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

Date of Decision :- 31.10.2019

+ **W.P.(C) 2542/2007**

D.T.C.

..... Petitioner

Through: Ms.Bhakti Pasrija Sethi with
Mr.Moksh Pasrija & Ms.Reshma
Pasrija, Advs.

versus

JAGDISH

..... Respondent

Through: Mr.Rajiv Agarwal with Ms.Meghna
De, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition filed by the management/Delhi Transport Corporation assails the award dated 21.03.2006 passed by the Industrial Tribunal No.I, Karkardooma Courts, Delhi in ID No.15/05. Under the impugned award, the learned Tribunal concluded that the order dated 14.07.1998 passed by the petitioner, dismissing the respondent from service, being in violation of the law laid down by the Supreme Court in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma & Ors.*, (2002) 2 SCC 244, had to be treated as ineffective and non-est. In the light of its

aforesaid conclusion, the learned Tribunal had directed the petitioner to reinstate the respondent with full backwages and continuity in service.

2. The respondent was appointed as a Conductor with the petitioner/corporation on 06.11.1982. It appears that the respondent was inflicted with a commitment of censure vide order dated 18.03.1996, whereupon he raised an industrial dispute which was referred to the learned Tribunal vide reference order dated 01.07.1997. While the said industrial dispute was pending adjudication before the learned Tribunal, the petitioner issued a charge-sheet to the respondent on 26.09.1997, alleging that he had not issued tickets to some passengers despite collecting the requisite fare from them.

3. Based on the charge-sheet, a domestic inquiry was held against the respondent, wherein he was found to be guilty and the penalty of removal from service came to be passed against him on 14.07.1998. The respondent then filed an application under Section 33A of the Industrial Disputes Act (ID Act), alleging that the order of termination dated 14.07.1998 was in the teeth of Section 33(2)(b) of the ID Act and, therefore, it was liable to be treated as non-est and the respondent was entitled to be reinstated in service with full backwages. The petitioner opposed the said claim of the respondent by contending that the respondent was a habitual offender and, therefore, he deserved no sympathy. It was further contended that the dispute, having been raised after an inordinate delay, was liable to be rejected.

4. The learned Tribunal, after examining the record and considering the pleadings of the parties, came to the conclusion that even though there was no infirmity in the inquiry held against the respondent, the respondent's dismissal by the petitioner was in blatant violation of Section 33(2)(b) of the ID Act, as held by the Supreme Court in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra)***. Accordingly, the learned Tribunal directed the petitioner to reinstate the respondent with full backwages and continuity in service, by observing as under:-

*"16. Since no approval application has been filed on behalf of the management, the dismissal order of the management is ineffective as the same in violation of Section 33 of the Act. It has been so held by the Hon'ble Supreme Court in the case of **JAIPUR ZILA SAHAKARI BHOOMI VIKAS BANK LTD. VERSUS RAM GOPAL SHARMA AND OTHERS (2002) 2 SUPREME COURT CASES 244**. Thus, this issue is decided in favour of the workman and against the management.*

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20. Keeping in view the discussions made above on issue no.1 &2, I hold that the dismissal order dated 14.7.98, passed by the management is ineffective and the management is directed to reinstate the workman with full back wages and continuity in service within one month. The management is also directed to pay the arrears to the workman within one month of the date of publication of this award. The complaint is decided in favour of the workman. Award is passed, accordingly."

5. In support of the writ petition, Ms.Bhakti Pasrija Sethi, learned counsel for the petitioner, reiterates the same submissions as made before the learned Tribunal. She submits that the respondent, being

guilty of repeated misconduct, deserves no sympathy. She further submits that the respondent was terminated in 1998, i.e., before the decision of the Supreme Court in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra)*** was rendered, and therefore, the petitioner could not be faulted for not having sought approval under Section 33(2)(b) of the ID Act before terminating the respondent's services. She contends that the legal position prevailing at the time was laid down by the Supreme Court in ***Punjab Beverages Pvt. Ltd., Chandigarh vs. Suresh Chand & Anr.***, (1978) 2 SCC 144, wherein it was held that the non-filing of an approval application under Section 33(2)(b) could not be treated as fatal to the disciplinary action taken against a delinquent employee. She also places reliance on the decision of the Supreme Court in ***The Nedungadi Bank Ltd. vs. K.P. Madhavankutty & Ors.***, (2000) 2 SCC 455, to contend that the dispute having been raised by the respondent belatedly was liable to be rejected outrightly.

