



\$~

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

Reserved on: 21st February, 2022

Date of Decision: 15th March, 2022

+ **W.P.(C) 3207/2014 & CM APPLs.19708/2014, 12790/2015**

DELHI TRANSPORT CORPORATION Petitioner

Through: Ms. Bhakti Pasrija & Mr. Moksh
Pasrija, Advocates.

versus

RAJ KUMAR GUPTA Respondent

Through: Mr. G.S. Charya, Advocate.

AND

+ **W.P.(C) 3218/2014**

RAJ KUMAR GUPTA Petitioner

Through: Mr. G.S. Charya, Advocate.

versus

DELHI TRANSPORT CORPORATION Respondent

Through: Ms. Bhakti Pasrija & Mr. Moksh
Pasrija, Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through video conferencing.

Brief Facts

2. The Petitioner-Corporation (*hereinafter* “Corporation”) has challenged the impugned orders dated 21st September, 2013 in *O.P. No. 501/92* titled *M/s Delhi Transport Corporation v. Sh. Raj Kumar Gupta* and



I.D. No. 400/93 titled ***Shri Raj Kumar Gupta v. Delhi Transport Corporation*** by which the Respondent-Workman (*hereinafter* “*Workman*”) has been awarded reinstatement, after holding that the termination of the Workman was illegal and unjustified and the enquiry conducted by the Corporation was vitiated. Similarly, the Workman was held to be not guilty of misconduct in ***O.P. No. 501/92***, and the approval application of the Corporation was rejected.

3. Before proceeding to the impugned orders, this Court notes that the present matter has had a long history of litigation. A brief background of the present matter is as below.

4. The Workman was appointed as a Conductor with the Corporation on 9th March, 1982, and was in service for a period of approximately 10 years. In January, 1992, it is the case of the Corporation that the Workman was absent unauthorizedly between January to May, 1992, and there were 12 adverse entries also in his service book. The case of the Workman was that his wife was suffering from cancer and accordingly, he had put in applications for leave which were kept pending for sanction by the Corporation. It is not in dispute that the leave was not sanctioned. However, a charge-sheet being charge sheet no.RN-2/AIT/CS-119/92/380, was issued by the Corporation to the Workman on 21st July, 1992, and a domestic enquiry was also conducted by the Corporation. Post the enquiry, a show cause notice dated 29th/30th September, 1992, was issued to the Workman as to why he should not be removed from service due to the misconduct. On 22nd October, 1992, he was removed from service after an enquiry conducted by the Corporation.

5. The Corporation filed an application before the Labour Court seeking approval of its action under Section 33(2)(b) of the ID Act. A separate parallel



challenge was also raised by the Workman challenging his removal from services.

6. In so far as the approval application under Section 33(2)(b) of the ID Act, in **O.P. No.501/1992**, the Labour Court dismissed the same vide order dated 27th March, 2003, holding the termination to be in violation of the principles of natural justice. This order was challenged in **W.P.(C) 3750/2004**.

7. Thereafter, order dated 25th November, 2004, was also passed by the Labour Court in **ID No.400/93** concerning the validity of the termination of the Workman. Vide the said order, the preliminary issue of enquiry was decided and the enquiry was held to be defective and violative of principles of natural justice. Subsequently, vide order dated 5th July, 2005, the termination of the Workman was held to be illegal and the relief of reinstatement with 60% back wages and other consequential benefits was granted. The operative portion of the said award dated 5th July, 2005, reads as under:

“6. The issue No. 1 was framed on the pleadings of the parties regarding domestic enquiry and treated as preliminary I Issue. The Parties were directed to lead evidence on the enquiry issue and thereafter it was decided vide order dated 25.11.2004 in favour of the Workman and against the Management.

7. The well settled law is that if in case enquiry proceedings are vitiated by the order of the Court then Management must be granted opportunity prove misconduct before the Court; The Management was granted more than sufficient opportunities to prove misconduct before the Court since 22.12.2004 to 6,5.2005. The Management failed to adduce any evidence on misconduct, therefore, the Court left with no other option but to close M.E.



