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

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Reserved on: 14.10.2022
Pronounced on: 04.11.2022

+ **W.P.(C) 13141/2009**

DELHI TRANSPORT CORPORATION Petitioner

Through: Mr. Sarfaraz Khan, Advocate

versus

SURAJ MAL

..... Respondent

Through: Mr. Dheeraj K. Nayal,
Advocate

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present petition has been preferred against the award dated 22.4.2008 (*"the impugned award"*) passed by the Labour Court-VI, Karkardooma Courts, Delhi in I.D. No.19/2005. Vide the impugned award, the learned labour court ordered petitioner-corporation to reinstate the respondent with payment of 50% of the back wages.

FACTS RELEVANT FOR ADJUDICATION OF DISPUTE

2. The facts of the case as incorporated by the petitioner in its writ petition is that the respondent was appointed as a driver with petitioner on 29.05.1984. On 03.07.2000, the respondent was consigned with the duty of driving Bus bearing no. DEP-6106 to

W.P.(C) 13141/2009

Page 1 of 11

Sonipat at about 1400 hours from D.T.C. Dichaon Kalan Depot, New Delhi. While in the bus depot, respondent drove the said vehicle allegedly in a rash and negligent manner and struck the same into a stationary bus bearing no. DEP -9506 which was parked in the yard. Due to the high hitting impact, one of the employees who were working/repairing the stationary bus bearing no. DEP -9506, Shri Ishwar Singh, Assistant Fitter (*“the deceased”*) received grievous injury and died on the spot. Subsequently, a criminal case vide FIR no. 346/2000 dated 03.07.2000 at P.S. Najafgarh u/s 279/304-A IPC was initiated against the respondent.

3. On receipt of report no. 369390 dated 03.07.2000 from Shri. Mahender Singh T.I., respondent was placed under suspension vide letter dated 04.07.2000. Further, a charge sheet dated 04.07.2000, was issued to the respondent for the above-mentioned irregularity. A disciplinary inquiry was conducted to investigate into the charges levelled upon respondent. Thereafter, the enquiry officer submitted its report to the Disciplinary Authority holding the charges proved against him.
4. In pursuance to the enquiry report, a show cause notice dated 16.08.2000 was issued by the depot manager to the respondent as to why he be not removed from the services. The respondent challenged the said show cause before this Court in W.P. (C) No. 4718 of 2000. Vide order dated 25.08.2000, this court was pleased to grant a stay of further action till the disposal of his pending appeal. Later, this Court disposed of the said writ

petition with directions to the respondent to file the reply to the show cause notice.

5. On 11.06.2001, the petitioner corporation-imposed punishment of 'removal from service' upon the respondent. Aggrieved by the aforesaid removal, the respondent raised the industrial dispute before the conciliation officer, Delhi which resulted in failure. Govt. of NCT of Delhi referred the said industrial dispute for adjudication with the following terms of reference:

"Whether Sh. Suraj Mal S/o Late Sh.Kanshi Ram has been removed from services illegally and/or unjustifiably by the management, if so to what sum of money as monetary relief alongwith consequential relief along with consequential in terms of existing law/Govt. Notification and to what other relief he entitled to and what directions are necessary in this respect. ?"

6. The respondent filed his statement of claim on 28.01.2005 before the learned Labour court, wherein he alleged that enquiry conducted against him was improper and against principles of natural justice. Also, that petitioner is bound by the law of estoppel since it has earlier taken position before the learned Labour court that respondent was not driving the vehicle in a rash and negligent manner. Petitioner herein filed its written statement wherein it defended itself by submitting that the decision of management for removing the workman from the services of the corporation was based on the misconduct committed by him considering the gravity of the offence was such that strict action was necessary.
7. From the pleadings of the parties, learned labour Court framed the following issue:

“Whether the domestic enquiry conducted by the Management was not proper and fair?”

8. The learned Trial Court vide order dated 12.01.2007 held that the domestic enquiry conducted by the Petitioner Management was not proper and fair and hence the following additional issues were framed:

- “1. Whether the workman was legally and/or justifiably terminated by the Management?*
- 2. Relief?”*

9. In order to prove the said issue, the Petitioner examined 2 witnesses (i) Sh. Mahender Singh (ii) Sh. C.K Goel. The respondent examined himself as WW-1.

10. The learned Labour court after hearing both the parties, passed the impugned award on 22.04.2008. Vide the impugned award, the learned Labour court observed that the petitioner had taken a contrary makeshift stand in this case just to avoid the liability. Hence the learned Labour court decided the reference in favour of the respondent and directed for the reinstatement of the respondent workman with 50% back wages. The relevant part of the impugned Award reads, inter alia, as follows:

“18. The management has, therefore, miserably failed in showing that there was any justification for the dismissal of the claimant/workman from his service. The management has failed to discharge the burden of having proved this issue. The issue is, accordingly, answered against the management and in favour of the workman.”

11. Through this present writ petition, Petitioner Corporation has challenged the Impugned award to the extent of payment of 50% of back wages.

SUBMISSIONS MADE ON BEHALF OF THE PETITIONER

12. Mr. Sarfaraz Khan, learned counsel appearing for the petitioner argued against the impugned award. It is contended by the counsel that the learned Labour court grossly erred in awarding back wages to the respondent since it is settled proposition of law that payment of back wages is not an automatic or natural consequence of reinstatement. Further, the principle of ‘No work No pay’ has been brought forward by the petitioner to convince the court that respondent is not entitled to receive back wages as awarded by the learned Labour court. Learned counsel for the Petitioner to cement his arguments, relied upon the judgments delivered in *J.K. Synthetics Ltd. v. K.P. Agrawal*, (2007) 2 SCC 433 ; *U.P. State Brassware Corpn. Ltd. vs Udai Narain Pandey* [2006 (1) SCC 479] ; *General Manager, Haryana Roadways vs. Rudhan Singh* 2005 (5) SCO 591; *URSRTC Ltd. Vs. Sharda Prasad Mishra*, (2006) 4 SCO 733.

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENT

13. Mr. Dheeraj K. Nayal, learned counsel representing the respondent submitted in favour of the impugned award. Learned counsel argued that the learned Labour court while passing the impugned award was correct in holding that the petitioner failed to prove the element of negligence on the part of the respondent, thereby rightly awarded reinstatement along with 50% back wages to the respondent. The prime contention adopted by the respondent is that the petitioner has taken completely contrary

stance in this Court with respect to the stance taken before the learned Labour court. The Respondent has presented before the learned Labour court the Office order no. 201 dated 24.11.1954, issued by the petitioner titled as '*Procedure for disposal of cases in which D.T.S employees are prosecuted while on duty*' to put forward the submission that the petitioner has acted in violation of its own rules by terminating his services. Relevant extract of the said Rules is reproduced below:

"5) The serious departmental action of termination of services will not be taken against driver if he is convicted by the court for an offence which is committed by him for the first time during his service in this organisation. This conviction will however be taken into consideration while deciding the nature of departmental action to be taken against him for a subsequent offence. No departmental action will be taken against a driver, who is convicted in an offence which is due to some defects or lack of some equipment in a bus."

14. Further, learned counsel for the respondent submitted that respondent is in dire need of money to finance his family's personal affairs. Therefore, delaying tactics adopted by the Petitioner Corporation is causing great prejudice and suffering to the respondent.

LEGAL ANALYSIS

15. This Court has heard the arguments advanced by both the parties and perused the documents and the Judgments relied upon by the parties.
16. The Petitioner Corporation has reinstated the respondent workman in service w.e.f 03.09.2008. In the present writ Petition, the Petitioner is challenging the impugned award only to the

limited extent of awarding 50% of back wages to the respondent. Hence the question before this Court is whether the learned Labour court was right while granting 50% back wages to the Respondent.

