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

Date of decision: 09.10.2019

+ **W.P.(C) No.684/2013**

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

versus

INDERJIT Respondent
Through: Mr.G.S. Charya,Adv.

+ **W.P.(C) 5325/2013**

INDERJEET Petitioner
Through: Mr.G.S. Charya, Adv.

versus

DELHI TRANSPORT CORPORATION Respondent
Through: Mr. Sarfaraz Khan, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present decision disposes of two writ petitions; while WP(C) No.684/2013 preferred by the Delhi Transport Corporation (DTC)/Management assails the Award dated 31.08.2012 passed by the Labour Court in ID No. 331/08/1997, WP(C) No.5325/2013 preferred by the workman seeks a direction to the DTC to reinstate him with all consequential benefits. For the sake of convenience, the parties are

being referred to by their nomenclature in WP(C) No.684/2013.

2. The respondent, while serving in the post of Conductor with the DTC, was placed under suspension by the Management on 19.04.2003 and was issued a chargesheet alleging that on 12.04.1993 upon a surprise inspection conducted by the Checking Staff of the bus where he was deployed, he was found to have indulged in serious irregularities. Based on this chargesheet a departmental inquiry was conducted against him, in which the charges stood proved, thereby leading to his removal from service on 25.07.1994. Aggrieved by his termination, the respondent raised an industrial dispute which was on 17.12.1997 referred for adjudication before the Labour Court.

3. During the pendency of the aforesaid industrial dispute raised by the respondent, the DTC moved an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as "I.D. Act, 1947") seeking approval of its removal order dated 25.07.1994. The said application came to be rejected by the Labour Court vide its order dated 25.03.2003, which order has attained finality as the petitioner's challenge thereto, before this Court and the Supreme Court, has remained unsuccessful. Meanwhile, in the industrial dispute raised by the respondent, the Labour Court vide its impugned order dated 14.05.2010 held the inquiry conducted by the petitioner to be vitiated and thereafter vide its impugned Award dated 31.08.2012, directed the respondent's reinstatement alongwith all consequential benefits including continuity of service except backwages.

4. While the DTC, by way of WP(C) No. 684/2013, assails the

order dated 14.05.2010 as also the Award dated 31.08.2012, the respondent/workman in WP(C) No. 5325/2013, by relying on the decision in ***Jaipur Zila Sahakari Bhoomi Vikas Ltd. v. Ram Gopal Verma & Ors.*** AIR 2002 SC 643 seeks a direction to the petitioner to reinstate him with all consequential benefits.

5. The learned counsel for the petitioner submits that even though the petitioner's application for approval stands rejected and the respondent has to be deemed to have been in continuous service in terms of the decision in ***Jaipur Zila Sahakari Bhoomi Vikas Ltd. (supra)***, but once the learned Labour Court under the Award dated 31.08.2012 had specifically disallowed payment of backwages to the respondent, his prayer for full backwages is liable to be rejected. He submits that merely because the petitioner's application for approval stands rejected, the respondent cannot claim full backwages from the petitioner as a matter of right. In support of this contention, he places reliance on the decision dated 21.01.2013 passed by a Division Bench of this Court in ***DTC Vs. Surjeevan Kumar 2013 LAB. I.C. 981***, wherein under similar circumstances, the workman was granted payment of only 50% backwages. He, therefore, submits that even if the petitioner's challenge to the direction of the Labour Court to reinstate the respondent may be unmerited, the respondent would still not be entitled to full backwages, as claimed by him.

6. On the other hand, learned counsel for the respondent/workman, contends that once the approval application of the petitioner/management stood rejected, the workman is entitled to receive all consequential benefits including full backwages. He,

however, submits that in the light of the admitted position that the Award dated 31.08.2012 declining grant of backwages to him, has not been assailed by the respondent, he is agreeable for grant of 50% backwages, as granted by the Division Bench in *Surjeevan Kumar (supra)*.

7. In the light of the admitted position that the petitioner's application for approval stands rejected, the removal order passed by the petitioner has to necessarily be treated as non-est and, therefore, there is absolutely no merit in the petitioner's challenge either to the impugned order dated 14.05.2010 or to the impugned Award dated 31.08.2012. However, in view of the fair stand taken by the respondent agreeing to accept payment of 50% backwages, even though the respondent is entitled to be treated in continued service from the date of his termination, it would be in the interest of justice to restrict payment of backwages to him to 50%, especially in the light of the fact that the Award declining him grant of backwages has not been challenged by him till date.

8. Accordingly, the present petitions are disposed of by directing the DTC to pay 50% backwages to the respondent/workman from the date of his termination till the date of his superannuation on 31.08.2016. The respondent will also be entitled to all other consequential benefits including ACP, MACP and pension, if found eligible under the extant rules, by treating his service as being continuous till the date of his superannuation. The benefits payable to the respondent, as directed hereinabove, will be released to him within a period of six weeks.

9. The writ petitions are disposed of in the above terms.

(REKHA PALLI)
JUDGE

OCTOBER 09, 2019/aa

