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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 06th November, 2023

+ **W.P.(C) 1829/2018**

DELHI TRANSPORT CORPORATION

..... Petitioner

Through: Ms. Laavanya Kaushik, Advocate for
Petitioner, along with Mrs. Avnish
Ahlawat with Ms. Aliza Alam and Mr.
M. Sehrawat, Advocates.

versus

**VIRENDER SINGH (DECEASED) THROUGH SMT MUKESH
DEVI**

..... Respondent

Through: Mr. Shailender Negi, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. This petition challenges the award dated 13th July 2016 passed by the Labour Court No.-XVII, Karkardooma Court, New Delhi, in LIR No. 3790/2016 (“**Impugned Award**”). This award followed reference by the Government of NCT of Delhi (GNCTD) to determine the legality and justification of the removal from service of the Respondent's husband, a deceased employee of the Petitioner. The Impugned Award amended the original dismissal order dated 01st February 2007, effectively considering the deceased employee as retired from the date of his service termination. As a result, it directed that all retirement benefits, including pension, be paid to the legal representatives of the deceased. The Petitioner contests the Impugned



Award, particularly the modification of the dismissal order, arguing that this decision is unjustified based on the case facts and the Labour Court's own findings.

THE FACTS:

2. The background facts of the present challenge are as under:

2.1. The Petitioner, Delhi Transport Corporation appointed Late Mr. Virender Singh, as “Tyreman” w.e.f. 08th June 1981. Mr. Singh successfully completed his one-year probation period on 07th June 1982. However, between 1998 and 2004, he faced several disciplinary actions, including the stopping of increments and censures, due to multiple instances of unauthorized absence.

2.2. Subsequently, two separate departmental inquiries were conducted against Mr. Singh. The first, initiated with a chargesheet dated 01st August 2005, addressed his unauthorized absence from duty between 01st January to 30th June, 2005. The second chargesheet, issued on 24th February 2006, concerned his absence between 12th August 2005 to 09th February 2006.

2.3 Regarding the first chargesheet, Mr. Singh appeared before the Enquiry Officer on 30th October 2006. The Enquiry Officer, after examining the relevant facts and records, submitted a report. Based on this report, a showcause notice was issued to Mr. Singh on 17th November 2006. However, he failed to respond to this notice. Consequently, considering his past record and the allegations in the chargesheet, Mr. Singh was dismissed from service under Clause 15(2)(vi) of the DRTA (Conditions of Appointment and Services) Regulation, 1952 (“**DRTA Regulations, 1952**”) on 01st February 2007.

2.4 Tragically, Mr. Singh passed away on 26th November 2007. Seven



years later, in 2014, his widow and legal heir challenged his dismissal, leading to the issuance of the Impugned Award.

PETITIONER'S CONTENTIONS:

3. Ms. Laavanya Kaushik, counsel for Petitioner, assails the Impugned Award on the following grounds:

3.1. The Respondent's late husband, the workman in-question, consistently absented himself from duty without obtaining proper leave approval or notifying the competent authority. Despite various disciplinary actions taken by the Petitioner's management, including issuing warnings and withholding increments, his behaviour remained unchanged.

3.2. During the departmental inquiry, the Respondent's husband appeared before the Enquiry Officer, acknowledged the charges against him, and admitted his guilt. He expressed his wish to forego the inquiry process and was advised to submit a written response. Despite admitting to the charges, he failed to provide any written explanation or cite his medical condition in his defence. Given his repeated unauthorized leaves and the results of two separate departmental inquiries, his employment was terminated under the DRTA Regulations, 1952. The termination was justified, considering the workman's past conduct and the specifics of the case at hand. In support of this position, reliance is placed upon the judgment of the Supreme Court in *Indian Iron and Steel Co. v. Their Workman*¹ and *Delhi Transport Corporation v. Sardar Singh*².

3.3. The findings under all issues framed by the Labour Court in the Impugned Award – have been returned in favour of the Petitioner. There was

¹ AIR 1958 SC 130

² 2004 SCC (L&S) 946.



no violation of principles of natural justice. Respondent's husband was given fair opportunity to present his case where he could have provided an explanation with supporting medical records to justify his leaves but no evidence was put on record. Reliance is also placed on the decisions of the Supreme Court rendered in *U.P.SRTC v. Mitthu Singh*³ and *State of Punjab v. Dr. P.L. Singla*⁴.

3.4. "Compulsory retirement" is no punishment. There was no basis for the Labour Court to modify the removal order as the enquiry was conducted completely in consonance with law and therefore, there is no illegality in the order of removal. In view of the same, the Labour Court could not have modified the punishment of removal from service to retirement.

RESPONDENT'S CONTENTIONS:

4. *Per contra*, Mr. Shailender Negi, counsel for Respondent, makes the following submissions:

4.1. The Respondent's husband served with utmost dedication from his appointment in 1981. Prior to 1997-98, he was a patient of diabetes which adversely impacted his health. He became prone to other illnesses and frequently fell sick. As a result, he was forced to take unavoidable leave but the Petitioner either refused to accept his leave applications, rejected them or treated him as being on unauthorized absence.

4.2. In 2005, his health further deteriorated developing into life threatening complications including Tuberculosis. As a result, he was left with no option but to take unavoidable leave from 01st May to 30th June, 2005, which prevented him from reporting of service. Further, in 2006, he injured his right

³ 2006 SCC OnLine SC 835.

⁴ 2008 SCC OnLine SC 1161.



hand while on-duty which developed into a running sore, which never healed till his death and prior to that, rendered him unable to attend duty from 12th August, 2005 to 09th February, 2006.

4.3. The disciplinary proceedings initiated against the Respondent's husband, were initiated in complete disregard of his ill-health. Initially, while appearing before the Enquiry Officer, the Respondent's husband was not in a position to walk. However, he appeared before the officer, with the assistance of his sons, and was asked to admit the charges with the assurance that no action will be taken against him. Thereafter, the Enquiry Officer returned his finding on the basis of the admission made by Respondent's husband and did not call for any medical records.

4.4. In reply to the Petitioner's show-cause notice, the workman had reiterated the ground of ill-health as the reason for absence from duty. Pursuant thereto, he was directed to report to the Medical Board on 05th February, 2007 for a check-up. However, four days prior, on 01st February, 2007 itself, the order for removal from service came to be passed. Thereafter, the Respondent's health deteriorated causing him to be bed ridden for many months until his unfortunate demise on 20th November, 2007.

4.5. Given that he had furnished his medical records to demonstrate his illness as the cause for his absence, the same should have been taken into consideration. In this regard, reliance is placed on the Supreme Court's decision in *Krushnakant B. Parmar v. