

IN THE HIGH COURT OF DELHI AT NEW DELHI

**Judgment Reserved On:19.09.2017.
Judgment Pronounced On:17.05.2019**

W.P.(C) 2357/2012

SH. SATISH CHANDER

.....Petitioner

Through: Mr. Atul T.N., Advocate.

Versus

DELHI TRANSPORT CORPORATION

..... Respondent

Through: Mr. Uday N. Tiwary and Mr. Sunil K.
Ojha, Advocates.

**CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA**

J U D G M E N T

ANU MALHOTRA, J.

1. The petitioner Sh. Satish Chander, who joined the Delhi Transport Corporation on 13.08.1998 as a Retainer Crew Conductor at its Rohini Depot-I, Delhi, vide this present petition assails the impugned award dated 12.03.2010 of the Presiding Officer, Labour Court-VII, Karkardooma Courts, Delhi in ID No.275/2004 vide which the claim petition filed by the petitioner/workman herein seeking the setting aside of his termination of services and seeking reinstatement with consequential benefits in the respondent corporation,- was dismissed.

2. Notice of the petition was issued to the respondent who was put in appearance and contested the petition.

3. It is undisputedly brought forth that the services of the petitioner were dispensed with immediate effect under Para 4(XIV) of the Executive Instructions regarding the employment of the Retainer Crew of the Delhi Transport Corporation vide Order No..../AI(T)/CS-47/03/04/972 dated 05.04.2004. Para 4(XIV) of the Executive Instructions regarding the employment of Retainer Crews relates to the terms and conditions of the employment and the Retainer Crews of which terms and conditions are as follows:-

“

.....

.....

(xiv) The services of the retainer crews can be dispensed with by the Undertaking without notice and without assigning any reason. Further their services can also be dispensed with if they fail to turn up at the Units or perform duty as laid down in these instructions for five days continuously, without permission of the officer under whom they are working and without adequate reasons.

.....

.....”

4. As per letter No.PLD-III/cond./Apptt/98/2747 dated 12.08.1998, the petitioner amongst others was appointed as R/C/Conductor with the respondent w.e.f. 13.08.1998, pending medical examination by DTC Medical Board with it having been stated categorically that the appointment is purely on temporary basis subject to the physical fitness to be adjudged by the Medical Board of the Corporation, in due course.

5. It was specifically stipulated therein that the persons so appointed including the petitioner at serial no.47 would be paid wages at the prescribed

rate for the period they actually performed the duty and that the terms and conditions of their appointment as Retainer Crew Conductor would be those as embodied in the DRTA (Conditions of Appointment & Service) Regulations, 1952 as may be amended by the DTC and would also be governed and bound by all other rules and regulations framed by the DTC.

6. The facts brought forth through the impugned award reflect that on 20.07.2003, the petitioner was on duty on Bus No.3396 enroute from Sambhal to Delhi and the bus was stopped for checking at 6.25 hours at Saiyad Nangloi when it was found by the checking staff comprising of Sh.Mahabir Singh ATI, T No.20367, Sh. Jaipal Singh ATI, T No.20238, Sh. Om Prakash ATI, T No.12587 who were on checking duty and boarded the bus at the Saiyad Nangloi stand found a passenger in the bus with a ticket of Rs.9/-, which was from Saiyad Nangloi to Hasanpur and on inquiring from the ticket holder/passenger he stated that he boarded in this bus from Sambhal to Hasanpur and handed over Rs.16/- to the conductor but the conductor had given a ticket to the passenger when he saw the ticket team. The conductor i.e. the petitioner herein is stated to have been confronted with the passenger and the conductor/petitioner accepted his fault and that he had given a blank ticket No.16734 worth Rs.9/- but he had collected Rs.18/- from the passenger and had issued a ticket worth Rs.9/- only and the passenger's statement was recorded in the presence of the conductor by Sh. Jai Pal Singh, ATI on the back of the challan, which was signed by the conductor. The passenger was stated to be illiterate and has thus, only signed on the back of the challan and a copy of the challan No.37641 was issued to the conductor i.e. the petitioner after receiving his signatures.

