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

+ RSA 18/2020

DELHI TRANSPORT CORPORATION Appellant
Through: Mr.Sarfaraz Khan, Adv.

versus

GULAB SINGH Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **07.02.2020**

CM 5146/2020

Exemption allowed, subject to all just exceptions.

**CM 5147/2020(delay of 17 days in filing the appeal) and CM 5148/2020
(delay in re-filing)**

These are applications seeking condonation of 17 days delay in filing of the appeal and 50 days in re-filing of the appeal.

For the reasons stated in the applications, the delay as stated hereinabove is condoned and applications stand allowed.

RSA 18/2020 & CM 5145/2020

1. This appeal has been filed challenging the judgement and order dated 09.08.2019 passed by the learned Additional District Judge-06, Central, Tis Hazari Courts, Delhi, allowing the appeal filed by the respondent, being RCA DJ 61469/2016, against the judgement and order dated 11.10.2013 passed by the learned Civil Judge, which had dismissed the suit of the respondent.

2. The respondent was appointed as Tyre-man by the appellant on 13.07.1982. He was suspended on 06.09.1986 and his services were terminated by the appellant on 22.01.1987 on the allegation that he had misbehaved with the security guard on duty. In the criminal case filed, the respondent was acquitted by an order dated 05.09.1988 passed by the learned Metropolitan Magistrate. Thereafter, the respondent raised an industrial dispute before the learned Labour Court and the learned Labour Court, Delhi, passed an Award dated 24.12.1999 directing his reinstatement with continuity of service and all consequential benefits but without back wages. The respondent was eventually reinstated in service only on 10.12.2001. Feeling aggrieved with the fixation of the pay scale, the respondent filed a suit, being Civil Suit No.1075/2010, which, was dismissed by the Court of the learned Civil Judge-06, Central, Tis Hazari Courts, Delhi by the judgement and order dated 11.10.2013. The respondent feeling aggrieved of the same, challenged it in form of an appeal, which has been allowed by the Impugned Judgement.

3. The learned counsel for the appellant submits that the relief granted by the learned Appellate Court by its Impugned Judgement and Order goes much beyond the relief claimed by the respondent in his suit. He submits that the said suit is merely one of recovery of money based on the alleged incorrect re-fixation of the pay scale by the appellant. In said suit, the direction of the learned Appellate Court for fixation of the notional pay for purposes of pension, gratuity and contributions to provident fund etc., could not have been passed.

4. I have considered the submissions made by the learned counsel for the appellant, however, find no merit in the same. As noted hereinabove, the

learned Labour Court in its Award dated 24.12.1999 had directed reinstatement of the respondent with continuity of service and all consequential benefits. Only back wages were denied. This Court in its judgement, titled *Mahabir Prasad vs. Delhi Transport Corporation*, 212 (2014) DLT 503 (DB), has held that where the employee is ordered to be reinstated without back wages but with continuity of service, the reinstated employee shall be entitled to notional increments for the duration he was out of employment, in the grade and the equivalent grade which replaced it later, till he reached the end of the pay-scale. The consequential benefits directed by the Award of the learned Labour Court would therefore, also include the consideration of this period for the purposes of pension, gratuity and other benefits as well.

5. The respondent in his suit had prayed for the following relief:

“(i) pass a decree of mandatory injunction in favour of the plaintiff and against the defendant, thereby directing the defendant to correct fixation of basic pay scale as per award dated 24.12.1999 accordingly as per the Calculation Fixation Chart as Annexure-P annexed with the present suit and to pay the remaining dues of Rs.1,76,546/- (w.e.f. 24.12.1999 to 31.09.2010) alongwith interest thereto; and to pass the order to pay the basic salary amount in the correct ratio till its realization or in future;

(ii) pass a decree of declaration in favour of the plaintiff and against the defendant, thereby to be declared the letter/reply dated 24.07.2009 bearing No. BD/PFC(W)/2009/3823 and reply dated 18.11.2010 bearing No.BD/PFC(W)/2010/3439 issued by the Depot Manager as null & void and to treat the plaintiff continuity in service since the date of appointment i.e. 03.07.1982.”

6. The relief granted by the learned Appellate Court shall fall within the scope of prayers made in the plaint. I, therefore, find no infirmity in the judgement and order passed by the learned Appellate Court.

7. The appeal is accordingly dismissed.

NAVIN CHAWLA, J

FEBRUARY 07, 2020/Arya