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

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Date of decision: 18.08.2021

+ **LPA 42/2020, CM APPLs. 2456-58/2020, 16115-16/2020 & 26498/2020**

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

versus

JAGDISH Respondent
Through: Mr. Jawahar Raja with Ms. Meghna De, Mr. L. Gangmei, Mr. Archit Krishna and Ms. Varsha Sharma, Advocates for R-1.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J.: (ORAL)

[Court hearing convened via video-conferencing on account of COVID-19]

1. This is an appeal directed against the judgement dated 31.10.2019, passed by the learned Single Judge, in W.P.(C.) No. 2542/2007.

1.1. The appellant before us is the writ petitioner i.e., the Delhi Transport Corporation.

2. Mr. Sarfaraz Khan, who appears on behalf of the appellant/DTC, says that the learned Single Judge, *via* the impugned judgement, has sustained the award dated 21.03.2006, passed by the Industrial Tribunal, concerning ID No.15/2005, without having regard to the fact that, the order of termination

qua the respondent/workman was passed on 14.07.1998 and the respondent/workman moved the Industrial Tribunal only in 2005 by way of an application, under Section 33A of the Industrial Disputes Act, 1947 (in short 'the I.D. Act').

2.1. In sum, it is Mr. Khan's submission that, the impugned award [which has been sustained by the learned Single Judge] not only reinstates the respondent/workman but has also granted full back wages and continuity of service, despite respondent/workman having not approached the Industrial Tribunal for nearly 7 years, after the order of termination was passed qua him in 1998.

3. It is, however, not disputed by Mr. Khan that, when the order of termination was passed by the appellant/DTC, on 14.07.1998, an industrial dispute, between the parties herein, was pending before the Industrial Tribunal, which was registered as ID No.52/1997.

3.1. Mr. Khan also does not dispute the fact that, no application was preferred by the appellant/DTC before the Industrial Tribunal for seeking approval, before passing the order of termination dated 14.07.1998, in terms of Section 33(2)(b) of the I.D. Act.

4. It is a matter of record that, the respondent/workman, having become aware of the order of termination, passed by the appellant, moved an application before the Industrial Tribunal, under Section 33A of the I.D. Act, which led to the impugned award dated 21.03.2006, being passed.

5. Both, the Industrial Tribunal as well as the learned Single Judge have relied upon the judgment of the Constitution Bench of the Supreme Court rendered in '*Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma & Ors.*, (2002) 2 SCC 244' to reach the conclusion that, the order

of termination dated 14.07.1998, passed by the appellant/DTC, was *void ab initio/non-est* in the eyes of law as it was passed without the approval of the Tribunal even while the dispute obtaining between parties was pending before it. It is based on this rationale that, the Industrial Tribunal has directed not only the reinstatement of the respondent/workman, but also ordered, payment of full back wages, and continuity in service.

6. We may note that, the Industrial Tribunal had indicated, in its award dated 23.03.2006, that the enquiry held *qua* the respondent/workman, before ordering his termination from service, was in order. However, having regard to the fact that, no approval was taken by the Tribunal, as required under Section 33(2)(b) of the I.D. Act, it concluded that the order of termination dated 14.07.1998, could not be sustained. For this purpose, it would be relevant to extract the relevant portion from the judgement of the Supreme Court in the ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.*** case (supra), as the same, according to us, is apposite in this case: -

“15. The view that when no application is made or the one made is withdrawn, there is no order of refusal of such application on merit and as such the order of dismissal or discharge does not become void or inoperative unless such an order is set aside under Section 33A, cannot be accepted. In our view, not making an application under Section 33(2)(b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to Section 33(2)(b). An employer who does not make a application under Section 33(2)(b) or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. If it is so done, he will be happier or more comfortable than the employer who obeys the command of law and makes an application inviting scrutiny of the authority in the matter of granting approval of the action taken by him. Adherence to and obedience of law should be obvious and

necessary in a system governed by rule of law. An employer by design can avoid to make an application after dismissing or discharging an employee or file it and withdraw before any order is passed on it, on its merits, to take a position that such order is not inoperative or void till it is set aside under Section 33A notwithstanding the contravention of Section 33(2)(b) proviso, driving the employee to have recourse to one or more proceeding by making a complaint under Section 33A or to raise another industrial dispute or to make a complaint under Section 31(1). Such an approach destroys the protection specifically and expressly given to an employee under the said proviso as against possible victimization unfair labour practice or harassment because of pendency of industrial dispute so that an employee can be saved from hardship of unemployment.”

7. Having regard to the aforesaid, we find that there is, no error, in law or on facts, in the judgement of the learned Single Judge, dated 31.10.2019, as also the award, dated 23.03.2006.

7.1. Mr. Khan’s argument that, the Industrial Tribunal ought not to have granted the relief of full back wages and continuity of service, given the long gap in the time, when the order of termination was passed, i.e., in 1998, and the date on which he approached the Industrial Tribunal i.e. in 2005, has no merit.

7.2. Once the order of termination is rendered *non-est* in the eyes of law, the logical consequences should follow. To our minds, the principle, which the Courts have applied qua illegal termination, would be applicable, in such a case as well, i.e., once it is found that the services of the workman were illegally terminated, he would be entitled to full back wages, unless it is proved by the employer, that the workman was gainfully employed. [See **Hindustan Tin Works vs. Employees**, (1979) 2 SCC 80; **Surendra Kumar Verma vs. Central Govt. Industrial Tribunal-cum-Labour Court**, (1980) 4

SCC 443; and *Badshah Singh vs. Delhi Jal Board*, 2019 SCC OnLine Del 9844] In our opinion, any other view would amount to putting premium on illegality. The fact that the employer is duty bound to take approval of the Tribunal, cannot be simply sidestepped, by supporting the position of the employer, which is that, an enquiry was held, which was fair. The emphasis of the Constitution Bench of the Supreme Court in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. case* (supra) that orders of dismissal passed by an employer, without approval of the Tribunal, under Section 33(2)(b) of the I.D. Act, are inoperative or void, emphasized this principle with greater force.

7.3. Mr. Khan also submitted that, the order of termination was passed, when the judgement of the Supreme Court had not been rendered in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. case* (supra). It was pointed out by him that, the said judgement was rendered only in 2002. According to us, this submission is also without merit. The Supreme Court has declared the law as it ought to be. The Court has not stated that the judgement would apply prospectively. This argument is, thus, untenable.

7.4. However, assuming that, according to the appellant/DTC, the position of law became clear only in 2002, it chose not to take any steps even thereafter, i.e., withdraw the order of termination dated 14.07.1998 and approach the Industrial Tribunal for necessary approval, under Section 33(2)(b) of the I.D. Act.

8. Thus, for the aforesaid reasons, the appeal is dismissed. The interim order dated 22.01.2020 shall stand vacated.

9. The pending applications shall also stand closed. The case papers shall be consigned to the record.

10. Resultantly, CM 16115/2020, filed on behalf of the respondent, seeking release of the amount deposited by the appellant, with the Registry of this Court, in terms of the order dated 22.01.2020, is allowed.

11. The Registry will release the amount deposited by the appellant [which was only 50% of the awarded amount], in terms of the order dated 22.01.2020, along with accrued interest, to the respondent, forthwith.

RAJIV SHAKDHER, J

TALWANT SINGH, J

AUGUST 18, 2021

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[Click here to check corrigendum, if any](#)