

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

% **Date of decision: 8th March, 2021.**

+ **LPA 215/2020 & CM APPL. 19516/2020 (for stay).**

DELHI TRANSPORT CORPORATION **Appellant**

Through: Ms. Avnish Ahlawat, Adv.

Versus

DHEER SINGH **Respondent**

Through: Mr. Umesh Suri, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The appeal impugns the judgment dated 28th July, 2020, in W.P.(C) No.6204/2017 preferred by the appellant impugning the Award dated 6th September, 2016 of the Labour Court in an industrial dispute referred for adjudication.

2. We have heard the counsel for the appellant Delhi Transport Corporation (DTC) as well as the counsel for the respondent/workman.

3. The respondent/workman was employed as a driver with the appellant DTC. On 10th January, 2006, he was on duty on route no. 33 from Bhajanpura to Noida, with Sat Pal Singh as the conductor on the said bus. The said bus met with an accident near the subway at Gokalpuri, Delhi; no injury however was caused to any passenger and no damage done to the bus. The Police Control Room van which was immediately called to the site, took the driving license and badge of the respondent/workman and

handed over the same to the conductor Sat Pal Singh for deposit with the appellant DTC. Disciplinary proceedings were initiated against the respondent/workman, resulting in the Disciplinary Authority of the appellant DTC, on 30th June, 2006, terminating the respondent/workman from service.

4. On the respondent/workman raising an industrial dispute, the following reference was made to the Labour Court:-

“Whether services of Sh. Dheer Singh S/o Sh. Dharam Singh have been terminated illegally and/or unjustifiably by the management; if so, to what relief is he entitled?”

5. The Labour Court, vide order dated 28th May, 2016 held that the enquiry conducted by the appellant DTC was fair, proper and valid. Vide Award dated 6th September, 2016, the Labour Court found/held that the accident was caused owing to the respondent/workman, at the time of accident, having been drunk and having indulged in drunken driving, causing him to ram the bus into the subway. Notwithstanding the said finding, the Labour Court, reasoning that (i) the respondent/workman had joined the Management as driver in the year 1980 and had prior to termination of his services on 30th June, 2006 had served for 26 long years; (ii) the appellant DTC, while terminating his services, did not take into account the length of service of the respondent/workman; (iii) the respondent/workman had two sons and two daughters and his younger son as well as his wife were suffering from AIDS; (iv) the wife of the respondent/workman was also suffering from slip disk; and, (v) these facts also were not taken into account while deciding whether the services of the

respondent/workman be terminated or not, held the removal of the respondent/workman from service to be unjustified. The Labour Court further reasoned that though the respondent/workman had started committing misconduct since 1983 and was having as many as 31 adverse entries against him, but keeping in view the health of his family, the misconduct of drunken driving ought not to have resulted in dismissal. The Labour Court thus held that it was a fit case for the respondent/workman to be not entitled to continue in service as a driver, beyond 55 years of age and which the respondent/workman had already reached. The Labour Court accordingly modified the punishment meted out by the Disciplinary Authority of the appellant DTC to the respondent/workman, of removal from service, to that of reinstatement with 50% back wages, from the date of termination till the respondent/workman achieved the age of 55 years, with all consequential benefits.

6. The Single Judge, in the impugned judgment, observing that the Labour Court, considering the mitigating circumstances aforesaid had awarded 50% of the back wages only to the respondent/workman and considering the long service of the respondent/workman, has refused to interfere with the Award.

7. The Single Judge, in the impugned judgment has recorded that vide interim order dated 24th July, 2017 in the writ petition, 50% of the Award amount had been directed to be deposited with the Syndicate Bank, DTC Depot IP Estate, Delhi; consequent to refusal to interfere with the Award of the Labour Court, the Single Judge has directed the said amount together with interest accrued thereon to be released to the respondent/workman.

Since the Award amount comprised of only 50% of back wages from date of termination till the respondent/workman attain age of superannuation of 55 years and since vide order dated 24th July, 2017 only 50% of the Award amount had been directed to be deposited, the Single Judge, in the impugned judgment directed appellant DTC to pay to the respondent/workman the remaining 50% of the Award amount together with interest, instead of @ 9% p.a. as ordered by the Labour Court, @5% p.a.

8. The counsel for the appellant DTC has contended that the Labour Court, nowhere in the Award has set aside the order of removal of respondent/workman from service and without setting aside of the order of termination, the Labour Court could not have passed the order of reinstatement with back wages. It is argued that drunken driving has been viewed very seriously in *M.L. Singla Vs. Punjab National Bank* (2018) 18 SCC 21 and in recent order in *Om Pal Singh Vs. Disciplinary Authority* (2020) 3 SCC 103.