The Management also not produced any evidence on gainful employment' Hence Management miserable failed to prove if misconduct against the workman.

RELIEF:

8. On the basis of findings of enquiry issue and non proving of misconduct before the Court by the Management, the workman has proved that his services were terminated by the Management illegally and/ or unjustifiably. Therefore, he is entitled for the reliefs of reinstatement, 60% back wages, continuity of service and all other legal benefits. Reference is answered accordingly. Copy of the award -be sent to appropriate Government within 30 days from the receipt of the award. File be consigned to Record room."

8. The Corporation challenged the award of the Labour Court dated 25th November, 2004 and 5th July, 2005 in **WP(C) 16896/2006**. Vide order dated 15th November, 2006, in **WP(C) 16896/2006**, the High Court had stayed the operation of the said award dated 5th July, 2005. Finally, vide common order dated 18th December, 2012 in **WP(C)3750/2004** and **WP(C) 16896/2016**, the impugned awards were set aside and the matter was remanded back to the Labour Court to decide the matter afresh in view of the law laid down in **DTC v. Sardar Singh, (2007) 7 SCC 574**. The relevant portion of the said order of the Id. Single Judge dated 18th December, 2012 reads as under:

"10. As held by the Hon'ble Supreme Court while interpreting Clause (ii) of para 4 of the Standing Order of the Petitioner that seriousness is attached to the habitual absence and the burden is on the employee who claims that there was no negligence by placing relevant material. In the case in hand, Respondent No. 1 has placed nothing on record to



show that his absence from duty was justified. I find no merit in the contention of learned counsel for Respondent No. 1 that there was no way that Respondent No.1 would know whether the leave has been sanctioned or not. Along with the charge-sheet all the documents were supplied to Respondent No.1. Further, the Respondent No. 1 was given opportunity to inspect the records which Respondent No. 1 did not avail. As held by the Supreme Court, the onus was on Respondent No. 1 to discharge that the absence, was for a genuine reason and the said onus having not been discharged, the impugned order dated 27th March 2003 cannot be sustained and is set aside accordingly.

11. In W.P.(C) No. 16896/2006 vide the order dated 25th November, 2004 the enquiry was held to be vitiated. The reasons for holding the enquiry to be vitiated was that there was no proper examination of the witnesses during the enquiry proceedings, no document was supplied to the delinquent workman and the enquiry officer had not granted opportunity to examine witnesses to prove the defence of the workman. I have gone through the material placed in ID No. 400/93. A perusal of the evidence in inquiry shows that Respondent No.1 never disputed that he was not aware that his leave without pay has not been sanctioned. His entire grievance was against Shri Inder Singh Mann who was the presenting officer. The witness examined by the Petitioner was the disciplinary authority who issued the show cause notice pursuant to the enquiry report and directed removal. All documents had been examined by him. From a perusal of the cross examination, it is evident that the genuineness of the documents is not disputed. Respondent No.1 filed an application for production of documents by the management which application was decided by the



learned Tribunal vide order dated 6th August, 1999 by a detailed order and it was held that the workman was seeking direction to the management to file the same documents filing of which documents was objected by the management. The said documents were already exhibited on 22nd January, 1999 and thus there was no need for the said documents again. As regards the letter dated August 1992 the same was allowed as the same was relevant to the preliminary issue. Opportunities were given both to the Petitioner and the Respondent to file affidavits. Hence to my mind the finding of the learned, Tribunal in the order dated 25th November, 2004 holding that -the enquiry was vitiated is contrary to the record. Further the award dated 5th July, 2005 is consequential to the order dated 25th November, 2004 as no evidence was led by the Petitioner. Since the Petitioner is able to satisfy on the basis of evidence led that the enquiry was not vitiated and that there was evidence to prove, the award dated 5th July, 2005 is also liable to be set aside and it is ordered accordingly.