7. A preliminary enquiry was held by the respondent in relation to the misconduct of the petitioner in which he participated. The Enquiry Officer vide its preliminary findings concluded to the effect that the charges imposed by the checking team on the daily wage conductor, B.No.25565 of collecting full fare and issued a ticket of less denomination were both true.

8. The petitioner herein has admittedly participated in the said preliminary enquiry and has made a statement also on 20.07.2003, stating that the checking team forcibly entered into the bus and when the conductor i.e. the petitioner herein objected to it, the checking team forcibly asked the passenger to say that he had got in the bus from Sambhal to go to Hassanpur and had given Rs. 18/- to the conductor who handed over a ticket worth Rs.9/- and during the enquiry, the petitioner stated that the checking team had written nothing in the Challan and had in fact given a blank Challan signed by the passenger, which statements of the petitioner were found to be contrary.

9. The respondent vide its written statement that had been submitted before the learned Labour Court-VII, has stated that on the preliminary enquiry having been conducted, it was found that the petitioner was involved in acts not befitting of his employment and that he was not a fit person to be retained for deployment and that it was a case of discharge of simplicitor and not termination of services. The respondent also submitted that the petitioner had not completed 240 days of service in any year and no retrenchment notice was required to be given and that the provisions of Section 25G & 25H of the Industrial Disputes Act, 1947 were not applicable.

10. As observed at the outset, the letter dated 05.04.2004 issued to the petitioner indicates that his services were dispensed with immediate effect

under Para 4(XIV) of the Executive Instructions regarding the employment of Retainer Crews.

11. The petitioner has contended that his services were terminated vide order dated 05.04.2004 without assigning any valid reason and that he was not even given salary for the month of March, 2004 and that he had completed 240 days of service in every year and no compensation such as retrenchment or notice pay was offered to be paid to him and that no charge sheet was ever given to the workman and no opportunity of being heard was afforded to him.

12. The respondent through the written statement that had been submitted before the learned Labour Court-VII, has submitted that there was no relationship of an employer-employee between the parties as a pre-requisite for the purpose of Industrial Dispute and that the petitioner was appointed as retainer crew conductor on terms and conditions as stated in the letter dated 04.08.1998, in which it was made clear that he would be paid wages as per the days of his actual performance of duty and that he was a temporary crew employee and his services were dispensed with as he was found guilty of misconduct.

13. The impugned award reflects that no rejoinder was filed by the petitioner to the written statement of the respondent that has been submitted before the learned Labour Court-VII.

14. The learned Labour Court framed the following issues:-

“1. Whether the workman is entitled to reinstatement with all consequential benefits with full back wages?”

2. Relief.”

and considered the testimonies of WW-1 workman i.e. the petitioner herein and the witnesses MW-1 Sh.Des Raj, Enquiry Officer & MW-2 Sh.Mahabir Singh, ATI produced by the respondent herein. The learned Labour Court-VII on a consideration of the testimonies of the petitioner herein examined as WW-1 and of the witnesses of the respondent/management observed as follows:-

“11. To appreciate the arguments of Ld. A.R. for the parties, a look has to be made to the testimony of Workman Shri Satish Chander WW.1 as well as Shri Des Raj, MW.1, Enquiry Officer and Mahabir Singh, MW.2.

Firstly, the testimony of Workman Shri Satish Kumar WW.1 is looked into, it is noticed that he was appointed as Conductor on temporary period as per Ex.WW1/5. He has admitted in his cross-examination that he was not a permanent employee of the Management and engaged for as daily wager/casual worker for a particular period. To quote from his testimony:

“It is correct that I was not permanent employee of the Management.

Further,

“It is also correct that I was daily wager/casual worker and was being paid accordingly.”

12. He has further made admissions regarding the enquiry in his cross-examination. Again to quote from his testimony:

“It is correct that a preliminary enquiry was held and I had participated in the enquiry.”

Further,

“It is correct that enquiry proceedings bear my signatures at point A and B.”

