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

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Date of Decision: 13th August, 2019

+ W.P.(C) 5070/2013

CHHTTAR SINGH

..... Petitioner

Through: Mr.Raj Kumar Mann, Advocate
versus

DTC

..... Respondent

Through: Mrs.Avnish Ahlawat, Standing
Counsel for DTC along with
Mr.Nitesh Kumar Singh, Ms.Laveena
Arora, Advocates.

+ W.P.(C) 2059/2014 & CM APPL.4311/2014

DELHI TRANSPORT CORPORATION

..... Petitioner

Through: Mrs.Avnish Ahlawat, Standing
Counsel for DTC along with
Mr.Nitesh Kumar Singh, Ms.Laveena
Arora, Advocates

versus

CHATTAR SINGH

..... Respondent

Through: Mr.Raj Kumar Mann, Advocate.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (O R A L)

1. Both the parties have challenged the award dated 13th March, 2013 whereby the Industrial Tribunal awarded the financial benefits of difference in the regular pay scale and the wages paid to the workman as a daily wager for a period of three years prior to the date of reference i.e. 22nd March, 2010.

2. Learned counsel for the DTC submitted that the workman joined the

DTC as a daily wages driver in 1974; the workman remained absent for more than three months in 1982 whereupon the DTC declared him deemed to have resigned w.e.f. 30th April, 1982; the workman made a representation whereupon he was taken back in service w.e.f. 12th October, 1983; the workman again absented himself from duty whereupon his services were dispensed with on 09th May, 1984; the workman raised an industrial dispute which resulted in an award dated 15th December, 1999 whereby he was awarded reinstatement with 25% back wages and continuity in service; DTC challenged the award of the Labour Court before this Court which was dismissed; DTC filed LPA which was also dismissed on 10th May, 2002 whereupon the workman joined the duty on 01st January, 2003. On 07th April, 2010, the workman raised another industrial dispute claiming full wages of a regular pay scale of the post of driver.

3. The Labour Court partly allowed the claim by directing DTC to pay the difference of wages of regular pay scale and wages paid to him treating him as a daily wager with effect from three years prior to the date of reference dated 22nd March, 2010.

4. Learned counsel for the DTC urged at the time of the hearing that the workman was not a regular employee and therefore, the direction of the Industrial Tribunal is not justified. It is further submitted that the workman retired in 2009 and he raised an industrial dispute after his retirement. It is further submitted that the workman did not raise the issue of regularization in the earlier industrial dispute and therefore, the workman's claim is barred by the principle of constructive res judicata.

5. Learned counsel for the workman urged at the time of the hearing that the workman was a regular employee and not a daily wager driver as alleged

by the DTC. The workman filed an application under Section 33C(2) of the Industrial Disputes Act which was withdrawn on the objection that an industrial dispute should be raised whereupon the workman raised an industrial dispute.

6. According to DTC, the workman was awarded reinstatement with 25% back wages as a daily wager by the award dated 15th December, 1999 whereas according to the workman, he was awarded reinstatement as a regular employee with 25% back wages by the award dated 15th December, 1999.

7. The award dated 15th December, 1999 of the Labour Court has been examined. In that award, no issue was raised as to the status of the workman i.e. whether he was a daily wager or a regular employee and consequently there is no finding of the Labour Court that he was a regular employee. The workman joined the duty in terms of the above award on 01st January, 2003 and he retired on 30th April, 2009. The belated claim for regularization raised by the employee after the retirement is not maintainable. However, no interference is warranted in the financial benefits granted to the workman. DTC is directed to pay the amount in terms of the award of the Labour Court to the workman within four weeks.

8. Both the writ petitions are disposed of in the above terms. The pending application is disposed of.

9. Copy of this judgment be given *dasti* to counsel for the parties under signatures of the Court Master.

J.R. MIDHA, J.

AUGUST 13, 2019/dk