12. In view of the aforesaid discussion, the impugned orders/awards are set aside and the matter is remanded back to the learned Tribunal to decide the OP No. 501/1992 and ID No.400/93 afresh in view of the law laid down by the Supreme Court.”

9. In the meantime, some of the arrears of wages for the period 5th July, 2005 to 30th November, 2012 are also stated to have been paid to the Workman under Section 17B of the ID Act. The Workman challenged the order dated 18th December, 2012, by way of an LPA. However, the same was dismissed vide order dated 30th July, 2013 in **LPA 153/2013**, but with a modification to the effect that none of the observations given by the Id. Single Judge in the order dated 18th December, 2012, would be binding on the Labour



Court and all issues would be considered afresh. The relevant portion of the said order of the Id. Division Bench dated 30th July, 2013 reads:

“2...We are not interfering with the remand order made by the learned Single Judge. However, we are modifying the directions given by the learned Single Judge to the extent that none of the observation is made by the learned Single Judge on the merits, of the matter shall be binding on the Tribunal and the Tribunal shall go into” all issues including preliminary issues afresh without being influenced by any observations made by the learned Single Judge in the impugned order. The parties are also granted liberty to adduce additional evidence, if any, on merits.

3. We hope that the Tribunal shall conclude and decide O.P.No.501/1992 and I.D.No.400/1993 within a period of six months from today. For the sake of convenience and to avoid any conflicting order, both the matters be clubbed together and be heard by the same Tribunal. The District and Sessions Judge, Karkardooma is directed to place both the matters before one Judge.”

10. In the proceedings post remand, the Labour Court finally came to the conclusion that the termination was illegal and directed reinstatement by the impugned order dated 21st September, 2013 in **ID No.400/93**. The said order reads as under:

“On the basis of findings of enquiry issue and non-proving of misconduct before this Tribunal by the management, the workman has proved that his services were terminated by the management illegally and/or unjustifiably. There is no case of management of loss of confidence in the workman. Moreover, MW Sh. Virender Kumar, Depot Manager has, in his cross-examination, deposed that management has no record about gainful



employment of workman Sh. Raj Kumar since his termination from service. Therefore, workman is entitled for the reliefs of reinstatement (if he has not retired on superannuation), full back wages, continuity of service and all other legal benefits. The workman has admitted in his cross-examination that he had received a sum of Rs. 2,36,000/- towards Section 17B of Industrial Disputes Act in pursuance of the order by Hon'ble High Court of Delhi & that he also attended his duties for 10 months and that wages of that period is also included in aforesaid amount. He has admitted that he received notice from the management for an amount of Rs. 2,35,136/- as per the order passed by Hon'ble High Court and that he has not deposited the said amount as he did not have same. Therefore, the management has right to deduct the said amount of Rs. 2,35,136/- from the back wages of workman."

11. Similarly, the Labour Court in **O.P. No.501/92**, concluded that there was no misconduct by the Workman vide the impugned order dated 21st September, 2013. The said order reads as under:

"Relief

Keeping in view the findings on preliminary issue of enquiry and also on issue no 1 regarding misconduct, approval sought by the applicant/management by application is rejected and application filed under Section 33 (2) (b) of Industrial Disputes Act is dismissed."

12. The present writ petitions arise out of these two impugned orders.

Submissions

13. Ms. Pasrija, Id. Counsel appearing for the Corporation, submits that this is a case where the past record of the Workman had 12 adverse entries and even in the ten years period while he was working with the Corporation, he



was repeatedly warned by the Corporation about his conduct and absence. She submits that he would unauthorizedly remain absent for several days. In fact, she submits that the past record of the Workman would show that the final chargesheet which was issued was completely justified as he took leaves unauthorizedly. She further submits that the Workman had worked with the Corporation, only for a period of ten years and if such unauthorized absence were to be condoned, it would lead to indiscipline within the force of the Corporation and the services of the Corporation to commuters would be hindered considerably.

