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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 10.05.2023

+ W.P.(C) 5516/2023

DELHI TRANSPORT CORPORATION

..... Petitioner

Through: Mr.Aviral Saxena, S.C. with
Mr.Abhinav Sharma, Adv.

versus

VINOD KUMAR

..... Respondent

Through: Ms.Rashmi Priya with Mr.M.S.Pahal,
Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

CM APPL. 21608/2023 -Ex.

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. Since the learned counsel for the respondent enters appearance, the caveat stands discharged.

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4. The present petition preferred by the Delhi Transport Corporation seeks to assail the award dated 08.12.2022 passed by the learned Labour Court. Vide the impugned award, the learned Labour Court has directed the petitioner to pay the remaining 50% salary of the

respondent/workman w.e.f. 22.06.2016 to 31.05.2018 along with all consequential benefits.

5. The only submission of learned counsel for the petitioner is that the respondent having been reinstated pursuant to an order dated 10.05.2016 passed by the Central Administrative Tribunal(hereinafter referred to as the Tribunal), whereby only 50% back wages were directed to be paid to him, the learned Labour Court neither had the jurisdiction to entertain the petition nor could have passed any order directing the petitioner to pay the remaining 50% back wages, which direction is contrary to the order passed by the Tribunal which had attained finality.
6. On the other hand, learned counsel for the respondent, who appears on advance notice, submits that while the respondent is not seeking any review of the order passed by the Tribunal on 10.05.2016, the petitioner, who was required to reinstate the respondent within a period of six weeks took almost more than two years to reinstate him on 01.06.2018. He submits that it is for this subsequent period of 23 months i.e. between 22.06.2016 to 31.05.2018, that the respondent has been granted full back wages by the learned Labour Court. This direction by the learned Labour Court, he contends was justified as the petitioner having wilfully delayed reinstating the respondent in accordance with the Tribunal's directions, must pay him full wages for this period of 23 months during which he remained out of service despite the Tribunal's order of reinstatement in his favour.
7. Having considered the submissions of the learned counsel for the parties, it would be apposite to first note the relevant extracts of the

Tribunal's decision dated 10.05.2016 on which both sides have placed heavy reliance. The same read as under:-

“17. In the circumstances and for the aforesaid reasons, the OA Is allowed and the Impugned order is quashed and the respondent-DTC is directed to act as per the provisions under Section 147(1) i.e. by reinstating him in an alternative post with the same pay scale, continuity of service, and other service benefits and In accordance with his capabilities, appropriate work be assigned within a period of six weeks from today. Since the petitioner was on probation and had not yet completed the period of probation of two years, therefore, the petitioner be put on probation as per the applicable; rules on the alternative post for the remaining period of probation under the respondent who shall further deal as per the rules. However, the petitioner has not worked as an employee of the respondent since the day on which he acquired the disability and, therefore, to meet the ends of justice, he shall be paid 50% of back-wages with due Increments within a period of twelve weeks from today. In the event of non-payment within twelve weeks, the DTC is liable to pay interest on that amount @9% p.a. till date of payment. No order as to costs.”

8. In the light of these directions issued by the Tribunal requiring the petitioner to pay only 50% back wages to the respondent, the petitioner's plea that the Tribunal having directed payment of 50% back wages to the respondent, the Labour Court could not have directed payment of 100% back wages, on the first blush, appears to be attractive. However, on a closer scrutiny of the directions issued by the Tribunal show that the Tribunal had on 10.05.2016 granted only six weeks time to the petitioner to reinstate the respondent. The

petitioner however chose to unsuccessfully assail the said order before this Court as also the Apex Court and reinstated the respondent only on 01.06.2018 i.e. more than 23 months after the time granted by the Tribunal expired.

9. The petitioner by delaying the reinstatement of the respondent had undoubtedly deprived him of full wages for the period between 22.06.2016 to 31.05.2018, which he would have received, in case, he had been reinstated in time in accordance with the directions of the Tribunal. I am of the view that once there were specific directions of the Tribunal to reinstate the respondent within six weeks, the petitioner by choosing to delay his reinstatement, cannot be permitted to take benefit of its own wrong. The Labour Court has admittedly granted full back wages to the respondent only for the period from 22.06.2016 to 31.05.2018 after noticing the fact that the petitioner was obliged to reinstate the respondent with 50% back wages on or before 21.06.2016 but chose to do so only on 01.06.2018. The Labour Court found that the respondent was entitled to full back wages for this subsequent period during which he was deprived from being reinstated despite there being an unambiguous order of reinstatement in his favour. I am therefore of the considered view that while directing the petitioner to pay full wages to the respondent for the period between 22.06.2016 to 31.05.2018, the Labour Court has in no manner tinkered with the directions issued by the Tribunal.
10. In the light of the aforesaid, I find no infirmity in the impugned award passed by the learned Labour Court. The writ petition being meritless is dismissed.

11. At this stage, learned counsel for the petitioner submits that the petitioner has in accordance with the directions of the Tribunal also paid interest on the delayed payment of 50% back wages for the period between 22.06.2016 to 31.05.2018 which interest should be refunded. If that be so, the petitioner would be entitled to seek refund of the interest paid for the delayed payment for the period between 22.06.2016 to 31.05.2018. Learned counsel for the respondent fairly does not oppose this limited direction.

12. Accordingly, while dismissing the writ petition, It is directed that the while paying the amount in terms of Labour Court's impugned award, the petitioner would be entitled to deduct the amount paid towards interest to the respondent for the period on the 50% back wages between 22.06.2016 to 31.05.2018.

(REKHA PALLI)
JUDGE

MAY 10, 2023

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