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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 28.02.2019

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W.P.(C) 8974/2017 & C.M. Nos.36728/2017, 36731/2017

DELHI TRANSPORT CORPORATION Petitioner

Through: Ms.Aditi Gupta, Adv.

versus

RAM KUMAR (DECEASED) THR LR BABLI DEVI

..... Respondent

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

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition under Articles 226 and 227 of the Constitution of India, the petitioner/DTC impugns the order dated 11.01.2017 passed by the learned Labour Court in LCA No.09/16, directing the petitioner to pay a sum of Rs.2,76,449/- to Smt.Babli Devi, the legal representative of the deceased respondent/workman, towards his wages for the period between 15.10.2009 and 28.07.2011.

2. Before dealing with the rival contentions of the parties, it may be appropriate to note the undisputed facts emerging from the record. The respondent/workman having been appointed as a Driver in the petitioner/DTC on 29.09.1982, was terminated from service on 29.06.1989. Upon being terminated, he raised an industrial dispute,

which culminated in an award dated 15.10.2009 in his favour, wherein the learned Labour Court directed his reinstatement with continuity of service, but without any back wages. It is an admitted position that though the petitioner/DTC did not challenge the said award, it did not take any steps for implementing the same for almost two years and, for the first time, wrote a letter to the respondent/workman on 20.06.2011, directing him to report for duties within ten days from the receipt of the said letter. The said letter was, however, not sent to him on 20.06.2011 and was instead posted to him pursuant to directions issued by the competent authority on 26.07.2011, whereafter the respondent/workman passed away on 28.07.2011, i.e., even before the said letter could be served on him. After his death, Smt.Babli Devi claiming to be his widow, approached the learned Labour Court by way of an application under Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act”) seeking directions to the petitioner/DTC to pay her the arrears of respondent/workman’s wages for the period between 15.10.2009 and 28.07.2011.

3. Before the learned Labour Court, the plea of Smt.Babli Devi was that she was the legally wedded wife of Late Shri Ram Kumar, who was earlier married to her elder sister Smt.Savitri Devi, who had gone missing after 6-7 months of the marriage itself and, in these circumstances, the marriage between her and respondent/workman Shri Ram Kumar was solemnised. It was also pointed out before the Labour Court that though the name of Smt.Savitri Devi was reflected in the service records of the petitioner/DTC, all the documents,

including Ration Card, Aadhar Card, and Voter Identity Card clearly reflected the name of Smt.Babli Devi as the wife of Late Shri Ram Kumar relying on the aforesaid stand of Smt.Babli Devi, the learned Labour Court allowed her claim and directed the petitioner/DTC to pay her the arrears of the respondent's wages from the date of passing of the award dated 15.10.2009 till the date of the respondent's death.

4. Impugning the said Award, the present petition has been filed by the petitioner/DTC. Ms.Aditi Gupta, learned counsel for the petitioner submits that while directing payment of the arrears of wages of the deceased workman to Smt. Babli Devi, the learned Labour Court has failed to appreciate that there was nothing to show that she was the legally wedded wife of the workman and was, therefore, entitled to receive wages, if any, payable to the deceased workman. She states that once the records of the DTC reflected the name of Smt.Savitri Devi as the wife of the deceased workman, there was no question of making any payment to Smt.Babli Devi.

5. Learned counsel for the petitioner contends states that once there was nothing to show that after passing of the award, the workman had even made any efforts to rejoin duty, he or his legal heirs could not claim any wages from the date of passing of the award. She further draws my attention to the letter dated 20.06.2011, and states that when the respondent/workman did not rejoin duty after the passing of the award, the petitioner/DTC was compelled to issue a letter directing him to rejoin duties, which he could not do due to his unfortunate death on 28.07.2011 itself. She places reliance son a decision dated 25.03.2009 of this Court in the case of **Dev Raj vs.**

DTC, [W.P.(C) No.23156/2005] and states that once the respondent/workman had not rendered any duties, after the passing of the Award in his favour, the principle of 'No work no pay' would squarely apply. She, therefore, contends that the respondent/workman was not at all entitled to receive any back wages, as directed by the learned Labour Court.