14. Ms. Pasrija, ld. counsel, also relies upon the fact that the Labour Court did not take proper note of the past record, while holding that the reinstatement was illegal. She relies upon the judgment of *Sardar Singh (supra)* for her submissions.

15. On the other hand, Mr. Charya, ld. counsel for the Corporation, seeks to contend that the reason that the Workman was on leave, was because of the ill-health of his wife, who thereafter succumbed to cancer. He submits that the leave application was also filed for the entire 66 days period and not 32 days, as earlier contended by the Corporation. He also emphasizes that the Labour Court has arrived at a conclusion that no communication was ever sent by the Corporation rejecting the said leave application. Thus, the leave ought to be taken to be as deemed to have been granted by the Corporation.

16. In so far as the Corporation's contentions regarding the Workman's past conduct are concerned, Mr. Charya, ld. counsel, submits that even in the past, if the Workman was duly given warnings or cautioned in accordance with the service conditions, the same had to be proved before the Labour Court. Thus, he submits that past conduct cannot be considered in judging



whether the termination was valid or not.

17. He finally submits that the Labour Court has already given the adjustment for the sum already paid to the Workman, in the operative portion of the award, and thus the award deserves to be upheld.

Findings and Analysis

18. The first and the foremost issue for consideration is whether the leave which was taken by the Workman between January and May, 1992, was unauthorized and if so, to what effect. The impugned awards, as also the evidence on record show that the medical records of the Workman's wife were filed to corroborate that she was suffering from cancer. It is not disputed that the workman's wife thereafter unfortunately passed away. Though the Corporation's case was that the Workman applied only for leave for 32 days, the Labour Court has come to the conclusion that the leave application was for the entire period of 66 days. The Corporation has also not shown any rejection of the leave application and thus, it cannot be stated that the Workman had not applied for leave.

19. Insofar as the past record is concerned, the same does show that during the Workman's tenure, on various occasions, there have been leaves which were availed of by the Workman without prior permission of the Corporation. On all such occasions, the Workman has been cautioned or advised to be careful in the future, some increments were withheld and warnings were also given to the Workman.

20. In view of these facts, this Court considers the impugned orders dated 21st September, 2013. A perusal of the order in **ID No.400/93** shows that the following issues were framed by the Labour Court in the said matter where the Workman had challenged the termination:



- “1. Whether the domestic enquiry conducted by the management was fair and proper one ?*
- 2. Whether service of the workman have been terminated illegally and unjustifiably by the management ?*
- 3. Relief”*

21. The following issues framed in the earlier proceeding, were dealt with by the Labour Court in the approval proceedings, in **OP No.501/92** in award dated 21st September, 2013:

“5. On the basis of pleadings of parties following preliminary issue was framed by Ld. Predecessor on 07.12.93

"Whether the applicant held a legal and valid enquiry against the respondent according to principles of natural justice?

6. Vide separate detailed order dated 25.09.2002, the issue of validity of enquiry was decided against the applicant/management. On the basis of pleadings of parties, the following issues were framed on same day i.e., 25.09.2002:

- 1. Whether the respondent is guilty for misconduct as alleged?*
- 2. Whether the applicant has remitted one month's salary as per provision of Section 33 (2) (b) of ID Act?*
- 3. Relief”*

22. On remand by the Id. Single Judge, the evidence of the parties had been recorded in **O.P. 501/92** and on remand, the same evidence was read in both cases being **O.P. 501/92** and **I.D. No.400/1993**. The Labour Court proceeded as discussed hereinafter.

