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

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Date of Decision: 09.08.2019

+ LPA 67/2018

KRISHAN KUMAR

..... Appellant

Through: Mr. J.P.N. Shahi, Advocate

versus

DELHI TRANSPORT CORPORATION

..... Respondent

Through: Ms. Avnish Ahlawat, Standing
Counsel for DTC with Mr. N.K. Singh
& Ms. Palak Rohmetra, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

G.S. SISTANI, J. (ORAL)

1. The appellant is aggrieved by a common order dated 11.12.2017 passed by learned Single Judge of this Court in W.P.(C) No. 8184/2004 and W.P.(C) No. 18045/2006.

2. Before the rival submissions of the learned counsels for the parties can be considered, we deem it appropriate to outline some of the relevant facts, which have given rise to the filing of the present appeal. The appellant herein was employed as a Conductor with the respondent/DTC since the year 1984. An incident had taken place on 13.06.1992 when the appellant was on duty on Bus No. 9130, which was travelling from Delhi to Bareilly. The checking staff of the Corporation signaled the bus to stop, but the Bus driver

did not stop. The Bus was chased. Certain allegations were levelled against the appellant. He was served with a chargesheet on 18.06.1992 on the ground that there were irregularities which constituted misconduct. An inquiry was conducted against the appellant on 10.08.1992. As per the appellant, the principles of natural justice were not followed. The charges were proved without following the due process of law. The entire inquiry was completed within 3-4 days. An order of removal was passed on 17.09.1992. The respondent, thereafter made an application under Section 33(2)(b) of the Industrial Disputes Act for approval of their action of removal, which was declined. In the meanwhile, the appellant raised a substantive industrial dispute. The Presiding Officer allowed the prayer of the applicant and directed reinstatement of the appellant with 50% back wages. The Award was challenged by the DTC. The Single Judge in the order of 11.12.2017 partly allowed the writ petition of the DTC. The Award was modified. Para 23 and 24 of the judgment of the learned Single Judge read as under:

“23. This is a case in which the charges against the workman were serious and the DTC has ultimately failed only owing to the lackadaisical manner in which it has prosecuted the case, without ventilating any substantial challenge to the order dated 28th September 2004 and without challenging the order dated 05th March 2005, at all. In the circumstances, I am of the view that the interests of justice would be met if lump sum compensation of Rs. 2 lakhs is given to the respondent workman.

24. Resultantly, these writ petitions are disposed of as under:-

(i) W.P (C) 8184/2004 is disposed of as having been rendered infructuous/redundant.

(ii) W.P (C) 18045/2006 is disposed of by modifying the impugned award by substituting the relief, granted therein to the workman, by a lump sum compensation of Rs. 2 lakhs to be paid to the workman within a period of four weeks from the date of receipt, by the petitioner of a certified copy of this judgment.

3. Learned counsel for the Appellant has placed strong reliance on the judgment rendered by a Coordinate Bench of this Court in LPA 533/2017 titled ***Mahender Pal vs. Delhi Transport Corporation*** decided on 05.12.2018. Learned counsel submits that the Division Bench while allowing the appeal observed that his removal from service was a result of an unfair and unjust inquiry and the DTC was directed to reinstate the appellant in service with full back wages. Learned counsel for the appellant submits that the judgment in the case of ***Mahender Pal (supra)*** would apply to the facts of the case with all force.

4. Ms. Ahlawat, learned counsel appearing for the respondent/DTC submits that the appellant has an extremely poor track record which is evident from the fact that on 5 occasions, he was punished, which orders have attained finality and the same was not challenged by the appellant. She submits that although there was enough material to pass an order of dismissal, however, the Tribunal reached a conclusion and so did the Single Judge that the DTC did not follow the principles of natural justice and on this ground, the order of dismissal was set aside.

5. Ms. Ahlawat further submits that reinstatement with back wages is no more the rule. She submits that the Supreme Court has repeatedly held that grant of such a relief in all cases is not justifiable and the Court must

examine various factors before ruling on these aspects of reinstatement and back wages.

6. Learned counsel for the appellant in rejoinder submits that the punishments referred to by the learned counsel for the respondent do not form part of this inquiry and thus they cannot be taken note of while deciding this appeal. In the case of *Mahender Pal (supra)*, the appellant was a conductor and was guilty of not issuing tickets and there is similar allegation as in the present appeal. In the case of *Mahender Pal (supra)*, what prevailed upon the Division Bench in passing the order of reinstatement with full back wages is reflected in paragraph 20 which we reproduce below:

“20. The Court has also perused the counter affidavit filed by the DTC before the learned Single Judge and finds that there is no mention therein of any past instance of the Appellant being found guilty of any charge. Therefore, the observations of the learned Single Judge that “considering the past record of Petitioner”, the penalty inflicted upon him was “amply justified” is plainly without basis. The DTC has not come forward in the present proceedings to show any past record of the Appellant that justifies this extreme penalty of termination of service.”

7. A reading of this paragraph would show that there was no mention of any past instances of the appellant being found guilty of any charge while in the present case, the counsel for the respondent has highlighted that the appellant was found guilty on five occasions in 9 years of service, when he was employed with the DTC. She had also highlighted the fact that although inquiry had been set aside, but the charges against the appellant were grave and serious.

8. The short question which arises for our consideration today is as to whether the amount of Rs. 2 Lacs awarded by the learned Single Judge is insufficient and as to whether the appellant is entitled to reinstatement with full back wages.

