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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 25.09.2023

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LPA 107/2023

DELHI TRANSPORT CORPORATION

..... Appellant

Through: Mr. Sarfaraz Khan, Adv.

versus

SURAJ MAL

..... Respondent

Through: Mr. G.K. Pathak and Ms. Rubi Mishra, Advs.

CORAM:**HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE SANJEEV NARULA****SATISH CHANDRA SHARMA, CJ. (ORAL)**

1. The instant LPA has been filed challenging judgment dated 04.11.2022 passed in W.P.(C). No. 13141/2009 (“**Impugned Judgment**”) whereby the learned Single Judge dismissed the Writ Petition preferred by the Appellants herein.

2. The facts of the case reveal that the Respondent was appointed as a driver with the Appellant on 29.05.1984. On 03.07.2000, the Respondent was consigned with the duty of driving a Bus bearing No. DEP-6106 to Sonipat around 02:00 PM from DTC Dilchaon Kalan Depot, New Delhi. It is alleged that the Respondent drove the bus in a rash and negligent manner and struck the bus into another stationary bus bearing No. DEP-9506 in the bus depot. Due to the impact of the accident, Sh. Ishwar Singh who was working on DEP-9506, received grievous injury and died on the spot. Consequently, a criminal case *vide* FIR No. 346/2000 dated 03.07.2000 was registered at Police Station, Najafgarh u/s 279 & 304-A of the Indian Penal Code, 1860 (“**IPC**”).



3. Thereafter, on receipt of Report No. 369390 dated 03.07.2000, the Respondent was placed under suspension *vide* letter dated 04.07.2000 and a charge sheet was issued to the Respondent on the same date. A disciplinary inquiry was conducted to investigate the charges levelled upon the Respondent and the enquiry officer duly submitted its report to the Disciplinary Authority, holding the charges proved against him. Pursuant to the enquiry report, a show cause notice dated 16.08.2000 (“SCN”) was issued by the Depot Manager to the Respondent as to why he should not be removed from service. The SCN was challenged before this Court by the Respondent in W.P.(C) 4718/2000, which was disposed of by this Court with a direction to the Respondent to file a reply to the show cause notice. Eventually, on 11.06.2001, the Appellant imposed a punishment of “removal from service” upon the Respondent.

4. Aggrieved with the punishment imposed upon him, the Respondent raised an industrial dispute before the conciliation officer, Delhi which resulted in failure. Thereafter, the Government of NCT of Delhi (“GNCTD”) referred the said industrial dispute for adjudication. The Respondent filed his statement of claim before the learned Labour Court on 28.01.2005 wherein he alleged that the enquiry conducted against him was improper and against principles of natural justice. The Appellant, in response filed its written statement wherein it submitted that the decision of the Appellant Company for removing the workman from service was based on the misconduct committed by him and keeping in view the gravity of the offence that was committed.

5. The learned Labour Court, after hearing both the parties and examining witnesses passed an Award on 22.04.2008 wherein the Labour



Court observed that the Appellant had taken a contrary makeshift stand in the case just to avoid liability, and held the reference in favour of the Respondent and directed for reinstatement of the Respondent with 50% backwages (“**Impugned Award**”).

6. The Impugned Award was challenged by the Appellant herein *vide* the underlying Writ Petition to the extent that 50% backwages had been awarded to the Respondent. The Appellants case before the learned Single Judge was that the payment of back wages is not an automatic or natural consequence of reinstatement and that the Respondent is not entitled to receive back wages as awarded under the Impugned Award. The learned Single Judge, relying upon the judgment of the Apex Court in ***Hindustan Tin Works v. Employees***, (1979) 2 SCC 80 observed that while the award of back wages should not be a mechanical affair, the learned Labour Court, in the facts and circumstances of the case, has not erred in awarding 50% back wages to the Respondent. The learned Single Judge observed that the Labour Court exercised its discretion in a judicial and judicious manner and the reasons assigned for granting 50% back wages appears to be cogent, convincing and based on well-known legal principles. Aggrieved with the Impugned Judgment, the Appellants have preferred the instant appeal.

7. Learned counsel for the Appellant argues that the Impugned Judgment is erroneous as the learned Single Judge did not consider the past record of the Respondent. It is argued that the payment of back wages is not automatic or natural even if the reinstatement is awarded in favour of the Workman/Employee.

8. *Per Contra*, learned Counsel for the Respondent submits that the instant appeal has been filed in a mechanical manner and the Appellant has



already complied with the directions given by the Labour Court in the Impugned Award. Further, the Respondent has been reinstated in service in consequence of the Impugned Award and the amount deposited with the Registry of this Hon'ble Court in respect of 50% back wages has also been released to the Respondent as directed by the learned Single Judge. Furthermore, the Respondent has already retired from the services of the Appellant having attained the age of superannuation.

9. It is submitted by learned Counsel for the Respondent the Appellant has deposed before the Motor Accident Claims Tribunal("MACT") that the accident was not caused due to any negligence on the part of the Respondent and the Respondent has been acquitted of charges u/s 304A and 279 of IPC.

10. Heard learned Counsels for the Parties and perused the material on record.

11. At the outset, this Court deems it apposite to reiterate the law concerning reinstatement and award of backwages to an employee. In **Hindustan Tin Works** (supra), a three judge bench of the Hon'ble Supreme Court has observed as under:

"9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. 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 workmen'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. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect."

12. More recently, in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya**, (2013) 10 SCC 324, the Hon'ble Supreme Court has held as under:

"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential



benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.”

13. The aforesaid decisions were recently relied upon by the Apex Court in its decision in ***JeetubhaKhansangji Jadeja v. Kutchh District Panchayat***, 2022 SCC OnLine SC 1284 to uphold the reinstatement of the Appellant-therein, as granted by the Labour Court and the High Court and the Apex Court awarded the Appellant-therein with backwages.

14. A reading of the aforesaid decisions makes it clear that when it is established that the employer is in the wrong, and it is due to the action/in-action of the employer that the employee has been deprived of his right to work, the employee must be reinstated with backwages. If the employer wants to deny back wages the employee, then it is for the employer to specifically plead and prove that the employee was gainfully employed during the said period. Denial of back wages to an employee who has suffered on account of the action/inactions of the employer would amount to punishing the employee concerned and rewarding the employer.

15. In the present case, it has been correctly observed by the Labour Court and the learned Single Judge that the employer has taken a contrary and make-shift stand in order to avoid its own liability. This is evident from the fact that the Appellant has deposed before the MACT that the accident has not been caused due to any negligence on the part of the Respondent. The Appellant has failed to establish that the Respondent was gainfully employed after his termination. It is pertinent to note that the Appellants



have already complied with the directions given in the Impugned Award and the Impugned Judgment and that the Respondent herein has already achieved the age of superannuation. This Court is in agreement with the submission of the learned counsel for the Respondents that the instant appeal has been filed in a mechanical manner. Accordingly, the challenge made by the Appellant to the Impugned Judgment and the Impugned Award fails. In view of the same, this Court finds no reasons to interfere with the Impugned Judgment and the same is upheld.

16. With these observations, the LPA is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

SEPTEMBER 25, 2023