23. In order dated 21st September, 2013 in **O.P. No.501/1992**, post remand, the Corporation examined one Sh. Inder Singh as the Management's



Witness/MW 1, whose core testimony was that the Workman remained unauthorizedly absent. He had deposed that he was the reporter in the present case at the time of the enquiry and had given his report dated 9th June, 1992, to the Depot Manager. He was also cross-examined wherein he admitted that the leave register was not filed before the Tribunal and he had not supplied any document to the Labour Court other than the complaint dated 9th June, 1992. The Corporation also examined Sh. Virender Kumar, Depot Manager of the Corporation as MW-2, who deposed relating to the charge-sheet, show cause notice and the removal. He deposed that the charge sheet was issued to the Workman by the then Depot Manager, Sh. B.S. Vats, who was no more in service of the Corporation. MW-2 had no personal knowledge of the present case. In his cross-examination, MW-2 admitted that in response to the leave application, there was no communication of rejection or sanction of the leave application. He also deposed that the Corporation had not filed the leave register before the Labour Tribunal. The Workman also examined himself as WW1, before the Labour Court. His main case was that he sought to inspect the service book, record of leave, and medical certificates which were submitted by him along with the leave application, but the daily register was not made available to him initially. Only on second inspection, he could gather some information and found some of his leave applications along with medical certificates, in possession of PFC. He categorically deposed that he moved applications seeking leave for the entire 66 days and the same had been furnished to the Enquiry Officer. His leave was never rejected and it was only due to extenuating circumstances and sheer necessity that he had taken the leave. The Workman admitted that he did not attend duty for the period from January, 1992 to March, 1992 due to his wife's illness of breast cancer. He



asserted that he was not gainfully employed anywhere. Even MW-2 deposed that the Corporation had no record about gainful employment of the Workman since his termination. On the strength of this evidence, the Labour Court arrived at the following findings in ***O.P. No.501/1992***:

- (i) That the domestic enquiry was started on 17th September, 1992 and was concluded on the same date. The statement of one reporter i.e., Sh. Inder Singh, ATI was recorded.
- (ii) The statement of the Workman was, thereafter, recorded and the enquiry report was prepared by the Enquiry Officer on 29th/30th September, 1992. On the same day i.e., on 29th/30th September, 1992, the show cause notice was issued to the Workman. Thus, the Labour Court holds that the manner in which the enquiry was conducted shows that the same was contrary to the principles of natural justice.
- (iii) The Workman requested for certain information, which was not fully provided. An allegation was also raised that the Workman had not given any leave application for the period from 22nd February, 1992 to 16th March, 1992, which was held to be contrary to the record and false. The Enquiry Officer did not call for the records of the Corporation relating to the leave applications as also the leave application registers. The truthfulness of the reporter's/MW 1's statement was also not checked by the Enquiry Officer.
- (iv) No proper examination of witnesses was carried out during the enquiry either. The Corporation's witness has admitted that apart



from the complaint, no further documents were given to the competent authority, who issued the charge-sheet.

24. Thus, the Labour Court held that the findings of the Enquiry Officer are contrary to the record and violative of the principles of natural justice. The observations of the Labour Court in ***O.P. No.501/1992***, are as under:

“...It is held that the conclusion drawn by enquiry officer holding the workman guilty is without any evidence and contrary to the record available before him and also violative of the principles of natural justice. Hence, it is held that applicant did not hold a legal and valid enquiry against the respondent/workman according to principles of natural justice.”

25. Having dealt with the preliminary issue relating to the legality of the domestic enquiry, on the issue of whether the Workman was guilty of misconduct, the Labour Court held as under:

- (i) In ***Sardar Singh (supra)***, though habitual unauthorized absence is treated as irresponsible in the extreme, exception/leniency has been made in case there is no negligence by the employee.
- (ii) As admitted by the Management witness (AW-1)- Sh. D.K. Shukla, Disciplinary Authority of the Corporation, in his cross-examination, the leave application of all 66 days was received by the Corporation.
- (iii) No intimation of rejection of the leave application was ever given to the Workman.
- (iv) The leave register was not filed before the Enquiry Officer or before the Labour Court.



