

\$~

\*

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

**Date of Decision:- 23.10.2019**

+

W.P.(C) 3234/2010

DTC

..... Petitioner

Through Mr.Sarfaraz Khan, Adv.

versus

SATBIR SINGH

..... Respondent

Through Mr.Fidel Sebastian, Adv.

**CORAM:**

**HON'BLE MS. JUSTICE REKHA PALLI**

**REKHA PALLI, J (ORAL)**

1. The present writ petition filed by the Management/Delhi Transport Corporation (DTC) seeks to assail the Award dated 04.09.2009 passed by the learned Labour Court, Karkardooma Courts, Delhi in I.D.No.76/2007. Under the impugned award the Labour Court, after holding that the punishment of stoppage of one increment with cumulative effect awarded to the respondent/workman on 30.10.2001 was illegal and unjustified, has directed the petitioner to refund the amount deducted from his salary.

2. The respondent, who was working as a Fitter in DTC, was assigned the duty of checking the sufficiency of mobile oil (hereinafter referred to as 'oil') and other fluids in the fleet of buses operated by the petitioner. On the night of 14.12.2000-15.12.2000, while conducting a routine examination of Bus No.226, the respondent claims that he found the bus to have insufficient oil and, resultantly, added two litres of oil in the engine of the said bus after

making the requisite entry in the register.

3. On 15.12.2000, when Bus No. 226 left the depot, it came to a halt after merely running for a distance of two and a half kilometres, due to an engine failure. Apprehending that the malfunctioning engine had been caused by the respondent's failure to refill the oil in the bus, DTC issued him a charge sheet on 21.12.2000 setting out the following charges:-

*“On 14<sup>th</sup> and 15<sup>th</sup> December 2000 your duty was in the night shift on Mobile Oil Topping Group. As per Mobile Oil Topping Fleet on 14.12.2000 two litres Mobile Oil was filed in Bus Route No.226. On 15.12.2000 in the morning after going out the engine of the said bus started making sound and the bus became Break down at the Red Light of the B-Block, Mangolpuri, Delhi. When the Recovery Van Tongo-40 checked the bus, it was revealed that the Mobile Oil was finished and the bus was towed and taken to the Depot.*

*The Mobile Oil filled up on 15.12.2000 (during the night shift) and checked up on 16.12.2000, it was found that only one litre Mobile Oil was filled up by you. When the Bus was opened for Ring Check, the Mobile Oil was not found.*

*On the basis of above, it is confirmed that you did not get filled up the Mobile Oil in the bus. The bogus entry of the same has been made in the papers and heavy loss has been caused to the engine of the bus, the cost of which will be recovered from the Central Workshop II after dismantling the same.*

*Your above act has committed a serious negligence with regard to the duty. It shows that you have no interest in the work of the corporation and you have caused the financial loss to the corporation.”*

4. Upon the respondent denying the charges levelled against him, a departmental inquiry was held against him and based on the findings thereof, a penalty of stoppage of one increment with cumulative effect was imposed upon him. Consequently, the respondent raised an

industrial dispute in the year 2007.

5. While opposing the respondent's claim before the Labour Court, the DTC sought to rely on the findings of the departmental inquiry conducted by it against the respondent, which inquiry was held to be vitiated by the Court vide an order dated 01.07.2009. As this order has not been assailed by the DTC, the same has attained finality.

6. After quashing the departmental inquiry conducted against the respondent, the Labour Court granted the DTC an opportunity to lead evidence in support of the charges framed against him. Accordingly, one Mr. G.P. Kaushik was examined on behalf of the DTC who *inter alia* established the breakdown report of Bus No. 226. On the other hand, the respondent examined himself as his sole witness and reiterated that he had duly filled two litres of oil in the bus and that the breakdown of the bus was not attributable to any shortcoming on his part. Upon a consideration of the evidence led before it, the Labour Court concluded that no case of misconduct had been made out against the respondent and went on to hold that the penalty imposed on him was illegal and unjustified. Consequently, the DTC was directed to refund the amount deducted from the respondent's salary on account of the penalty imposed on him.

