

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

% **Date of decision: 19th November, 2020.**

+ **LPA 347/2020**

RUMAL SINGH

..... Appellant

Through: Mr. V.N. Jha, Adv.

Versus

DELHI TRANSPORT COPORATION & ORS. Respondents

Through: Mrs. Avnish Ahlawat and Ms.
Aditi Gupta, Adv. for D-1.
Mr. Dhruv Rohatgi, Adv. for
R-2&3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

CM No.29426/2020 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The applications are disposed of.

LPA No.347/2020 & CM No.29427/2020 (for condonation of 233 days delay in filing the appeal)

3. The challenge by the appellant in this Letters Patent Appeal (LPA) is to the judgment dated 11th February, 2020 of the Single Judge of this Court, partly allowing W.P.(C) No.4765/2001 filed by the appellant by enhancing the quantum of back wages awarded by the Labour Court in its Award dated 7th January, 2000 of reinstatement of the appellant in the employment of the

respondent Delhi Transport Corporation (DTC), from that awarded of 25%, to 50%. The grievance of the appellant in this appeal is twofold. Firstly that he should have been awarded 100% back wages instead of 50% and secondly that on the back wages ordered by the Single Judge of 50% also, no interest on arrears has been granted.

4. We have heard the counsel for the appellant and the counsel for the respondent DTC appearing on advance notice finally at the admission stage itself.

5. The appeal is accompanied with CM No.29427/2020 for condonation of delay of 233 days in filing thereof. The counsel for the respondent DTC at the outset has contested the appeal on this ground. The appellant has sought condonation of delay on account of the prevalent pandemic. On the contrary the contention of the counsel for the respondent DTC is that the period during which the Courts had suspended running of time has also long since passed and there is no explanation for not filing the appeal soon thereafter. It is further contended that in fact the period of limitation of 30 days for preferring this appeal lapsed prior to the lockdown effected in the city and there is no ground for granting any condonation in this case.

6. However owing to the unprecedented pandemic in the city, we are inclined to condone the delay and condone the delay in preferring the appeal and have heard the counsels on merits.

7. The appellant joined the respondent DTC on 3rd August, 1978, as a Conductor. The appellant, on 7th February, 1985 was placed under suspension and on 20th February, 1985 charged with having issued lower denomination tickets of Rs.1.60 paise each instead of Rs.2/- to a group of six

passengers, after collecting due fair of Rs.12/- from them, as detected on interception of the Delhi-Faridabad DTC Bus on which the appellant was the Conductor. Needless to state, the appellant denied the charges and an inquiry was conducted and the Inquiry Officer found the charge to have been proved against the appellant and the Disciplinary Authority of the respondent DTC, after issuing show cause notice to the appellant, passed the order dated 16th May, 1986 of removal of the appellant from service. The appellant raised an industrial dispute which was referred to the Labour Court, which framed a preliminary issue as to the validity of the inquiry held and on merits with respect to the validity of the order of termination of services of the appellant. The Labour Court, in its Award dated 7th January, 2000 has recorded (i) that it took evidence first on the preliminary issue but the respondent DTC could not lead any evidence, though the appellant examined himself and resultantly, the preliminary issue was decided in favour of the appellant and against the respondent DTC; and, (ii) that the respondent DTC made a prayer for permitting it to lead evidence to prove charges before the Labour Court and accordingly was given an opportunity for the same but the respondent DTC again failed to lead any evidence. Resultantly, the Labour Court in its award held that since the respondent DTC did not lead any evidence to bring home the charges against the appellant, the appellant was entitled to reinstatement and while so ordering reinstatement of the appellant, awarded 25% of the back wages to the appellant. The Award of the Labour Court was accepted by respondent DTC and no challenge against the same was preferred thereto.

8. The appellant, not satisfied with being awarded only 25% of the back wages, preferred the writ petition aforesaid claiming 100% back wages with interest on arrears thereof.

9. The Single Judge, in the impugned judgment/order has enhanced the award of back wages from 25% to 50%, referring to ***Management of Asiatic Air Vs. Presiding Officer, Labour*** 2004 SCC OnLine Del 853, ***Municipal Corporation of Delhi Vs. Prem Chand Gupta*** (2000) 10 SCC 115 and ***Haryana Urban Development Authority Vs. Devi Dayal*** (2002) 3 SCC 473 and observing that there was a gap of thirteen and a half years between the date of removal of the appellant from service on account of financial irregularity and the date of the award and that such increase would be fair.