- (v) The testimony of MW-1, who deposed on remand, confirms the non-production of the leave register and leave applications in the enquiry proceedings. The Labour Court found that there was something wrong/doubt in truthfulness of MW-1's report dated 9th June, 1992 and therefore, he did not file such leave register. In fact, even the copy of MAR produced by MW-1 did not bear the signatures of the Workman, and the document was not authenticated.
- (vi) MW-2 confirmed that he was only deposing on the basis of record but it is correct that no intimation of rejection of the leave application was given to the Workman.
- (vii) On the basis of the analysis of the testimony of the Corporation's witnesses, the Court came to the following conclusion:

"24. From the facts and the evidence lead by both the parties, it clear that the report of Sh. Inder Singh Mann, ATI is contrary to the true facts. The document Ex. MW 1/W 1 prepared by the management show that workman has submitted leave applications for entire 66 days, whereas, as per the report of reporter, no application of 32 days was submitted by the workman. It is established on record that leave applications for the entire sixty-six days were submitted by the workman and no communication was ever sent to workman in respect of rejection of the same, which, in other words, shall be deemed to have been sanctioned by the Competent Authority. Further, it seems that the management intentionally and deliberately has not filed SAR, leave register, leave applications and other leave record before the enquiry officer or Labour Court or this



Tribunal. The management cannot avoid their liability simply by saying that SAR, leave Register and other leave record has been destroyed when the dispute in respect of the matter was pending. The management; cannot take advance of its own wrong. It was incumbent upon the management to preserve all these records as the matter was pending since the date of dismissal of the workman.”

(viii) The wife of the Workman was suffering from serious ailments.

It was the admitted position that the leave applications were accompanied by medical certificates of the wife. Thus, the ground on which the Workman took leave, is genuine. Hence, the leave application having not been rejected, there was no misconduct by the Workman. The relevant portion of the order reads as under:

“26. In the present case, wife of workman was suffering from serious ailment i.e. breast cancer and she was bed ridden during the aforesaid period. AW 1 Sh. D.K. Shukla, Disciplinary Authority of the management, has already admitted in his cross-examination that leave applications were duly submitted by workman, supported with medical certificates of his wife. The document Ex. MW 1/W1, which is prepared by the management, also shows that workman has submitted 18 leave applications for alleged 66 days during the period from January, 1992 to May, 1992 and the said document nowhere mentioned that any of the applications was rejected. The ground, on which the leave have been availed by workman, is genuine and he has taken these leaves for getting treatment and care of his wife, who was suffering from breast cancer



and was bed ridden. When admittedly, the workman- has submitted leave applications with medical certificates of leave availed by him and the management has failed to produce leave records of workman which can show that the said leave applications were not sanctioned by the competent authority on record, there is no misconduct on the part of workman. Moreover, admittedly, workman has already been warned and declared absconder for having remained absent unauthorizedly w.e.f. 23.02.1992 to 03.03.1992, which period is included in said alleged 66 days. In view of above discussion, I am of considered view that the respondent/workman is not guilty for misconduct as alleged. Accordingly, this issue is decided in favour of workman and against the management.”

26. On these grounds, the application of the Corporation for approval under Section 33(2)(B) of the ID Act, was dismissed.

27. In the other order dated 21st September, 2013, in ***I.D. No.400/1993*** again, the findings of the Labour Court are similar in respect of the domestic enquiry, which was conducted. The Labour Court held that the enquiry was contrary to the record and was violative of principles of natural justice on the basis of the same evidence. Therefore, on the first issue of enquiry, the Labour Court held that the enquiry was not a fair and proper one.