7. While allowing the respondent's claim, the Labour Court also rejected the petitioner's objection that the reference, having been made after a delay of almost six years, was liable to be rejected on this ground alone. The Court opined that even though there was nothing placed on record to substantiate the respondent's assertion that he had

been making departmental representations in the interregnum, keeping in view the fact that the respondent is still in service, the delay of six to seven years in instituting the dispute could not be treated as fatal.

8. In these circumstances, the petitioner has assailed the award in the present proceedings. In support of the writ petition, Mr.Sarfaraz Khan, learned counsel for the petitioner has raised two contentions. The first and foremost being that the Labour Court has failed to appreciate the petitioner's contention that when the reference had been made after six years, the respondent's claim ought to have been rejected by the Court on the ground of delay itself. The second contention of Mr.Sarfaraz Khan is that the engine of Bus No. 226 had stopped working immediately after leaving the bus depot. Since the respondent's own admission is that he filled mobile oil in the said bus prior to its departure from the depot, it is evident that bus' malfunction was attributable to the respondent as he had not discharged his duties properly and had failed to fill the mobile oil in the engine, despite having making entries to that effect in the register. For this purpose, he places reliance on the report regarding the breakdown of the bus, which was exhibited as MW 2/4 before the Labour Court. He, therefore, submits that the impugned Award, which ignores the evidence on record, is wholly perverse and, therefore, prays that the same be set aside.

9. On the other hand Mr.Fidel Sebastian, learned counsel for the respondent, while supporting the impugned award, submits that the report on which the DTC seeks to rely itself shows that the same does not attribute any lapse on the respondent's part. He submits that the

learned Labour Court has, after a due appreciation of evidence, come to a categorical conclusion that there was no misconduct on the part of the respondent. He, therefore, prays that this Court ought not to interfere with the well reasoned award of the Labour Court and that the writ petition be dismissed.

10. I have considered the rival submissions of the learned counsel for the parties and find no reason to interfere with the impugned award.

11. The admitted position is that when reference of the dispute was made in the year 2007, the respondent was still in service and, therefore, even though there was a delay in the said reference being made, it cannot be said that the claim raised by the respondent was stale. There is no time limit prescribed for the appropriate government to exercise its power under Section 10 of the Industrial Disputes Act, 1947 for making a reference and the question whether a dispute raised belatedly should be referred for adjudication, would primarily depend on the facts and circumstances of each case. In a given case, if the appropriate government or the Labour Court, upon consideration of the facts, has come to the conclusion that a dispute was sought to be raked up belatedly, it would be open for them to reject the same. In the present case, the Labour Court has specifically taken into account the respondent's plea that he was still in service with the DTC and his explanation for the delay being that he was making departmental representations to the DTC, before rejecting the petitioners' plea that the reference was not maintainable on the ground of delay. In these circumstances, I find absolutely no reason to interfere with this

finding of the Labour Court.

12. I have also considered the effect of the report exhibited MW 2/4, heavily relied upon by the learned counsel for the petitioner, and find that the same when read in conjunction with the cross examination of the petitioner's sole witness Mr.G.P.Kaushik, does not in any manner forward the petitioner's case. I, thus, have no hesitation in concurring with the conclusions of the Labour Court that there was no evidence at all to show that the respondent was guilty of any misconduct or that the breakdown of Bus No. 226 was in any manner attributable to a lapse on his part.

13. For the aforesaid reasons, I find no infirmity in the impugned award, warranting interference with the same in exercise of my writ jurisdiction under Article 226 and 227 of the Constitution of India.

14. The writ petition, being meritless, is dismissed in the aforesaid terms.

**REKHA PALLI, J**

**OCTOBER 23, 2019**

sr