6. On the other hand, Mr.Charya, learned counsel for the respondent supports the impugned Award and states that the petitioner having failed to controvert the plea of that she was the legally wedded wife of the respondent/workman, the learned Labour Court was fully justified in allowing her claim. He further states that it was incumbent upon the petitioner/DTC to write a letter to the respondent/workman in a timely manner asking him to rejoin duty and having not done so, they cannot deprive the legal heirs of the workman of his due wages only because of their own inaction. He, therefore, prays that the writ petition be dismissed.

7. I have considered the rival contentions of the learned counsel for the parties and with their assistance, perused the record. Ms.Gupta has basically raised two submissions, the first regarding the eligibility of Smt.Babli Devi and the second regarding the eligibility of the respondent/workman himself to receive any wages from the date of passing of the award till the date of his death. Insofar as first submission regarding eligibility of Smt. Babli Devi is concerned, a bare perusal of the documents filed by the claimant Smt.Babli Devi before the Labour Court, which include her Ration Card, Aadhar Card and the Voter Identity Card, in itself leave no manner of doubt that

she is depicted as the wife of Late Shri Ram Kumar in the documents issued by public authorities. Therefore, unless anything to the contrary is shown, it has to be presumed that these public documents were issued after due scrutiny. The mere fact that the name of Smt.Savitri Devi continued to be reflected in the records of the petitioner/DTC as the workman's wife would not be sufficient to disbelieve the version of Smt.Babli Devi that she was the legally wedded wife of Late Shri Ram Kumar. It also needs to be noted at this stage that Smt.Babli Devi had duly appeared in the witness box in support of her claim and though she was cross-examined at length, no suggestion of any kind was put to her that she was not the younger sister of Smt.Savitri Devi as claimed by her or that she was not the wife of Late Shri Ram Kumar. In fact, the only questions put to her in the cross-examination were regarding the workman not having made any efforts for re-joining duty.

8. In these circumstances, I find no infirmity at all in the conclusion arrived at by the learned Labour Court that Smt.Babli Devi was entitled to receive the dues of Late Shri Ram Kumar.

9. Now coming to the second submission of the learned counsel for the petitioner that the respondent/workman not having rendered any service after the passing of the Award, he was not entitled to back wages for the period from the date of passing of the award till the date of his death on 28.07.2011. The admitted position emerging from the record is that even though the award directing the respondent's reinstatement was passed on 15.10.2009, the petitioner/DTC admittedly did not send any letter/notice to the

workman till 20.06.2011, which letter was also posted only after 26.07.2011, as is evident from the noting at the bottom of the said letter. This letter granted 10 days joining time to the respondent who unfortunately expired before the expiry of the said period of ten days on 28.07.2011. The plea of Ms. Gupta that the petitioner/DTC was always willing to reinstate the respondent, but he did not come forward to join duties does not inspire confidence at all as a bare perusal of the letter dated 20.06.2011, in itself shows that there is no averment in the said letter and that the respondent had ever failed to join duties, despite being asked to do so. This in itself shows that the plea of the respondent that he was very keen to re-join duty but was not allowed to do so, appears to be correct and he could therefore not be denied wages for the period between 15.10.09 and 28.07.2011. I have also considered the decision in the case of ***Dev Raj (supra)***, relied upon by learned counsel for the petitioner but in my view the same is not at all applicable to the facts of the present case. The said case related to a workman who stood involved in a murder case where the Court after finding that his reinstatement had been ordered upon his acquittal only on technical grounds, was of the view that in the facts of the case, the principle of 'no work no pay' ought to be followed. The facts of the present case, however, depict a totally different picture. In the present case, the workman was a Driver who passed away just before receiving the letter sent by the petitioner directing him to rejoin duty in terms of the award in his favour. In these circumstances, I find absolutely no reason to interfere with the finding of the learned Labour Court that the workman's legal heir was

entitled to receive back wages from the date of the award till the date of his death.

10. For the aforesaid reasons, I find no infirmity in the impugned award.

11. The petition being devoid of merits is dismissed along with the pending applications with no order as to costs.

12. As the petitioner pursuant to an order passed on 12.10.2017, deposited the already awarded amount of Rs.2,76,449/- with the Registrar General of this Court, the Registry is directed to forthwith release the said amount in favour of Smt.Babli Devi along with upto date interest accrued thereon.

(REKHA PALLI)
JUDGE

FEBRAURY 28, 2019
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