28. On the next issue of whether termination was illegal and unjustifiable, the Labour Court holds that the application for leave having not been rejected and no intimation having been given by the Corporation to the Workman of the said rejection, applying the exception carved out in ***Sardar Singh (supra)***, and that no misconduct was found on the part of the Workman, the termination



was illegal and unjustified. In view thereof, reinstatement, full back wages, continuity of service and all other legal benefits were granted by the Tribunal. The operative portion of the said order reads as under:

“30. **Relief**

On the basis of findings of enquiry issue and non-proving of misconduct before this Tribunal by the management, the workman has proved that his services were terminated by the management illegally and/or unjustifiably. There is no case of management of loss of confidence in the workman. Moreover, MW Sh. Virender Kumar, Depot Manager has, in his cross-examination, deposed that management has no record about gainful employment of workman Sh. Raj Kumar since his termination from service. Therefore, workman is entitled for the reliefs of reinstatement (if he has not retired on superannuation), full back wages, continuity of service and all other legal benefits. The "workman has admitted in his cross-examination that he had received a sum of Rs. 2,36,000/- towards Section 17B of Industrial Disputes Act in pursuance of the order by Hon'ble High Court of Delhi & that he also attended his duties for 10 months and that wages of that period is also included in aforesaid amount. He has admitted that he received notice from the management for an amount of Rs. 2,35,136/- as per the order passed by Hon'ble High Court and that he has not deposited the said amount as he did not have same. Therefore, the management has right to deduct the said amount of Rs. 2,35,136/- from the back wages of workman.”

29. This Court has heard the counsels for the parties and perused the record. The reason for unauthorized absence of the Workman was clearly established



before the Labour Court. It is not in dispute that the Workman's wife was suffering from breast cancer and was bed-ridden. It is also not in dispute that the Workman applied for 66 days leave, though the Corporation attempted to mislead the Labour Court initially in this regard that the application was only for 32 days. It is also the admitted position that no intimation of rejection or sanction of the said leave application, was given to the Workman. Under extenuating circumstances, such as the spouse's illness, apart from filing an application for leave and proceeding on leave to attend to the medical condition of the spouse, nothing more could have been done by the Workman.

30. The conduct of the Workman is normal human conduct, i.e., to seek leave by filing an application and to give priority to the spouse's illness. Expecting that the Workman ought to await the decision on the leave application before proceeding on leave, would be completely contrary to usual behaviour. The Workman was fully justified in taking the leave. The Corporation having not given the Workman any intimation that his leave was rejected ought to have taken a compassionate view of the matter rather than terminating his services.

31. Another factor which strikes the Court is the manner in which the domestic enquiry has been conducted, i.e., the statements of one witness of the Corporation and the Workman recorded on the same date, the enquiry being closed on the same date as it was started, i.e., 17th September, 1992, and the report being submitted within a few days thereafter. On the date of submission of the report i.e., 29th /30th September, 1992, a show cause notice was also issued. There was some haste with which the Corporation was proceeding in these enquiry proceedings.



32. In so far as the Workman's opportunity to cross-examine is concerned, the Enquiry Officer may have given the opportunity to the Workman to cross examine the ATI, however even if the same was not availed, the mere non-availment of the said opportunity by the Workman cannot justify the manner and the haste in which the enquiry was conducted.

33. Thus, the Labour Court's findings that the enquiry proceedings were vitiated and violative of principles of natural justice, do not warrant any interference. Since the enquiry conducted was vitiated and even the alleged misconduct cannot be held to be misconduct, the termination was clearly illegal and contrary to law.

34. There can be no cavil to the submission of Id. counsel for the Corporation that unauthorized leave should not be encouraged in an organization providing public transport services. While there can be no doubt that the workmen of the Corporation, which provides consumer services, ought to be responsible in their conduct and not take any unnecessary leaves, especially without following the prescribed procedure, in the present case, this Court does not find any reason to hold that the Workman had not followed the correct procedure. Id. counsel for the Corporation has relied upon past conduct of the Workman to argue that he was habitual in his unauthorized absence. The Court has perused the past record and notices that for the said absence, there were around 12 adverse entries against the Workman for which he had been adequately cautioned/warned/reprimanded. In fact, for one of the adverse entries, the Workman had been given a warning already and then again, this entry was included in the Workman's chargesheet, thereby resulting in the Workman being reprimanded for one instance twice. In any event, on this specific occasion, i.e., when his wife was ill, the said past



conduct could not have been considered to the detriment of the Workman, as there was clearly a justified cause.

