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

+ **W.P.(C) 6444/2002**

DELHI TRANSPORT CORPORATION Petitioner

Through: Mr. Sarfaraz Khan, Advocate.

versus

ASHOK KUMAR & ORS Respondents

Through: Mr. Abdhesh Chaudhary and Ms.
Saksh Arora, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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30.01.2020

This petition impugns the challan of a Recovery Certificate dated 19.08.2002, whereby an amount of Rs. 2,37,254/- was sought to be recovered from the petitioner, employer of the respondent. The Certificate has been issued to give effect to the order dated 24.05.1996 passed by the learned Industrial Tribunal, which directed *inter alia* the reinstatement of the respondent no. 1-workman with full back wages and continuity of service. However, before an appeal could be filed, the management of the workman-respondent no. 1 entered into a settlement on 05.03.1997 which records *inter alia* as under:

“.....

As such the matter may be mutually settled on the following terms and conditions:

- 1. Shri Ashok Kumar will be re-instated in service with continuity of his previous appointment on the terms and conditions of appointment to the post of Conductor already*

conveyed to him vide memo No. PLD-V 1/5/83/6211 dated 19.5.88.

- 2. He will be considered for re-instatement in services on the same position on the pay drawn by him at the time of removal.*
- 3. That the period of absence from duty of Shri Ashok Kumar from the date of removal to till he reports for duty will be treated as Leave without pay.*
- 4. That the workman would not be entitled to any monetary benefits or payment of any pay and allowances for the intervening period i.e. from the date of removal to the date he joins duty.*
- 5. That the workman, will however, be entitled to continuity of service and will retain his seniority in the cadre of Conductor but the intervening period will not be taken into account for the purpose of earning increments, leave benefits, bonus and other ancillary benefits.*
- 6. That the workman concerned will accept the terms and conditions as stipulated here-in-above and he shall not agitate or raise any dispute in the matter in future in any court of law or otherwise personally or through some unions as this matter now stands finally settled between the parties named above.*
- 7. That he will have also to withdraw the case from the court which is still pending.*
- 8. Gratuity and C.P.F. etc. paid to him under the provisions of said acts at the time of removal of service shall be deposited back by him with interest with the DTC before resuming duty otherwise the said amount will be adjusted at the time of retirement without giving any benefits for the intervening period.*
- 9. That the workman has gone through and understood the contents of this agreement/settlement and has accepted the same. Voluntarily with free will and without any pressure or coercion.*

..... ”

Clause (4) and (5) are relevant inasmuch as respondent no. 1-the workman, had agreed that he would not be entitled to any pay and allowance for the period of his removal till the date he resumes duty with the DTC. He also accepted that he would be entitled to continuity of service and would retain his seniority in the cadre of Conductor, but the intervening period would not be taken into consideration for the purpose of earning increments, leave benefits, bonus and other ancillary benefits. The order of reinstatement was issued on the very next day of the settlement i.e. 06.03.1997, the respondent no. 1 promptly joined duties thereafter and worked till his superannuation on 31.03.2019. For reasons unexplained, respondent no.1-workman initiated recovery of the aforesaid amount in terms of the order of the learned Industrial Tribunal. Albeit, he had himself forgone the said amounts by way of the settlement.

The learned counsel for the petitioner contends, that had the settlement not been brought about, possibly the employer-DTC would have taken legal recourse against the award. Respondent no.1-workman had worked for more than four years without any complaint or dispute, therefore, there was an acceptance that the *lis* had been duly settled. Agitation of a settled *lis* would not be maintainable in law.

The respondents contend that the said agreement was made under duress, however, there is nothing on record to substantiate this allegation, either by way of any protest or complaint to the senior authorities in the DTC or to the police or to the GNCTD or before any Court, that the workman was actually coerced to settle the dispute. Since the contention is unsubstantiated, it is untenable and is rejected.

Interestingly, the learned counsel for the respondents submits that

respondent no. 1-workman ought to be given the benefit of continuity of service relying upon clause (5) of the said agreement. Paradoxically, he first negates the agreement and then seeks to rely upon it. Be that as it may, insofar as respondent no.1 has been granted re-instatement on the basis of the said agreement, clause (5) shall be given full effect apropos retiral benefits due to the workman who has since superannuated on 31.03.2019.

Let the computation of his retiral benefits in terms of the settlement be furnished to respondent no.1-workman within a period of two weeks from today and requisite monies be released to him, if not already released.

Should the respondent still have any grievance, it will be open to him to approach the Court.

The petition is disposed-off in the above terms.

A copy of this order be given *dasti* to the learned counsel for the parties under the signature of the Court Master.

JANUARY 30, 2020

AB/RW

NAJMI WAZIRI, J