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

Date of Decision:- 13.08.2019

+ RFA No.53/2011

DELHI TRANSPORT CORPORATION Appellant
Through: Mr.U.N. Tiwary, Adv.

versus

SIRI KRISHAN Respondent
Through: Mr.Rajiv Nanda, Adv.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present Regular First Appeal under Section 96 of the Code of Civil Procedure impugns judgment and decree dated 12.07.2010 passed by the learned Additional District Judge, (Central-13), Tis Hazari Courts, Delhi in Civil Suit No.132/2008, whereunder the suit filed by the appellant seeking recovery of a sum of Rs.3,30,097/- along with interest at the rate of 18% per annum from 09.09.1998, from the respondent was dismissed on the grounds of limitation as well as on merits.
2. The facts as necessary for adjudication of the appeal may be noted hereinbelow.
3. The respondent while working as a Conductor with the appellant-Corporation was, based on the finding of a domestic enquiry, dismissed from service on 01.08.1974, which dismissal was assailed by him raising an

industrial dispute. The respondent succeeded before the labour Court which, vide its award dated 18.01.1988, set aside his dismissal from service by imposing a penalty of stoppage of six increments on him. The award also directed the appellant to reinstate the respondent with 50% backwages. The aforesaid award dated 18.01.1988 came to be challenged by the appellant before this Court by way of a writ petition [C.W.P 2229/1988] and this Court was pleased to issue notice in the petition wherein no stay of the impugned award was granted in favour of the appellant. However, since the appellant did not comply with the terms of the award despite there being no stay granted therein, the respondent moved an application before this Court seeking a direction to the appellant to implement the award. When the respondent's application came up for hearing before this Court on 18.02.1991, the following order was passed:-

“The impugned order has not been stayed by this court. By the said order, the applicant was directed to be reinstated with full back wages. Since the order has not been stayed, the applicant is entitled to be reinstated. Accordingly, he may join so that he can draw his wages.”

4. It appears that the respondent, armed with the order passed by this Court on 18.02.1991 wherein it was observed that he was entitled to be reinstated with full back wages, approached the appellant who, after taking the opinion of its Legal Advisor vide its letter dated 15.11.1991, directed the respondent to rejoin service. The respondent, accordingly, re-joined service on 29.11.1991 and was paid 50% of the backwages. It is only after the respondent's repeated demands that the appellant finally released the remaining 50% backwages to him on 15.02.1999. Thus, it is only after a

period of eight years of his reinstatement that the respondent was paid the full backwages for the period between 01.08.1974 to 29.11.1991. After the respondent had been reinstated, the appellant's writ petition came to be dismissed by this Court vide its order dated 30.01.2003, which order has now attained finality.

5. After serving for another 14 years, the respondent superannuated from service on 31.10.2005 and was paid all his retiral dues including gratuity and provident fund without any demand for a refund being raised by him. It is only thereafter on 20.08.2008, i.e., almost three years after the respondent had superannuated that the appellant instituted the instant suit for recovery against the respondent.

6. In its plaint filed before the trial Court, the case of the appellant/Delhi Transport Corporation (DTC) was that the respondent, despite being aware that the award in his favour had directed payment of only 50% backwages, had misled the appellant by claiming 100% backwages. Resultantly payment of 100% n backwages was erroneously made to him by the appellant under a mistaken belief that he had been awarded 100% backwages by the Labour Court. It was, therefore, claimed that the respondent, having played fraud upon the appellant, was not entitled to retain any amount in excess of 50% of backwages as awarded to him by the Labour Court and was, therefore, liable to refund the excess to the appellant amount with interest at the rate of 18% per annum.

7. Before the trial Court, the respondent filed his written statement opposing the claim of the appellant by stating that no misrepresentation of any kind had ever been made by him. It was urged that he had claimed 100% backwages only on the strength of the order passed by this Court on

18.02.1991. It was further urged in the written statement that the suit of the appellant was grossly barred by limitation and was liable to be rejected on this ground alone.

8. Based on the pleadings of the parties, the learned trial Court raised the following issues:-

“(1) Whether the suit of the plaintiff is beyond the period of limitation?”

(2) Whether the plaintiff is entitled for the recovery of Rs.3,30,097/- along with the interest as asked for in the plaint?”

9. In support of its claim, the appellant examined its Senior Manager (Traffic) as PW-1, while the respondent examined himself as a sole witness. The learned trial Court, after considering the evidence brought on record, decided both the issues against the appellant with a specific finding that the respondent/workman could not be said to be guilty of any fraud. The suit instituted by the appellant was accordingly dismissed under the impugned judgment.

10. In these circumstances, the present appeal has been filed by the appellant/DTC impugning the dismissal of its suit by the learned trial Court.