35. In this view of the matter, clearly the termination was illegal. This Court however cannot lose sight of the fact that the Workman had worked as a conductor for a period of only 10 years between March, 1982 to January, 1992. It has been 30 years since the Workman worked with the Corporation, and due to multiple rounds of litigation, the Workman has been unable to see a closure to his case. This Court is of the opinion that since the Workman has not rendered services for a period of 30 years, full back wages ought not to be awarded. Accordingly, in the facts and circumstances of this case, this Court holds as under:

- (i) The finding that the enquiry is held to be vitiated as it was contrary to the principles of natural justice, is upheld.
- (ii) The conclusion of the Labour Court that there was no misconduct and the termination was illegal, is also upheld.
- (iii) However, following the various recent decisions of the Supreme Court holding that lump sum compensation in lieu of reinstatement may be awarded, depending upon the facts of the case and considering that the Workman has already attained the age of superannuation, reinstatement is not granted. In ***Allahabad Bank and ors. v. Krishan Pal Singh [SLP(C) No. 19648/2019, decided on 20th September 2021]***, the Supreme Court has held:

“8. The directions issued by the High Court of Allahabad for reinstatement were stayed by this Court on 23.08.2019. During the pendency of



these proceedings, the respondent – workman had attained age of superannuation. Though, there was strong suspicion, there was no acceptable evidence on record for dismissal of the workman. However, as the workman has worked only for a period of about six years and he has already attained the age of superannuation, it is a fit case for modification of the relief granted by the High Court. The reinstatement with full back wages is not automatic in every case, where termination / dismissal is found to be not in accordance with procedure prescribed under law. Considering that the respondent was in effective service of the Bank only for about six years and he is out of service since 1991, and in the meantime, respondent had attained age of superannuation, we deem it appropriate that ends of justice would be met by awarding lump sum monetary compensation. We accordingly direct payment of lump sum compensation of Rs.15 lakhs to the respondent, within a period of eight weeks from today. Failing to pay the same within the aforesaid period, the respondent is entitled for interest @ 6% per annum, till payment.”

- (iv) Even in ***Ranbir Singh v. Executive Eng. P.W.D. [Civil Appeal No. 4483/2010, decided on September 2, 2021]***, the Supreme Court has taken a similar view, and held as under:

“6.In other words, we find that reinstatement cannot be automatic, and the transgression of Section 25F being established, suitable compensation would be the appropriate remedy.
7. In such circumstance, noticing that, though the appellant was reinstated after the award of the Labour Court in 2006, the appellant has not been working since 2009 following the impugned order, and also taking note of the fact that the appellant



was, in all likelihood, employed otherwise, also the interest of justice would be best subserved with modifying the impugned order and directing that in place of Rs. 25000/- (Rupees Twenty Five Thousand), as lumpsum compensation, appellant be paid Rs.3.25 lakhs (Rupees Three Lakhs and Twenty Five Thousand), as compensation, taking into consideration also the fact that the appellant had already been paid Rs. 25000/- (Rupees Twenty Five Thousand) as compensation.”

- (v) Therefore, the only issue is that of back wages. Considering that for a period of 30 years, the Workman did not work in the Corporation and his length of service was 10 years, instead of full back wages, this Court awards a sum of Rs.20 lakhs as lump sum compensation to the Workman.
- (vi) It is made clear that the Workman would be entitled to all statutory benefits such as PF, gratuity etc., for the period of service rendered by him.
- (vii) The Workman is also granted pensionary benefits.

36. In the above terms, the present writ petitions, along with all pending applications, are disposed of.

**PRATHIBA M. SINGH
JUDGE**

MARCH 15, 2022/dk/Rahul/ms