/- each. According to the petitioner, the respondent had retained the sold tickets with the intention to re-sell them. The petitioner chargesheeted the respondent and conducted an enquiry which held the petitioner guilty. The petitioner terminated the services of the respondent after enquiry whereupon the respondent raised an industrial dispute which was referred to the Labour Court.

4. The Labour Court held that the respondent at best merely prepared for selling the pre-sold tickets but neither attempted nor sold the said tickets. In that view of the matter, respondent had not committed any misconduct. That apart, the Labour Court observed that the punishment for removal of service was disproportionate to the action of the respondent.

5. Learned counsel for the petitioner submits that the respondent committed the misconduct and has been rightly terminated from service. It is further submitted that the award of 100% back wages is not warranted in the facts of the present case. Reliance is placed on *Parma Nand v. State of Haryana*, (1989) 2 SCC 177 and *Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane*, (2005) 3 SCC 254.

6. Learned counsel for the respondent urged at the time of the hearing that the respondent has not committed any misconduct and therefore, the reinstatement with 100% backwages is not justified.

7. This Court is of the view that the punishment of dismissal from service is totally disproportionate to the alleged misconduct of the

respondent. In that view of the matter, there is no infirmity in the finding of the Labour Court with respect to the setting aside of the dismissal. In the peculiar facts and circumstances of the present case, the setting aside of the punishment of dismissal for service is upheld. However, the award of 100% backwages is not justified. The 100% backwages awarded by the Labour Court is reduced to 50% backwages. The Labour Court imposed the punishment of stoppage of two annual increments with cumulative effect which is upheld. The petitioner shall not be liable to pay any interest considering that this petition was pending in this Court. The interest awarded by the Labour Court is set aside.

8. The petition is disposed of in the above terms. Pending application is disposed of.

9. At the request of learned counsel for the petitioner, it is clarified that this judgment shall not be treated as precedent.

10. The petitioner is directed to implement this judgment within six weeks from today.

11. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

J.R. MIDHA, J.

MAY 23, 2019

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