11. This Court, after hearing the matter at some length on the last date, put to the learned counsel for the appellant to explain the reasons for the appellant failing to implement the award dated 18.01.1988 for almost four years and to specify the amount payable to the respondent towards wages for this period, when he was kept out of employment despite an award directing his reinstatement which award was never stayed by this Court. Learned counsel for the appellant, Mr.Tiwary had sought time to get

instructions and today he submits that there is no justification for the said delay. He further submits that the amount payable to the respondent towards full backwages from 18.01.1988 to 29.11.1991, during which period the respondent was kept out of service is only Rs.91,400/-, viz., the amount of Rs.1,26,716/- which he erroneously received by misleading the appellant. He submits that the respondent had been dismissed from service after being found guilty of serious misconduct and merely because he was directed to be reinstated by the Labour Court by substituting the penalty imposed on him, did not imply that his misconduct had been condoned in any manner. He, therefore, prays that the appeal be allowed and the respondent be directed to refund the differential amount with interest.

12. On the other hand, Mr.Nanda, learned counsel for the respondent submits that it is not the respondent who was responsible for the mistake, if any, on the part of the appellant in paying 100% backwages to him. He submits that the respondent cannot be blamed for seeking implementation of an order passed by this Court on 18.02.1991 as he *bona fide* believed that it is the order passed by the superior Court, i.e., this Court, which would prevail and he was, therefore, entitled to receive 100% backwages. He submits that, in any event, it is not a case where the respondent can be said to be guilty of misrepresentation. He further submits that the respondent was in service for almost 14 long years after being reinstated on 29.11.1991, during which period the appellant did not take any steps to demand the said amount from him; now that the respondent stands superannuated and has attained the age of 75 years, recovery of any amount from him at this stage will cause grave hardship to him when he is surviving on his meagre pension. In support of his aforesaid contention, he places reliance on the

decision of the Hon'ble Supreme Court in *State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors.*, (2015) 4 SCC 334.

13. I have considered the submissions of the learned counsel for the parties and with their assistance perused the record.

14. What emerges from the record is that the award in favour of the respondent was, as is rightly contended by learned counsel for the appellant for reinstatement with only 50% backwages and, therefore, there can be no quarrel with the position that, in law, the respondent was entitled to receive only the said amount of 50% towards backwages. However, it is also an undisputed position that an order was passed by this Court on 18.02.1991, specifically observing that the respondent was entitled to be reinstated with 100% backwages. Even if this Court were to accept the appellant's plea that the said order was passed by this Court on account of an inadvertent oversight, it cannot be said that the respondent made any misrepresentation. The respondent's justification that he was under the impression that this Court being a higher Court than the Labour Court had awarded 100% backwages, cannot be simply brushed aside. In any case, it cannot be said that the respondent played any fraud by demanding 100% backwages from the appellant.

15. As noted hereinabove, Mr. Tiwary has been unable to dispute the position that though the respondent was entitled to be reinstated immediately after 18.01.1988, he was reinstated only on 29.11.1991. The respondent was, therefore, entitled to receive 100% backwages at least for this period between 18.01.1988 to 29.11.1991 when he was not reinstated, despite no stay on the said reinstatement having been granted by this Court. It is also an admitted position that only 50% of the backwages towards this period

were paid to the respondent as on 29.11.1991, while the remaining 50% of the backwages were released to him after almost eight years, i.e., on 15.02.1999, thereby entitling the respondent to claim interest on the said amount of Rs.45,700/- (50% of Rs.91,400/-) from the appellant for this period, which interest according to Mr.Tiwary works out at Rs.42,000/-. Thus, as per the appellant's own calculations, out of the amount of Rs.1,26,716/- claimed to have been paid in excess to the respondent, a sum of Rs.87,700/- was in any event payable to the respondent and cannot be recovered.

16. In the light of the aforesaid facts, the amount, if any, which would be payable to the appellant even as per its own calculation would be less than Rs.40,000/-. Keeping in view the respondent's age and the trial Court's conclusion that the respondent is not guilty of any wilful misrepresentation with which conclusion I see no reason to differ, as also the fact that the appellant has not been able to give any explanation for the inordinate delay in instituting the suit; no case is made out to interfere with the impugned judgment. Even otherwise at this stage, when the respondent has already attained the age of 75 years the recovery of any amount from him would not only cause grave hardship to him, but would also be contrary to the ratio of the decision of the Hon'ble Supreme Court in **Rafiq Masih (White Washer)** (*supra*). In my view, even if the alleged excess payment of about Rs.40,000/- made to the respondent was erroneous and unjustified, the equities in favour of the respondent far outweigh the appellant's right to recover the same. It would be most unfair to permit the appellant to make any recovery from the respondent, when he is already in the evening of his life and that too when the appellant itself has been guilty of gross negligence

and delay.

17. I find no infirmity in the impugned judgement and decree. The appeal is, accordingly, dismissed with no order as to costs.

REKHA PALLI, J

AUGUST 13, 2019

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