17. The Petitioner Corporation argued that award of back wages shall not be the natural consequence of reinstatement. Since the respondent was not working with the Petitioner Corporation after his termination, by invoking the principle of 'No work No pay', the petitioner argued that the respondent is not entitled for back wages.

18. In this regard, it is important to refer the law laid down by the Hon'ble Supreme Court in ***Hindustan Tin Works Pvt. Ltd., Vs. Employees of Hindustan Tin Works Pvt. Ltd.*** reported as **1979 (2) SCC 80**. While reducing the back wages to 75%, the Hon'ble Apex Court held as follows:

"If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the

enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workman's demand for revision of wages the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages.

In the very nature of things there cannot be a straight jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour."

19. In view of the law laid down by the Hon'ble Supreme Court, it is important to examine the impugned award. In the present case, the learned Labour court reinstated the respondent with 50% back wages. Regarding the back wages, the learned labour court held, inter alia, as follows:

"19. The claimant has sought reinstatement with full back wages in this case. Admittedly, the claimant was the driver. He has placed no cogent evidence on record that he had remained without gainful employment, all along, after his alleged illegal termination. It is common knowledge that the drivers are in scarcity, and it is not difficult to believe that casual jobs are easily available to the drivers. It, therefore, does not obtain from the material available on record that the claimant was without gainful employment throughout the period, after his termination and till date.

20. *On the other hand, the management has also placed nothing on record to show that the claimant had been employed gainfully elsewhere, after his termination.*
21. *Taking into consideration the totality of circumstances, I, therefore, feel that the ends of justice would be met if reinstatement of the claimant with 50% of the back wages is ordered."*

20. In the present case, the petitioner removed the respondent from the employment illegally. The petitioner accepted the said finding of the learned Labour court and reinstated the respondent back in service. The respondent was prevented from performing his job by the action of the petitioner. Therefore, the petitioner cannot invoke the principle of 'no work no pay'. The Hon'ble Supreme Court in catena of judgments has clarified that the said principle is applicable only to those employees who are not guided by any specific Rule relating to absence from duty and where an employee is prevented by employer from performing his duties, the said principle is inapplicable. Hence this Court is constrained to hold that pleading the said principle on part of the Petitioner Corporation is nothing but a misinterpretation in law as the argument seems entirely misconstrued on the face of it.

21. The petitioner failed to produce any evidence to the effect that the respondent was gainfully employed after his illegal termination. However, the learned Labour court considered this aspect on its own and granted only 50% back wages. It is trite to reiterate that indeed award of back wages shall not be a mechanical affair, however, in the given set of facts and circumstances of the case at hand, this Court is of the view that

the learned Labour court has in letter and spirit followed the law applicable in this field.

22. This Court examined the case laws cited by the petitioner. However, none of the case laws are applicable to the facts of the present case.

23. This Court is of the considered opinion that the learned Labour court exercised its discretion in a judicial and judicious manner. The reason assigned by the learned Labour court for granting 50% back wages appears to be cogent and convincing and based on the well-known legal canons. This Court is in agreement with the reasoning assigned by the learned Labour court while granting 50% back wages. There is no perversity or infirmity in the impugned award and hence this Court, while exercising the jurisdiction under Article 226 of the Constitution is not inclined to interfere with the impugned Award.

24. Before parting with this matter, it is noticed that in compliance of the order of this Court dated 16.11.2009, the petitioner deposited 50% back wages as per the impugned award with the registry of this Court. Further, vide order dated 03.02.2012, this Court had ordered for the release of half of the amount deposited by petitioner in favor of the respondent in the interest of justice. Hence the balance amount is still lying with the registry of this Court. Registry is directed to release the said balance amount with the accrued interest thereon in favour of the respondent within 2 weeks.

25. In view of the detailed discussions herein above, the present Writ
Petition is dismissed. No order as to costs

GAURANG KANTH, J.

NOVEMBER 04, 2022