10. The counsel for the appellant, in the memorandum of appeal has *inter alia* pleaded that the respondent DTC did not comply with the award dated 7th January, 2000 and reinstated the appellant in service only with effect from 1st March, 2002 and that the appellant has received 25% back wages as awarded by the Labour Court till the date of the award and 100% wages from the date of the award till the date of reinstatement, from the respondent DTC.

11. The contention of the counsel for the appellant is, (i) that the order of the Single Judge is arbitrary; (ii) that once it was proved that the departmental inquiry was vitiated, axiomatically it followed that the termination of the appellant was illegal; (iii) that once the termination was illegal, the appellant became entitled to full back wages in terms of ***Hindustan Tin Works (P) Ltd. Vs. Employees, Hindustan Tin Works (P) Ltd.*** (1979) 2 SCC 80 and ***Deepali Gundu Surwase Vs. Kranti Junior***

Adhyapak Mahavidyalaya (2013) 10 SCC 324 laying down that employee is required to be put back in the same position in which he would have been but for the illegal action of the employer; (iv) that when the termination is illegal, full back wages is the norm; (v) that if the respondent DTC wanted to avoid the liability for full back wages, the onus of proving that the appellant was employed elsewhere, was on the employer respondent DTC; (vi) that the matter is fully covered by *Jayantibhai Raojibhai Patel Vs. Municipal Council, Narkhed* (2019) 17 SCC 184; and, (vii) that the Supreme Court in *Raj Narain Vs. Union of India* (2019) 5 SCC 809 directed full back wages in the case of a workman, against whom disciplinary proceedings were initiated on the ground of forgery.

12. Per contra, the counsel for the respondent DTC has referred to *Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya* (2002) 6 SCC 41 to contend that award of full back wages on setting aside of the order of dismissal from service does not follow automatically. She has further argued that the Single Judge, in the matter of enhancing the award of back wages from 25% to 50% has exercised the discretion vested in him and against exercise of such discretion, no LPA lies and/or interference in LPA is not permissible. Reliance in this regard is placed on *Jogendrasinhji Vijaysinghji Vs. State of Gujarat* (2015) 9 SCC 1.

13. We have considered the rival contentions.

14. It is indeed unfortunate that the proceedings before the Labour Court, which Labour Courts were/are specially constituted to bring expediency to such matters by following the summary procedure, remained pending for thirteen and a half years. One of us (Rajiv Sahai Endlaw, J.) sitting singly,

in *Glaxo Smithkline Consumer Healthcare Ltd. Vs. Presiding Officer, Labour Court* 2010 SCC OnLine Del 1970 and in *Mahatta & Co. Vs. Munna Lal Shukla* 2012 SCC OnLine Del 173 commented adversely on the practice followed by the Labour Courts/Industrial Tribunals of, framing preliminary issue qua the validity of the departmental inquiry, besides the issue on merits on the validity of the termination in the event of the departmental inquiry being found to be invalid, and of recording evidence twice i.e. first on the preliminary issue and thereafter on the issue on merits. It was held that the same results in the same witnesses appearing twice and the consequential delays. Though we find LPA 421/2010 having been preferred against *Glaxo Smithkline Consumer Healthcare Ltd.* supra and on a compromise being arrived at between the parties resulting in the said judgment being set aside on consent but no appeal is found to have been preferred against *Mahatta & Co.* supra. It seems the said judgments have gone unnoticed.

15. After considering all the facts and circumstances and the contentions urged, we do not find any case to have been made out for us, exercising LPA jurisdiction, to interfere with the order of the Single Judge enhancing the award of back wages from 25% to 50% or to further enhance the award of back wages or to even direct payment of interest on the award of back wages.

16. As has emerged from the narration of facts above, the appellant, prior to his suspension from the respondent DTC, served the respondent DTC barely for seven years. Thereafter, as aforesaid, he was reinstated in 2002, in spite of the Award of the year 2000. For the said two years, without

working for respondent DTC, he has already received full wages. We have enquired from the counsel for the appellant, the year in which the appellant retired from the respondent DTC. The counsel for the appellant states that the appellant retired in the year 2014. It follows that the appellant, after reinstatement in 2002, served the respondent DTC for 12 years. Thus, the appellant, out of 36 years of his service with the respondent DTC, has worked for the respondent DTC for 19 years only i.e. nearly for half the period for which he was employed. The counsel for the appellant, on enquiry, confirms that the pension being received by the appellant is for the full 36 years of service. The net effect is that the appellant, for half the work done, is getting full pension and which, in our opinion, compensates the appellant more than enough.

