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

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Date of Decision: 12th July, 2019

+ W.P.(C) 827/2012 & CM APPLN. 1854/2012

SHANTI KAUR

..... Petitioner

Through: Ms. Sunita Arora, Advocate.

versus

DELHI TRANSPORT CORPORATION & ANR Respondents

Through: Mr. U.N. Tiwary, Advocate for DTC.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T

1. The petitioner has challenged the award dated 05th October, 2011 whereby the Labour Court dismissed the petitioner's claim.
2. The petitioner was appointed as Class-IV employee by the respondent No.1 on 16th January, 1981 after the death of her husband. The petitioner stopped coming to the office from 11th December, 1994 whereupon the respondent No.1 issued a charge sheet to the petitioner on the ground of illegal absence from the duty with effect from 11th December, 1994. The inquiry officer held the charge proved vide report dated 31st May, 1995. The respondent No.2 accepted the report and removed the petitioner from service on 27th July, 1995.

3. On 04th July, 2002 i.e. after seven years of removal from service, the petitioner raised an industrial dispute, in which reference was made on 28th July, 2003.

4. The Labour Court vide award dated 05th October, 2011 rejected the petitioner's claim on the following grounds:

i. Petitioner's claim that she had informed the respondents about her illness was vague since material particulars like date or month were not mentioned.

ii. The respondents had sent a letter to the petitioner asking her to join duty (Ex.WW1/4) which was not replied by her.

iii. The respondents asked the petitioner to report before the Medical Board but no reply was received from the petitioner.

iv. No document of illness was brought on record for the leave period. The Medical Certificate produced by the petitioner was of a later date.

v. The past record of the petitioner is also bad.

5. Learned counsel for the petitioner urged at the time of hearing that the petitioner was diagnosed with psychological disturbance in December, 1994 whereupon she took leave with effect from 11th December, 1994. However, her condition did not improve and, therefore, she could not attend her duties. Without prejudice, it is submitted that the punishment of removal imposed by the respondents is harsh, excessive and disproportionate to the charge.

6. Learned counsel for the respondents urged at the time of hearing that the respondents wrote to the petitioner on 17th January, 1995 to report before the Medical Board but the petitioner chose not to appear before the board. On 31st May, 1995, the respondents again directed the petitioner to appear

before the Medical Board whereupon she appeared on 05th June, 1995 and the Medical Board told the petitioner to produce the medical record but she failed to produce the same despite reminder letter dated 15th June, 1995. The respondents removed the petitioner after giving repeated opportunities to produce the medical record before the Medical Board. It is submitted that the burden to prove that the absence for any justifiable reason was on the petitioner which she failed to discharge. Reliance is placed on *DTC v. Sardar Singh*, (2004) 7 SCC 574. It is further submitted that the industrial dispute was raised after unexplained long delay of seven years.

7. It is further submitted that the petitioner expired on 03rd March, 2013.

8. This Court is of the view that there is no infirmity in the well reasoned findings of the Labour Court. The petitioner did not produce his medical record before the Medical Board despite repeated opportunities and as such could not prove that there was any justification for unauthorized absence. That apart there is an unexplained delay of seven years in raising the industrial dispute.

9. There is no merit in the writ petition which is hereby dismissed. Pending application is disposed of.

J.R. MIDHA, J.

JULY 12, 2019

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