9. The counsel for the respondent/workman has drawn attention to the dicta of this Court in *Delhi Transport Corporation Vs. Ramphal* MANU/DE/3016/2005, cited by the Labour Court as well as by the Single Judge also, and has contended that the respondent has already suffered on account of denial of 50% of the back wages and on account of his age of superannuation being reduced to 55 years but has still accepted the subject punishment and chosen not to challenge the same. It is also emphasised that the reference to the Labour Court was not only qua illegality of termination but also qua justifiability of the termination and it is argued that though the

Labour Court has not held the termination of service of the respondent to be illegal but held the same to be unjustified and accordingly granted the relief. Attention is also drawn to Section 11A of the Industrial Disputes Act 1947 in this regard.

10. There can be no doubt or two views, that for a driver in a public transport, the misconduct of being drunk at duty, which is also against the Motor Vehicles Act 1988 and the Rules framed thereunder, is a misconduct of the highest degree, deserving of no sympathy. To that extent, the contention of the counsel for the appellant DTC has to be accepted.

11. However what we find in the present case is that the Labour Court, in exercise of powers vested in it under the Industrial Disputes Act, notwithstanding the finding of the respondent/workman having committed such misconduct, for the reasons recorded (and as noted above), has still, though not coming in the way of not permitting the respondent/workman to in future drive a public transport bus, as was the purport of order of removal from service, deemed it appropriate to confer monetary benefit in the form of 50% of back wages, on the respondent/workman, to ensure that the family of the respondent/workman does not suffer in penury. What we also find is that the Single Judge, in exercise of inherent discretionary powers in exercise of jurisdiction under Article 226 of the Constitution of India, refused to interfere with the powers so exercised by the Labour Court in granting monetary benefit to the respondent/workman.

12. As far as the contention of the counsel for the appellant DTC, that the said monetary benefit in the form of back wages could not have been awarded without setting aside the order of removal from service and which

had not been done, is concerned, a careful perusal of the Award of the Labour Court shows the Labour Court to have, by holding the punishment meted out of removal from service to be unjustified, disagreed with the said punishment and which tantamounts to setting aside of the same. Moreover once the Labour Court has modified the punishment of removal from service to that of deemed superannuation of the respondent/workman at the age of 55 years with 50% of back wages from 1st July, 2006 i.e. the date of termination till the age of superannuation i.e. 30th November, 2011, it is implicit that the punishment of removal from service stands set aside.

13. To enable us to adjudicate, whether to interfere in this intra court appeal with the Award of the Labour Court in exercise of the special powers vested in it and with the discretion exercised by the Single Judge, we have enquired from the counsels, whether the consequence of the Award would be to entitle the respondent/workman to pension also, in as much as it is felt that if it is so, the same would be no punishment considering the grave misconduct committed by the respondent/workman.

14. While the counsel for respondent/workman states that the respondent/workman, as part of consequential benefits awarded by the Labour Court would also be entitled to pension, the counsel for the appellant/DTC, after taking instructions informs that the respondent/workman having not opted for pension, is not entitled thereto.

15. Once it is so, we, in exercise of our powers of letters patent jurisdiction, save as herein below, hesitate to interfere with the judgment of the Single Judge refusing to interfere with the Award of the Labour Court. We say so because we find the Labour Court to have justified the exercise

of its power under Section 11A of the Industrial Disputes Act, to set aside the order of dismissal and to give such other relief to the workman as it deems fit, by setting out as many as five reasons as recorded above and none of which reasons are contested by the appellant/DTC. It thus cannot be said that the exercise of such powers by the Labour Court is arbitrary or whimsical. The Labour Court was swayed by the long service rendered by the respondent/workman and felt that for one misconduct of drunken driving, even though grave, the family of the respondent/workman should not suffer. The Single Judge of this Court also has followed well established principles of interference in exercise of powers under Article 226 of the Constitution of India with jurisdiction properly exercised, by refusing to interfere with the Award. Once it is so, even if we were of a different opinion, we would not be entitled to substitute our opinion for that of the Labour Court and the Single Judge once the said opinion has been formed on uncontroverted facts having relevance to the decision to be taken. Even otherwise, the Single Judge records that in compliance of the order of deposit of 50% of the Award amount, Rs.3,65,957/- was deposited by the appellant DTC, indicating that towards 50% of the back wages, the liability of the appellant DTC is of a little over Rs.7 lacs only, besides of course consequential benefits not including pension.

16. We are however of the view that in the facts, the appellant DTC ought not to be burdened with interest, even @5% p.a., on the balance 50% of the Award amount. Accordingly, while not interfering with the direction of the Single Judge permitting the respondent/workman to withdraw the amounts deposited with interest, we order that if the appellant DTC pays a balance Award amount and other consequential benefits to the

respondent/workman on or before 15th May, 2021, it shall not be liable to pay any interest whatsoever; however if the payment is not made within the said time, the appellant DTC shall be liable for interest as directed by the Single Judge.

The appeal is disposed of.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

MARCH 8, 2021

‘pp’..



सत्यमेव जयते