13. Now, the testimony of Management witnesses viz., Shri Des Raj, MW.1 and Shri Mahabir Singh, MW.2 is taken up. If a look is made to the testimony of Shri Des Raj, MW.1, it is noticed that he has admitted that no chargesheet was issued to the Workman and the Workman was not given an opportunity to cross-examine the prosecution witnesses. Though he has

admitted this, but he has reasoned out that since the Management held preliminary enquiry, there was no procedure to give an opportunity to Workman to cross-examine the prosecution witnesses. He has also clarified that the Workman was a temporary/ daily wages employee.

14. Shri Mahabir Singh, MW.1 has stated in his examination-in-chief that on 20.07.2003, on checking bus No.3396, a passenger was in the possession of Ticket No.16733 for a sum of Rs.9/-, while the actual fare for the travel was Rs.18/- from Sambhal to Hasan Pur. He has reiterated the same in his cross-examination that the passenger was having the ticket of less denomination. No suggestion has been put by Ld. A.R for the Workman that the passenger was not having the tickets of less denomination.”

and thus, concluded to the effect:-

“15. From the above two things come out, firstly, the Workman was engaged on temporary basis as admitted in his cross-examination (also discussed in the above part of the judgment) and as per his appointment letter Ex.WW1/5. Secondly, a preliminary enquiry was held into the Misconduct in which the Workman participated as admitted by him in his cross-examination. Since the Workman has admitted that he was temporary employee of the Management and he participated in the preliminary enquiry, now he cannot take the plea that a full-fledged enquiry should have been conducted into the Misconduct.

16.Thus, the fact remains that services of the Workman have been dispensed with due to the Misconduct for issuing tickets to the passenger for less denomination. No doubt, there is no distinction between a permanent and temporary Workman, but the Hon’ble High Court of DELHI was faced with similar problem/question of retainer crew driver in Sajjan Kumar (Supra), where it held that his dispensation was said to be not arbitrary and it was for the Management/DTC to say that the employee was suitable to continue or not. Here also, since the Workman was retainer crew conductor and on

checking on 20.07.2003, he was found having issued ticket to the passenger for less denomination, the dispensation of services for this Misconduct, it was for the Management/DTC to see whether the services of the Workman were suitable to continue or not having regard to the nature of his duty.

17. Since the Management has made assessment on the basis of his having issued ticket to the passenger for less denomination and his nature of job was temporary one, it cannot be said that dispensation of services by holding a preliminary enquiry was illegal one. Therefore, this issue goes against the Workman and in favour of the Management.”

15. Written submissions have also been submitted on behalf of either side apart from the oral submissions having been made on behalf of the petitioner by learned counsel Mr. Atul T.N., Advocate and on behalf of the respondent by learned counsels Mr. Uday N. Tiwary and Mr. Sunil K. Ojha, Advocates.

16. Reliance was placed on a catena of verdicts on behalf of either side. Reliance was placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in *Central: Inland Water Transport Corporation v. Borjo Nath Ganguly* 1986 3 SCC 156, *Delhi Transport Corporation v. DTC Mazdoor Congress* AIR 1991 SC 101. *M/s Hindustan Tin Works Pvt. Ltd. Vs. The Employees of M/s Hindustan Tin Works Pvt. Ltd. and Ors.* (1979) 2 SCC 80, *M.C.D. v. Praveen Kumar Jain and Ors.* (1998) 9 SCC 468, and on the verdict of this Court in *Sajjan Kumar Vs. D.T.C.* 2006 (3) AD (Delhi) 73.

17. It is however, essential to observe that each case is to be determined on its own facts. **The facts of the instant case clearly bring forth that the petitioner was employed with the respondent as a Retainer Crew**

Conductor on temporary basis to be paid wages at the prescribed rates for the days that he actually performed the duty.

