

\$~

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

12

+ **W.P.(C) 11107/2016 & CM 43423/2016 (stay)**

DELHI TRANSPORT CORPORATION Petitioner

Through: Mr V.N. Tiwary and Mr Utkarsh
Tiwary, Advocates.

versus

DHYAN CHANDRA SONKAR Respondent

Through: Mr Parmod Kumar with Mr Amit
Kumar, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

%

19.11.2019

1. This is a petition by the Delhi Transport Corporation ('DTC') which is against an order dated 12th July, 2016 passed by the Central Administrative Tribunal ('CAT') allowing the OA No.3989/2013 filed by the Respondent herein and directed the Petitioner to reinstate the Respondent, whose services had been terminated by an order dated 6th December, 2012.

2. The Respondent was appointed as a driver with the Petitioner DTC on temporary basis on probation for a period of two years by an order dated 24th February, 2009. The Respondent accepted the offer. His actual appointment commenced on 7th December, 2009.

3. By an order dated 8th December 2011, the Petitioner extended the probation of the Respondent up to 7th December, 2012 i.e. by a period of one

year beyond the initial period of two years.

4. In terms of the amended rules applicable to such appointments, the period of probation could be extended by a period not exceeding one year in normal cases and for more than double the normal period in other cases.

5. During the exceeding period of probation, the Respondent's services were terminated by an order dated 6th December, 2012 under Clause 9 (a) (i) of the DRTA (Conditions of Appointments and Services), Regulations, 1952 ('DRTA Regulations').

6. Aggrieved by his termination of his services, the Respondent filed OA No. 3989/2013 before the CAT, which by the impugned order, set aside the termination of the Respondent and directed his reinstatement.

7. What appears to have weighed with the CAT in passing the impugned order, is that in view of the law explained by this Court in its decision dated 1st April, 2011 passed in RSA No.95/1988 (*Delhi Transport Corporation v. Shri Ramphal*), the order extending the probation of the Respondent had to be a reasoned order. Since in the present case, the order was without reasons, the termination would be during the period beyond the period of probation, and, therefore, was required to be struck down since that order itself was without reasons.

8. Learned counsel for the Petitioner pointed out that the Respondent in fact did not challenge before the CAT the order extending his probation, which had been passed on 8th December, 2011 itself. According to him, the CAT

exceeded its jurisdiction in granting relief in respect of the extension of probation without actually examining the validity of the order of termination of the Respondent's services.

9. On merits, learned counsel for the Petitioner submitted that Regulation 9 (a) (1) of the DRTA Regulations read with Clause 1 (d) of the relevant Guidelines, was attracted in the present case. He produced the original record available with the Petitioner to show that the Respondent's leave was far in excess of 60 days, which was the maximum permissible leave that could be taken by a driver on probation with the Petitioner, including the period of leave on account of illness.

10. Learned counsel for the Respondent, on the other hand, submitted that Clause 1(d) states that for termination of services of a driver on probation, one of the grounds was that "if the number of leave without pay exceeds 45 days on grounds other than illness or exceeds 60 days in all" and that in the present case, this was not fulfilled.

11. In the present case, the record reveals that the Respondent was on leave for more than 174 days in the first two years and 84 days in the extended period of probation. Therefore, there does not appear to be any arbitrariness, vitiating the decision of the Petitioner to go in for a simpliciter termination of the services of the Respondent during the period of his probation, which would render it non-stigmatic.

12. Regulation 9 (a) (i) of the DRTA Regulations, permits the Petitioner to terminate the services of an employee on probation, without notice, or pay in

lieu of notice “during the period of probation and without assigning any reasons thereof”. In the present case, therefore, the Petitioner could terminate the services of the Respondent, without assigning reasons, since it was within the extended period of probation.

13. As noticed earlier, the validity of the order of termination was not examined by the CAT. It confined itself to examining whether the extension of the probation period of the Respondent was valid, when that was in fact not put in issue by the Respondent.

14. For all of the aforementioned reasons, this Court finds the impugned order of the CAT to be unsustainable in law and hereby sets it aside.

15. The petition is allowed in above terms. Pending application is also disposed of. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 19, 2019

rd