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

Date of Decision :- 24.09.2019

+ W.P.(C) 9678/2017

DELHI TRANSPORT CORPORATION Petitioner
Through: Ms.Aldanish Rein with
Mr.Maheransh Rein &
Mr.Shamshravish Rein, Advs.

versus

VIJAY KUMAR Respondent
Through: Mr.G.S. Charya, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition assails the order dated 20.05.2017 passed by the Labour Court-XVII, Karkardooma Courts, Delhi in LCA No.40/17 whereunder the respondent's application under Section 33(C)(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'I.D. Act') was allowed and the petitioner management has been directed to pay a sum of Rs.10,71,616/- to the respondent towards his unpaid salary for the period between 01.11.2013 to 30.04.2017.

2. The respondent/workman was appointed as a Conductor in the petitioner/DTC on 06.11.1982. In February, 2008 when he was found to be suffering from a vision problem, he was asked to appear before a Medical Board constituted by the respondent, which Board advised him rest from time to time and finally on 13.10.2008 declared him unfit for performing the duties of a Conductor.

3. Based on this report dated 13.10.2008, the respondent was w.e.f. 23.06.2009 assigned table duties instead of being asked to discharge the duties of a Conductor, which post he was holding. The petitioner satisfactorily performed the table duties assigned to him till 24.09.2012, when he was transferred to Sriniwas Puri Depot, where he reported but expressed his inability to perform the duties of a Conductor. In these circumstances, he was directed by the Depot Manager, Sriniwas Puri to report back to PLD-III, which the respondent admittedly did but was not assigned any further duties by the petitioner. The respondent thereafter submitted various representations to the petitioner repeatedly requesting the management to either take him back on duty or pay him wages. It was only on 06.03.2018 that the respondent was again assigned table duties and he now stands superannuated from service.

4. Since the respondent was neither assigned any duties nor paid wages for the period between 24.09.2012 to 05.03.2018, he preferred four different LCAs, all of which came to be allowed by different though similar orders. While allowing the respondent's claims, the learned Labour Court refused to accept that the respondent had failed

to join duties and in fact observed that once the Medical Board had opined that the respondent was medically unfit to perform duties of a Conductor, it was on the petitioner to ensure that he is given light duties in accordance with his medical condition.

5. The first LCA being LCA No.225/2016 wherein wages for the period 25.09.2012 to 31.10.2013, were claimed came to be allowed vide order dated 01.03.2017 which order was assailed before this Court by way of a writ petition. Upon the writ petition being dismissed, the matter was carried forward by the petitioner to the Division Bench by way of LPA No.655/2017 which was also dismissed vide order dated 13.10.2017 and consequently, the respondent has been paid his wages for the period between 25.09.2012 to 31.10.2013.

6. In the present writ petition, the petitioner assails the similar order passed in LCA No.40/2017 in respect of the wages for the subsequent period between 01.11.2013 to 30.04.2017.

7. Learned counsel for the petitioner reiterates the same submissions as were made on behalf of the petitioner while impugning the order passed in the LCA No.225/16 for the period between 25.09.2012 to 31.10.2013. He submits that once the respondent did not perform any duties between 01.11.2013 to 30.04.2017, he was not entitled to claim any wages for the said period. He further submits that the petitioners had never refused to assign suitable duties to the respondent, but had only directed him to produce the necessary disability certificate which he failed to produce and,

therefore, it is the respondent himself, who is at fault for not being assigned any duties during the said period. He further draws my attention to letter dated 22.03.2013 issued by the Depot Manager to contend that when the respondent had, pursuant to the petitioner's directions, appeared before the Medical Board on 08.11.2012, he was asked to produce the handicapped certificate, which he failed to produce. She, therefore, prays that the writ petition be allowed.