9. In the case of *Ashok Kumar Sharma vs. Oberoi Flight Services (2010) 1 SCC 142*, the Apex Court held as under:

“6. The Division Bench held that it was difficult to believe the contention of the Management that 30 KLM soup spoons could be put in a shoe and that the workman walked with the said spoons in his shoe from the work area to the security check area. The Division Bench also noticed that the Management having not conducted any enquiry, the dismissal of workman without issuing him charge-sheet or a show-cause notice was unsustainable. However, the Division Bench vide his judgment dated 18-3-2008 did not deem it proper to order reinstatement of the workman and instead directed the Management to pay him Rs 60,000 in full and final settlement of the claim. It is this part of the order which is under challenge in this appeal.

7. This Court in *U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey* [(2006) 1 SCC 479 : 2006 SCC (L&S) 250 : JT (2005) 10 SC 344] held thus: (SCC pp. 491-92, paras 41-42 & 45)

“41. The Industrial Courts while adjudicating on disputes between the management and the workmen, therefore, must take such decisions which would be in consonance with the purpose the law seeks to achieve. When justice is the buzzword in the matter of adjudication under the Industrial Disputes Act, it would be wholly improper on the part of the superior courts to make them apply the cold letter of the statutes to act mechanically. Rendition of justice would bring within its purview giving a person what is due to him and not what can be given to him in law.

42. A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the

functions of an Industrial Court shall lose much of their significance.

45. The Court, therefore, emphasised that while granting relief, application of mind on the part of the Industrial Court is imperative. Payment of full back wages, therefore, cannot be the natural consequence.”

8. In *Sita Ram v. Moti Lal Nehru Farmers Training Institute* [(2008) 5 SCC 75 : (2008) 2 SCC (L&S) 71 : JT (2008) 3 SC 622] this Court considered the matter thus: (SCC p. 81, paras 21-25)

“21. The question, which, however, falls for our consideration is as to whether the Labour Court was justified in awarding reinstatement of the appellants in service.

22. Keeping in view the period during which the services were rendered by the respondent (sic appellants); the fact that the respondent had stopped its operation of bee farming, and the services of the appellants were terminated in December 1996, we are of the opinion that it is not a fit case where the appellants could have been directed to be reinstated in service.

23. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of the job, etc. should weigh with the court for determination of such an issue.

24. This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be reinstated in service in cases of this nature would subserve the ends of justice. (See *Jaipur Development Authority v. Ramsahai* [(2006) 11 SCC 684 : (2007) 1 SCC (L&S) 518] , *M.P. Admn. v. Tribhuban* [(2007) 9 SCC 748 : (2008) 1 SCC (L&S) 264] and *Uttaranchal Forest Development Corpn. v. M.C. Joshi* [(2007) 9 SCC 353 : (2007) 2 SCC (L&S) 813] .)

25. Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs 1,00,000 to each of the appellants, would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs.”

9. The aforereferred two decisions of this Court and few more decisions were considered by us in *Jagbir Singh v. Haryana State Agriculture Mktg. Board* [(2009) 15 SCC 327 : JT (2009) 9 SC 396] albeit in the context of retrenchment of a daily wager in violation of Section 25-F of the Industrial Disputes Act who had worked for more than 240 days in a year and we observed thus: (SCC p. 330, para 7)

“7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.”

10. It is not necessary to multiply the decisions of this Court wherein award of compensation in lieu of reinstatement and back wages has been held to be adequate and in the interest of justice. In light of the aforesaid legal position, the view of the High Court that monetary compensation in lieu of reinstatement of the workman would be proper cannot be said to be unjustified. However, we find that the compensation in the sum of Rs 60,000 awarded by the Division Bench is grossly inadequate. Regard being had to all relevant facts and circumstances, including the nature of employment and the fact that he was a confirmed employee, in our considered view compensation of Rs 2 lakhs to the appellant by the respondent shall meet the ends of justice. We order accordingly. Such payment should be made, after deducting the amount already

paid, within six weeks from today failing which the same shall carry interest at the rate of 9% per annum on unpaid amount.”

10. In the case of *Ashok Kumar Sharma (supra)*, while revisiting the law on the subject, the Supreme Court has observed that the payment of full back wages is not always the natural consequence. In the aforesaid matter, reference has been made to the case of *Sita Ram vs. Moti Lal Nehru Farmers Training Institute (2008) 5 SCC (L&S) 71*, where reinstatement was declined keeping in view the duration for which the services was rendered by the workman and the fact that the employer had stopped its operation on the date when the services of the workmen were terminated. Keeping these factors in mind, the Supreme court held that it was not a fit case where the workman could be directed to be reinstated in service. The Supreme court also took into account various cases such as *Jaipur Development Authority vs. Ramsahai (2006) 11 SCC 684*, *M.P. Admn. Vs. Tribhuban (2007) 9 SCC 748* and *Uttaranchal Forest Development Corpn. Vs. M.C. Joshi (2007) 9 SCC 353*, where payment of adequate amount of compensation in place of direction to be reinstated in service would subserve the ends of justice. The Supreme Court then enhanced the compensation from Rs. 60,000/- to Rs. 2 Lacs.

11. Applying the law laid down by the Apex Court to the facts of the present case, we are of the view that the Single Judge was fully justified in declining the relief of reinstatement with full back wages to the appellant. This is a case where the appellant was punished on 5 occasions within a span of 9 years of service. Strong allegations were made against him which were proved during the inquiry. However, the inquiry was held to be against the principles of natural justice and accordingly quashed.

12. We are of the view that the compensation awarded by the Single Judge is inadequate. Accordingly, we enhance the compensation from Rs. 2 Lacs to Rs. 6 Lacs. We have also taken into consideration that during the pendency of this matter under Section 17B, the appellant has been paid a sum of Rs.10,65,128/-. To meet the ends of justice, we have enhanced the amount of compensation and also considered the payment of Rs. 10,65,128/- already paid to the appellant.

13. The appeal is disposed of in the above terms.

G.S.SISTANI, J

JYOTI SINGH, J

AUGUST 09, 2019

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