17. The appellant, along with the appeal has not placed before us the proceedings sheets of the Labour Court and which alone could show, whether the long delay of thirteen and a half years for which the dispute remained pending before the Labour Court was attributable to the appellant or the respondent DTC. The counsel for the appellant however in his rejoinder arguments did draw our attention to the fact that the respondent DTC did not lead evidence, neither on the preliminary issue nor on the issue on merits, despite opportunities. However the same, in our view, does not allow us to reach the conclusion that the delay was on the part of the respondent DTC or for that reason only the respondent DTC should be burdened with 100% back wages.

18. We have enquired from the counsel for the appellant, whether the appellant stepped into the witness box to depose that he was unemployed or

to depose how he, for the long period of thirteen and a half years, was meeting his day to day expenses and whether the appellant took any step for expediting the disposal of the dispute before the Labour Court, pleading/citing his dire state or place anything on record of the Labour Court to show the dire state in which he was. A person who is dismissed from his employment and has no other employment, would ordinarily file all kinds of applications for urgency. Nothing of the sort is pleaded or shown to have been done.

19. We have enquired from the counsel for the appellant about the family of the appellant of which also there is no pleading on record. The counsel for the appellant has informed that the appellant has five sons who were all minor at that time and only two of which were of school going age and were going to a private school. On enquiry about the other family members, it is informed that the wife of the appellant was/is not earning and that the appellant, during the said period and even now lives in his father's house. On enquiry, whether the father of the appellant was dependant on the appellant, the answer is in the negative and it is informed that the father is in the business of vegetable vending and earns therefrom. On further enquiry, it is informed that the father of the appellant was bearing the expenses of the appellant and his family and also paying the school fee of the children of the appellant.

20. We may, in this context, record that though undoubtedly the rule of evidence provides that evidence can be given of a positive fact and not in negative but at the same time it cannot be lost sight of that public sector entities like the respondent DTC are manned by officials, none of whom

have a personal interest and which results in a certain amount of laxity in litigations/dispute. There is no plea anywhere, of anyone in the respondent DTC being vindictive to the appellant, for the bus in which the appellant was a Conductor to be intercepted and action to be taken against the appellant. In the same vein, normally public sector corporations like the respondent DTC do not go about making enquiries, whether workers dismissed by them and whose claims are pending before the Industrial Tribunal/Labour Court are engaged in any other vocation. Had the appellant stepped into the witness box before the Labour Court, which though he did on preliminary issue but not when evidence on the issue on merits was being recorded, the Labour Court, would have had an occasion to quiz the appellant on how he was meeting his day to day expenses and which would have brought out the truth.

21. It is also not as if the Labour Court, in its award, whimsically awarded 25% back wages. The Labour Court reasoned, (a) that the appellant had done no better than merely making an allegation that he was unemployed since termination; (b) that he had not alleged or proved that he made any efforts to find alternative employment; (c) that he did not enter the witness box to prove the efforts made by him; (d) that he had not alleged that he got himself registered with Employment Exchange; (e) that it cannot be believed that he would sit idle throughout the period of 12 years; (f) that the respondent DTC was a Public Sector Undertaking, running into losses, and award of 100% back wages would put unreasonable burden on the respondent DTC; and, (g) that award of 25% of the back wages would be fair to both sides.

22. The fact that the father of the appellant was in the business of vegetable vending and was able to support the large family of the appellant also, leads to suspicion that the appellant either also joined the same business or found some other vocation and for which reason did not express any urgency before the Labour Court.

23. We have perused the judgments cited by the counsel for the appellant and are unable to decipher any rule that reinstatement in employment should always be accompanied with full back wages except for the period for which alternate employment is proved. *Hindustan Tin Works (P) Ltd.* supra itself lays down that there cannot be a straightjacket formula for awarding back wages and all relevant considerations will enter the verdict and that it is a motion addressed to the discretion of the Labour Court/Tribunal and which will be exercised in a judicial and judicious manner and for reasons to be recorded. It was further held in the same judgment that the fact that the employer was running into losses would be a consideration in this respect. The Labour Court in the present case, as aforesaid has given reasons in consonance with the said judgment. In *Deepali Gundu Surwase* supra, the Tribunal had returned a finding of the suspension and termination of the workman therein to be "per se illegal", arbitrary and vitiated and awarded full back wages giving reasons. It was in these circumstances that the Supreme Court interfered with the judgment of the High Court not interfering with the finding of "per se illegality" but denying any back wages to the workman. This is not the case here. Similarly, in *Raj Narain* supra also full back wages were awarded for the reason of the management though initiating disciplinary proceedings against the workman for involvement in forged payments but itself dropping the said proceedings after some time. It

is not so here. Lastly, **Jayantibhai Raojibhai Patel** supra does not lay down anything more than already said in **Hindustan Tin Works (P) Ltd.** supra, a judgment of three Judges Bench and itself is not a case of award of full back wages; lump-sum damages were awarded in that case.