18. As rightly contended on behalf of the respondent/Corporation whilst placing reliance on the verdict of the Hon'ble Supreme Court in "*Bhavnagar Municipal Corpn. V. Jadeja (2014) 16 SCC 130*", the burden of proof that the petitioner had continuously worked for a period of 240 days in a year is undoubtedly on the petitioner which the petitioner chose not to discharge in as much as the petitioner even did not file the rejoinder to the written statement that the respondent filed before the learned Labour Court-VII. The other aspect that cannot be overlooked is, as laid down by this Court in "*Rakesh Muni Tyagi Vs. DTC*" 2013 (139) FLR 24, which petition is based on the same appointment letter as that of the petitioner herein and in which case the petitioner thereof was also employed as a Retainer Crew Conductor, vide the same appointment letter dated 04.08.2008 and to whom the Executive Instructions for employment of a Retainer Crew were applicable and it was categorically observed by this Court in the said verdict vide paragraphs 9, 10, 11 & 12 to the effect:-

"9. The Executive Instructions above extracted show that the Retainer Crew is not engaged on a monthly basis. The engagement is only as a daily wager their services being utilized only in the event of the deployed Driver/Conductor being absent. That is why they are distinguished from monthly rated Drivers & Conductors.

10. Clause (vii) of the Executive Instructions extracted above shows that the Retainer Crew may not be put on duty on a given date and, in that eventuality, he would not earn the wages as prescribed in clauses (v) & (vi) in the said instructions. He is paid nominal retainer allowance, subject to the compliance of the conditions mentioned in clause (vii).

11. Clause (xiv) explicitly states that the services of the Retainer Crew can be dispensed with by the undertaking without notice and without assigning any reason. Their services can also be dispensed with if they fail to turn up at the Units or perform the duty as laid down in these instructions for five days continuously, without permission of the officer under whom they are working and without adequate reasons. Retainer Crew are absorbed on monthly rated temporary establishments of Drivers and Conductors in order of merit, seniority, conduct and performance.

12. A perusal of the aforesaid instructions as well as clauses 5 and 6 of the appointment letter dated 04.08.1998 issued to the petitioner offering the post of retainer crew driver for a temporary period leaves no manner of doubt that the termination of the services of the petitioner has been undertaken under a stipulation in that behalf contained in the conditions applicable to the petitioners appointment. The termination of the petitioners service, therefore, does not tantamount to retrenchment as defined in section 2(oo) of the Act since it is covered by the exception carved out in clause (bb) thereof. The mere completion of 240 days of service in the year preceding the petitioners termination does not vest the petitioner with the right to claim compensation under section 25F of the Act, since the terms of appointment in no uncertain terms made it clear that: i) The appointment was as a daily rated conductor and not a monthly rated conductor; ii) It was not necessary for the respondent to take from the petitioner, even when he offered himself for service, on any given day and all that he was entitled to, subject to fulfillment of certain conditions was retainer allowance; iii) The services of retainer crew conductor could be dispensed with without notice and without assigning any reason; iv) The absorption of the retainer crew conductor in the monthly rated establishment was dependant upon, inter alia, the conduct and performance of the conductor while working as a retainer crew. Therefore, the conduct and performance of the petitioner was under watch i.e. he was on probation for being

considered to be placed as a monthly rated temporary establishment conductor.”

19. As laid down in **“Rakesh Muni Tyagi Vs. DTC”** (supra), the provisions of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 come into play in the instant case which specify that retrenchment means the termination by the employer or of the service of a workman, but does not include:-

“(a).....

(b).....

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]
.....”

20. Furthermore, the letter dated 05.04.2004 issued by the respondent which merely dispensed with immediate effect the services of the petitioner and makes no allegations in relation to any enquiry report. Taking the totality of the circumstances into account, in as much as vide clause 4(XIV) of the Executive Instructions regarding the employment of a Retainer Crew issued by the respondent, it is apparent that the services of the petitioner could be dispensed with as and when the respondent chose without assigning any reason, Section 2(oo)(bb) of the Industrial Disputes Act, 1947 clearly comes into play.