6. On the other hand, Mr. Rajiv Agarwal, learned counsel for the respondent while supporting the impugned order submits that in the light of the admitted position that no approval application under Section 33(2)(b) of the I.D. Act had ever been filed by the petitioner, there is no infirmity in the impugned order, which is in consonance with the law declared by the Hon'ble Supreme Court in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra)***. He submits that since no application for approval had been filed, the respondent's termination order dated 14.07.1998 had to be treated as non-est and therefore, the respondent is rightfully entitled to be treated as having

continued in service. In support of his aforesaid contentions, Mr. Agarwal places reliance on a recent decision of a Division Bench of this Court in ***Badshah Singh vs. Delhi Jal Board***, LPA No.604/2014 and prays that the writ petition be dismissed.

7. I have considered the submissions of the learned counsel for the parties and with their assistance perused the record.

8. In my view, even though there may be merit in the petitioner's plea that a dispute which is raised belatedly ought not to be generally entertained, in the present case, the issue of delay does not arise for consideration. Once the respondent's termination was void and inoperative in the light of the decision of the Supreme Court in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.*** (*supra*), there was not even any requirement for the respondent to make a formal application to seek a declaration in this regard. Thus, in the present case, it cannot be said that the respondent had raised any belated dispute, as he had only moved an application for grant of benefits which were consequential to his termination order being void. Reference may be made to the observations of the Division Bench in paragraph 15 of ***Badshah Singh*** (*supra*), wherein the Division Bench referred to the decision of the Constitutional Bench of the Supreme Court in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.*** (*supra*) and held as under:-

15. An order of removal from service passed by the management, without seeking such approval from the Tribunal would be void and such a legal result would ensue notwithstanding that the workman may not have formally applied to the Court for such a declaration. This has been

made abundantly clear in para 15 of the judgment of a Constitution Bench of the Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma (supra) which reads thus:

“15. The view that when no application is made or the one made is withdrawn, there is no order of refusal of such application on merit and as such the order of dismissal or discharge does not become void or inoperative unless such an order is set aside under Section 33A, cannot be accepted. In our view, not making an application under Section 33(2) (b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to Section 33(2)(b). An employer who does not make an application under Section 33(2) (b) or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. If it is so done, he will be happier or more comfortable than an employer who obeys the command of law and makes an application inviting scrutiny of the authority in the matter of granting approval of the action taken by him. Adherence to and obedience of law should be obvious and necessary in a system governed by rule of law. An employer by design can avoid to make an application after dismissing or discharging an employee or file it and withdraw before any order is passed on it, on its merits, to take a position that such order is not inoperative or void till it is set aside under Section 33A notwithstanding the contravention of Section 33(2) (b) proviso, driving the employee to have recourse to one or more proceeding by making a complaint under Section 33A or to raise another industrial dispute or to make a complaint under Section 31(1). Such an approach destroys the protection specifically and expressly given to an

employee under the said proviso as against possible victimization, unfair labour practice or harassment because of pendency of industrial dispute so that an employee can be saved from hardship of unemployment.”

9. The petitioner admittedly violated the provisions of Section 33(2)(b) by terminating the respondent's services during the pendency of his industrial dispute before the Tribunal, without filing an approval application. For this reason, the respondent had to be considered as having continued in service. In these circumstances, the reliance placed by the petitioner on the decision of in ***Nedungadi Bank Ltd. (supra)*** is wholly misplaced and the petitioner cannot be permitted to urge that since the respondent filed the application under Section 33 after seven years, his termination, which is otherwise invalid, should be treated as valid.

10. The other submission of the petitioner that the respondent was found to be indulging in repeated misconduct and therefore deserves no relief is equally meritless, as the present case does not hinge on the misconduct of the respondent. In fact, in the impugned order, the learned Tribunal had observed that though there was no infirmity in the inquiry against the respondent, but once the termination order was violative of Section 33(2)(b) of the ID Act, the same has to be treated as non est and void. The respondent's misconduct, if any, cannot be a ground to deprive him of the benefits that accrue to him on account of non-compliance of Section 33(2)(b) by the petitioner.

11. The petitioner's plea that the corporation did not deem it necessary to file an approval application in the light of the decision of

the Supreme Court in *Punjab Beverages Pvt. Ltd., Chandigarh (supra)* is also liable to be rejected. Once the statute itself makes it mandatory that before terminating an employee during the pendency of his industrial dispute, it is necessary for management to approach the Tribunal for permission, the petitioner's failure to do so will render the termination of the respondent as void and non est.

12. I, therefore, see no reason to interfere with the well reasoned award of the learned Tribunal in exercise of my writ jurisdiction. The writ petition being meritless is dismissed.

OCTOBER 31, 2019

gm

REKHA PALLI, J.