24. On the contrary, **Hindustan Motors Ltd.** supra cited by the counsel for the respondent DTC, in view of the time for which the litigation had remained pending only 50% of back wages were awarded. As far as **Jogendrasinhji Vijaysinghji** supra is concerned, the same lays down that maintainability of an LPA depends upon the pleadings in the writ petition and the nature and character of the order passed by the Single Judge and the direction passed by the Single Judge; where the challenge before the Single Judge could have been made only under Article 227 of the Constitution of India, the writ petition even if also labelled as under Article 226, no LPA would lie; however if the directions issued by the Single Judge also entail invocation of Article 226, an LPA would lie. We are of the view that the direction issued by the Single Judge in the present case cannot be said to be in the confines of Article 227 alone and it cannot be said that this appeal is not maintainable.

25. The Single Judge in the impugned judgment, in our view has rightly referred to (i) **Prem Chand Gupta** supra where full back wages were denied reasoning that the litigation had remained pending for unduly long time, even if for no fault of contesting parties, to saddle the employer Municipal Corporation of Delhi (MCD) in that case which was for public benefit, with full back wages would be too harsh on MCD and that the workman in that case had not done the work for which was to be paid wages; and, (ii) **Devi**

Dayal supra where also full back wages were denied citing the short period for which the workman was in employment and reasoning that, in all probability he would have been working elsewhere earning wages since he did not give evidence that he could not earn anything.

26. We may mention that even in the 1980s, in *Surendra Kumar Verma Vs. Central Government Industrial Tribunal-cum-Labour Court, New Delhi* (1980) 4 SCC 443, the fact of the industry having closed down or being in severe financial doldrums and award of full back wages placing the industry inequitable position was held to be an exception to the award of full back wages. Mention may also be made of *Allahabad Jal Sansthan Vs. Daya Shankar Rai* (2005) 5 SCC 124 where it was held that though in earlier times reinstatement with full back wages was the usual result but with the passage of time it had been realised that the industry was being compelled to pay the workman for a period during which he did not contribute anything and that it was necessary to develop a pragmatic approach. Similarly, in *U.P. State Brassware Corpn. Ltd. Vs. Uday Narain Pandey* (2006) 1 SCC 479, dealing with the earlier judgments, it was held that the use of the word "ordinarily" therein indicated that the rule laid down therein, of reinstatement being followed with full back wages, was not a cast iron rule and permitted flexibility in those cases where the employer was prejudicially affected. In *Rajasthan State Road Transport Corporation Vs. Phool Chand* (2018) 18 SCC 299 also it has been held that a workman has no right to claim back wages from his employer as of right only because the Court has set aside his dismissal and directed his reinstatement; it is necessary for the workman in such cases to plead and prove with the aid of

evidence that after his dismissal he was not gainfully employed anywhere and that the initial burden is on the employee.

27. We may add that, wages are a consideration for work done and ordinarily there should be no wages, if no work has been done. The appellant in the present case has not pleaded or proved his readiness and willingness to work during the period of his suspension and/or during the period of his dismissal. It is not the case that any application was filed or any offer was made, to render services, without prejudice to his rights and contentions and subject to the outcome of the dispute qua dismissal raised. Furthermore, in the absence of proof of having borrowed money to survive, and in the absence of any plea or proof that the amounts spent on livelihood during the period of dismissal so borrowed or required to be repaid, back wages of 25% or now 50%, is akin to compensation for wrongful termination and no case for award of full back wages is warranted. Just like with passage of time, urgency of compassionate appointment disappears, as was noted by this Bench recently in *Shubham Kumar Tyagi Vs. Union of India* MANU/DE/1525/2020, so does the need for reimbursement of living expenses for the period bygone.

28. There is no merit in the appeal.

29. Dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

NOVEMBER 19, 2020/‘bs’