

\$~

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

Date of Decision :- 01.10.2019

+ W.P.(C) 634/2006 & CM No.11629/2007

D.T.C. Petitioner

Through: Ms. Manisha Tyagi, Adv.

versus

DILPAT SINGH EX-DRIVER Respondent

Through: Mr. N.S. Dalal, Mr. Manu Kharra and Ms.T.
Banerjee, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition has been preferred by the management/DTC assailing the Award dated 02.08.2005 passed by the learned Labour Court-II, Karkardooma Courts, Delhi in ID No.282/2001. Under the impugned Award the Labour Court, after finding that the petitioner's application for approval under Section 33 (2) (b) of the Industrial Disputes Act, 1947 ('ID Act' for short) stood rejected, had come to the conclusion that in view of the settled legal position as laid down in *Jaipur Zila Sahakari Bhoomi Vikas Ltd. vs. Ram Gopal Verma* (2002) 2 SCC 244, the respondent was deemed to have been in continued service. The petitioner was, therefore, directed to reinstate the respondent with full backwages.

2. At the outset, it is noted that even before the impugned Award came to be passed, the respondent was reinstated in service on 09.04.2003 and has since superannuated in 2012 upon attaining the age of superannuation.

3. Ms.Manisha Tyagi learned counsel for the petitioner, while conceding that the respondent ought to be treated as having continued in service in view of the petitioner's application for approval having been rejected, submits that the said position still does not entitle the respondent to claim full backwages. She submits that even when an approval application made by the Management under Section 33(2)(b) of the ID Act is rejected, the grant of full backwages to a workman is not automatic and the Court has to consider all the relevant circumstances before awarding the same. By placing reliance on the decision dated 24.01.2013 in **Delhi Transport Corporation vs. Sarjeevan Kumar** 2013 (5) SLR 328 (Delhi) she submits that this Court can, in appropriate circumstances, substitute a direction for grant of full backwages made by the Labour Court by reducing the awarded amount of backwages. In this regard the Division Bench of this Court, in paragraphs 19 to 24 of **Sarjeevan Kumar (supra)**, had observed as under:

"19. In the case of Jaipur Zila Sahakari Bhoomi Vikas Ltd. (supra), the Apex Court held that the order refusing to give approval for dismissal on the ground of non-compliance with the provisions of Section 33(2)(b) renders it void and inoperative and the respondent would deem to have continued in service as if no order of dismissal was passed. In our opinion, there cannot be any different approach as to the payment of backwages. Even when the order of dismissal

is held to be unjustified by the Industrial Tribunal on merits or such dismissal becomes inoperative by virtue of contravention of Section 33(2)(b), payment of full backwages is not automatic as the same depends on facts of each case and the Industrial Tribunal should also consider the reasons for awarding full backwages or for that matter lesser backwages and give its own reasons.

20. The above discussions lead to the following discussions:

i. Payment of full backwages is not automatic on Labour Court/Tribunal granting reinstatement of workman.

ii. The same principle is equally applicable in case an order of dismissal is set aside by the Labour Court/Tribunal on the ground of non-compliance of Section 25F of the I.D. Act.

iii. The Labour Court/Tribunal shall give reasons for determining the specified quantum of backwages.

iv. The burden is on the workman to show that he is entitled to full backwages or to a reasonable backwages and he is not gainfully employed during the period he was not in service of the management.

v. Once materials are placed by workman on the above, the burden shifts on to the Management to disprove such claim.

vi. In the event, the Labour Court/Tribunal fails to give any reason to quantify backwages, the High Court can go into the said issue and decide on quantum.

21. Coming to the facts of this case, the Tribunal has found that the misconduct was not proved and for that reasons held the order of dismissal as unjustified and awarded full backwages without there being any reasons. There is nothing to indicate as to how the Tribunal determined the award of full backwages. It is true that the Tribunal has referred to the subsequent event of dismissal of the application under Section 33(2)(b) and has referred to the judgment in Jaipur Zila Sahakari Bhoomi Vikas Ltd. (supra). In our opinion, the award of full backwages cannot be sustained for the simple reason that there has been no reason adduced for such

award by the Tribunal. The order of the learned Single Judge also suffers from the same reason and there is nothing to indicate as to the determination of full backwages. As has been held in *Kendriya Vidyalaya Sangathan (Supra)*, the burden is on the employee to show that he has not been gainfully employed during the relevant period when the dispute was pending and equally, while the writ petition was also pending. There is nothing to show that the workman had discharged the said burden and accordingly, in the absence of any reason, the question to be considered is whether he would be entitled to full backwages.

22. In the case of *Nicks (India) Tools (supra)*, the Apex Court held that in the event no reason is adduced by the Labour Court, the High Court would be justified in going into the reasons and determine the backwages depending upon the facts of the case. The only contention of the workman is that sufficient time has been taken for disposal of the dispute and for that reasons he should not be penalized by denying full backwages. On the other hand, it is the case of the management that for the same reason, the management cannot be penalized and directed to pay full backwages.

23. In our opinion, the matter has since been pending from 22.05.1993 when the workman was removed from service. The dispute was referred vide order dated 30.06.1996 and the award came to be passed only on 04.06.2011. In the case of *Municipal Corporation of Delhi v. Prem Chand Gupta* (2000) 10 SCC 115, the Apex Court took into consideration the fact that the Industrial dispute lingered on for as long as 33 years and nobody was really to blame for the delay, except the justice delivery system and hence only 50% backwages were awarded to the workman. A similar view was taken in *Bharat Cooking Coal Ltd. v. Presiding Officer* & (1994) 111 ILJ 453 SC, while awarding only 50% of backwages. Thus, in such cases, the Management cannot be mulcted with a direction for payment of full backwages.

24. In these circumstances, to strike the balance, in our opinion, the award of full backwages as awarded by the Industrial Tribunal and affirmed by the learned Single Judge in writ petition cannot be sustained and the workman would be entitled to 50% backwages.”

4. On the other hand, Mr. Dalal submits that the aforesaid decision does not lay any absolute proposition to the effect that full backwages can never be granted. He submits that in cases where the Labour Court, after taking all relevant circumstances into account, finds that grant of full backwages is warranted, this Court in exercise of its writ jurisdiction ought not to interfere with these findings. He submits that as the respondent, who is present in Court, is agreeable to the petitioner's offer to receive 50% of the backwages, he does not oppose the limited prayer made by the petitioner for reduction of backwages to 50%.

5. In these circumstances, in the light of the observations of this Court in *Sarjeevan Kumar (supra)* and the fair stand taken by the respondent, the impugned award is modified by substituting the direction to pay full backwages to payment of that of 50% backwages to the respondent.

6. At this stage, it has been pointed out that pursuant to the order dated 23.01.2007 passed by this Court, the petitioner had deposited the entire awarded amount of backwages which has been kept in an interest-bearing FDR with this Court. Accordingly, the Registry is directed to forthwith release 50% of the deposited amount to the respondent and the remaining 50% to the petitioner. The interest accrued thereon is also directed to be divided proportionately between them.

7. The writ petition, along with the pending application, is disposed of in the aforesaid terms.

REKHA PALLI, J

OCTOBER 1, 2019
'SDP'