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

Date of Decision: 19.02.2019

+ **W.P.(C) 2405/2017 & C.M. No.10359/2017 (for stay) & CM No.23221/2017 (u/S 340 C.P.C.)**

DELHI TRANSPORT CORPORATION Petitioner
Through Mr.Sarfaraz Khan, Adv.

versus

SHRI SATNARAIN Respondent
Through Mr.Ashwani Tyagi, Adv.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present writ petition, the petitioner impugns the order dated 3rd January, 2017 passed by the learned Labour Court in LCA No.923/16, directing the petitioner/DTC to pay a sum of Rs.10,34,568/- to the respondent/claimant within a month on account of wages from 6th September, 2010 to 12th December, 2014, along with interest at the rate of 6% per annum on the said amount from 5th October, 2016.

2. The necessary facts as emerge from the record are that the respondent who was working as a Conductor in the DTC, was issued a charge-sheet on 12th May, 1995 alleging that on 30.04.1995, he had failed to deposit the wage bill for the cash received by him. The respondent was thereafter removed from service vide order dated 9th February, 1996, based on the findings of a domestic inquiry held against him. Upon the respondent raising an industrial dispute, a reference was made to the learned

Labour Court regarding the validity of the respondent's termination. The learned Labour Court, after considering the material produced on record, passed an Award dated 1st July, 2010 directing reinstatement of the respondent with continuity of service and all other consequential benefits, excluding back wages along with a sum of Rs.25,000/- by way of litigation expenses.

3. The aforesaid Award, which was published on 6th September 2010, came to be challenged by the petitioner/DTC by way of WP (C) No.3633/2011 before this Court. Vide its order dated 25th November, 2011, this Court, while issuing notice to the respondent, granted time to the petitioner to seek appropriate instructions from its Chairman as to whether the petitioner was really interested in pursuing the writ petition. The Court had, in the interregnum, also stayed the operation of the Award.

4. At this stage, it may be noted that being aggrieved by the non grant of backwages to him, the respondent had also preferred a cross writ petition being WP (C) No.7039/2011 before this Court, which was dismissed for non-prosecution on 17th August, 2015. The petitioner's writ petition impugning the aforesaid Award dated 1st July, 2010, finally came to be dismissed by this Court vide its detailed judgment dated 23rd September, 2014. After the dismissal of the petitioner's writ petition, the respondent was reinstated in service on 13.12.2014, without being granted any benefits for the period from 06.09.2010, i.e., the date of publication of the Award, till his reinstatement, thereby compelling the respondent to move the Labour Court by way of an application under Section 33(C)(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') seeking release of wages from the period from 6th September, 2010 to 12th December, 2014 along with interest. The said

application was allowed by the learned Labour Court vide its impugned order. The present writ petition has been filed by the petitioner/DTC impugning the said order directing payment of arrears of wages from 6th September, 2010 to 12th December, 2014 to the respondent along with interest at the rate of 6% per annum from 5th October, 2016, within the prescribed period, failing which the interest was to be paid at the rate of 9% per annum.

5. Impugning the said order, the learned counsel for the petitioner has raised two basic contentions. The first being that since this Court itself had stayed the operation of the Award vide its order dated 25th May, 2011 the petitioner could not be faulted for not reinstating the respondent during the pendency of their writ petition. He states that once the writ petition was dismissed, the petitioner had taken expeditious steps to reinstate the respondent and therefore, the direction under the impugned order to pay wages to the respondent from 06.09.2010 to 12.12.2014 was wholly unjustified especially in the light of the fact that while dismissing the writ petition, this Court did not specifically direct the respondent to grant wages for the period during which the petition had remained pending before this Court.

6. The second ancillary submission of the petitioner is that since there was no direction by the Court for payment of wages to the respondent during the pendency of the petition, there was no question of the respondent's application under Order 33-C(2) being entertained by the learned Labour Court as there was admittedly no prior determination of any amount payable to the respondent by any Court.

7. On the other hand, learned counsel for the respondent while supporting the impugned order submits that once this Court found

absolutely no merit in the petitioner's writ petition, making it evident that there was no infirmity in the Award directing the respondent's reinstatement, he cannot be deprived of the benefits for the period during which he could not join his services due to the petitioner's decision to file a wholly misconceived writ petition before this Court, which ultimately came to be dismissed.

8. I have heard the learned counsel for the parties and with their assistance, perused the record. In my view, even though the learned counsel for the petitioner has raised two contentions, the same are inter-related. The only question which really needs to be determined by this Court is as to whether the petitioner having filed a writ petition, thereby preventing the respondent from joining service, can the petitioner still deprive the respondent of the wages for the said period during which he was very much willing and ready to join back his duties.

9. In my view, once an employee is prevented from joining duties not because of his fault/inaction but because of the employer not permitting him to join duties, he would be certainly entitled to get the benefit for the said period. Once the petitioner's writ petition was dismissed, it is evident that this Court did not find any infirmity in the impugned Award directing the petitioner's reinstatement. In these circumstances, it would be most unjust to deprive the respondent of the benefits under the Award which has ultimately been upheld by this Court. There is no merit in the petitioner's contention that merely because this Court, while dismissing the writ petition, did not pass any specific order directing payment of wages for the said to the respondent for the period that the petition remained pending, the respondent would not be entitled to wages for the period during which he has

admittedly not worked. The aforesaid contention overlooks the fact that this Court, while dismissing the writ petition, found no infirmity in the impugned Award whereunder the respondent was entitled to be reinstated and therefore, once it is evident that the respondent was denied reinstatement only because the petitioner chose to file a misconceived writ petition, he cannot be denied the benefit for the period he was willing to rejoin his duties but could not for no fault of his own.

10. I also do not find any merit in the petitioner's submission that as there was no predetermination of the amount towards wages for the period from 06.09.2010 till 12.12.2014, the learned labour Court could not have entertained the application under Section 33(C)(2) of the Act. In my view, once the amount of wages to which the respondent would have been eligible had he been reinstated in terms of the Award, is not in dispute, it cannot be said that the amount being claimed by the respondent under the Application, was not quantifiable and therefore, I find no reason as to why the application was filed was not maintainable.

11. For the aforesaid reasons, I find absolutely no perversity or infirmity in the impugned order. The writ petition being meritless, is dismissed along with pending application.

12. At this stage, it is pointed out by the parties that the petitioner had, in pursuance to the order dated 15th March, 2017 passed by this Court, deposited 30% of the amount then payable to the respondent with the Registrar General of this Court.

13. As the writ petition is being dismissed, the Registry is directed to forthwith release the said amount along with up to date accrued interest in favour of the respondent. The remaining amount in terms of the impugned order will be paid by the

petitioner to the respondent within a period of six weeks from today.

(REKHA PALLI)
JUDGE

FEBRUARY 19, 2019/aa