8. On the other hand, learned counsel for the respondent while supporting the impugned order submits that there is absolutely no infirmity in the same. He submits that the issues sought to be urged by the learned counsel for the petitioner have already been considered by the Division Bench while dismissing the petitioner's LPA No.655/2017 in respect of the direction for payment of wages to the respondent for the earlier period before 25.09.2012 to 31.10.2013. He, therefore, prays that the writ petition be dismissed.

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

10. In the light of the facts set out hereinabove, I find that the present petition is squarely covered by the decision of the Division Bench in LPA No.655/2017 and, therefore, I deem it appropriate to reproduce hereunder the order dated 13.10.2018 passed in the aforesaid LPA in its entirety:-

"1. The appellant is aggrieved by the judgment of learned Single Judge which affirms the Award under Section 33C (2) of The Industrial Disputes Act, 1947. The respondent-

workman complained of denial of lawful wages, which had accrued to him for a one year period from September, 2012.

2. In the proceedings before the Labour Court, the parties have led evidence. The workman—initially engaged in 1986 as a Conductor with the appellant i.e. DTC, produced several documents including letters written to the Management from September, 2012 repeatedly asking it to take him back into employment or pay him wages. Apparently in 2008, the workman had complained of some eye problem but was allowed to rejoin in 2009 and he worked for three years. He was not given work in September, 2012. On an appreciation of all the circumstances, the Labour Court held workman entitled to Rs.2,98,828/- as back wages for the period claimed in the application. The Management of the DTC challenged the Award primarily contending that the workman had not produced the disability certificate despite repeatedly being asked to do so. Learned Single Judge however declined the submission and affirmed the Award.

3. In the appeal, learned counsel highlights that once the workman had complained of a disability, the question of his being permitted to rejoin did not arise till he satisfied the organization about his physical and medical fitness to discharge responsibilities attached to his post. It was contended that the workman had suppressed certain facts relating to his disability and was thus successful in securing a favourable Award.

4. This Court is of the opinion that the findings of the Labour Court are reasonable. Concededly, the workman had complained of some eye problem and there was break in his employment for a period of one year. Thereafter, for the period 2009-12, he worked in DTC though not as a Conductor. In these circumstances, when he reported in September, 2012 again for his duty, he was not given any work. His repeated representations went unheeded. In the meanwhile, DTC insisted to produce the disability certificate—completely negating its own decision for three

years of having accepted him and given him employment—though in a different capacity.

5. Having regard to all these facts, the Labour court in our opinion correctly appreciated circumstances and held that the workman was denied wages unjustifiedly. The conclusion of the learned Single Judge is also to the same effect. We, therefore, see no merit to interfere with the impugned order. Hence, the appeal and the application are dismissed.”

11. Once the petitioner's own Medical Board had in 2008 declared the respondent to be medically unfit, the petitioner was wholly unjustified in once again assigning the duties of a Conductor to him and that too without getting him medically re-examined. It may be noted that it is not the case of the petitioner that the respondent was ever directed to appear before any Medical Board or that he ever refused to appear before any Medical Board. I have also considered the note dated 22.03.2013, heavily relied upon by the learned counsel for the petitioner, but find that the said letter is only an internal note issued by the Depot Manager and has not been addressed to the respondent and, therefore, no cognizance thereof can be taken. In any event, once the petitioner's medical Board had declared the respondent to be medically unfit, there was absolutely no justification on the part of the petitioner in asking the respondent to produce any further medical certificate. In these circumstances, the petitioner's order directing the respondent to once again perform duties as a Conductor w.e.f. 24.09.2012, was in fact an attempt to deprive the respondent of the benefits available to him under the provisions of the

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

12. In these circumstances, I find absolutely no merit in the present petition and the same is accordingly dismissed. As the petitioner has pursuant to this Court's order dated 02.01.2018, already deposited the entire awarded amount with upto date interest, the Registry is directed to forthwith release the said amount with accrued interest thereon in favour of the respondent.

SEPTEMBER 24, 2019

gm

REKHA PALLI, J