21. The verdict of the Hon’ble Supreme Court in **“Champaklal Chimanlal Vs. UOI” AIR 1964 SC 1854** relied upon on behalf of the respondent makes it clear that the order of dispensation of services of the

petitioner by the respondent dated 05.04.2004 does not fall within the ambit of an order inflicting any punishment of dismissal or removal from the services of the respondent and thus, non-supply of a charge sheet to the petitioner is of no avail to the petitioner. Furthermore, the observations of the learned Labour Court-VII in the instant case holding to the effect that the petitioner was engaged on a temporary basis as per his appointment letter EX.WW1/5 and that he participated in the preliminary enquiry and that the services had been dispensed with due to mis conduct for issuing tickets to the passengers of a lesser denomination and the management having found that the petitioner was not suitable to continue in the services of the management/Corporation, the findings of the learned Labour Court that the dispensation of the services of the petitioner by upholding the preliminary enquiry were not illegal, cannot be faulted.

22. Reliance was also placed on behalf of the respondent on the verdict of this Court in *Karambir Vs. Presiding Officer, Labour Court No.1 & Ors. and Delhi Transport Corporation Vs. Delhi Administration and Ors. in WP (C) 774/1997 and 809/2001, Praveen Kaushik Vs. A.S. Yadav & Ors. in Writ Appeal No.497/2001*, to contend that the termination of the services of the petitioner by the respondent was illegal.

23. The present petition has been filed under Article 226 & 227 of the Constitution of India. As laid down by the Hon'ble Supreme Court in "*Syed Yakoob Vs. K.S. Radhakrishnan and Ors.*" AIR 1964 SC 477, though a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals, these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions, a writ can similarly be issued

where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides questions without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. However, as observed by the Hon'ble Supreme Court in the said verdict vide para 7 thereof, though, a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court and this limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings and an error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be and that in regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding and similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari and that a Court must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings by a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding and the adequacy or sufficiency of evidence led on a point and the inferences of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court and that it

is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

24. It was further observed by the Hon'ble Supreme Court vide para 8 of the said verdict, which reads to the effect:-

“8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as

errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.”

25. The verdict of this Court in *“Parshuram Shah Vs. Govt. of NCT of Delhi and Anr.” 2008 LLR 256*” also likewise observes to the effect:-

“7. The arguments advanced on behalf of the petitioner workman, if entertained, would amount to interfering with the findings of facts as arrived at by the Labour Court after due appreciation of evidence. Law is well settled in this respect that the Labour Court is the final court of facts and it is not appropriate for this Court, while exercising jurisdiction under Article 226 of the Constitution, to reappreciate evidence or to interfere with the findings of facts as arrived at by the Labour Court. The jurisdiction exercised by the writ court under Article 226 is supervisory and not appellate in nature. Reappraisal of evidence without sufficient reason in law, to arrive at a finding of fact contrary to those arrived at by the Subordinate Court, is not the intent of exercising the powers of judicial review. Reliance in this regard can be placed on the following judgments of the Supreme Court:

(i) Harbans Lal v. Jagmohan Saran AIR 1986 SC 302

(ii) B.C. Chaturvedi v. Union of India (1996) 1 LLJ 1232 SC

(iii) Indian Overseas Bank v. I.O.B. Staff Canteen Workers Union AIR 2000 SC 1508

***(iv) P.G.I. of Medical Education and Research
Chandigarh v. Rajkumar (2001) 2 SCC 54.***

***(v) Municipal Corporation of Delhi v. Asha Ram
and Anr. 117 (2005) DLT 63.”***

and thus, in that case where it was observed that that findings of the Labour Court were based on an appreciation of the material placed on the record which findings were neither perverse nor arbitrary nor capricious, it was held that it did not warrant any interference.

26. In the circumstances of the instant case thus, it is apparent that there is no merit in the prayer made by the petitioner seeking the setting aside of the impugned award in as much as the services of the petitioner cannot be held to have been illegally terminated nor can the petitioner be held to be reinstated with full back wages taking into account the factum that the services of the petitioner were themselves engaged on a temporary basis and the services of the petitioner were terminated at the will of the respondent, coupled with the factum that the order of dispensation of the services of the petitioner *per se* made no observations on the allegations of misconduct under the preliminary enquiry held against him, and dispensed with his services simplicitor.

27. In the circumstances, it is held that there is no infirmity in the impugned award of the learned Labour Court-VII and the petition is thus, declined.

ANU MALHOTRA, J.

MAY 17th, 2019/NC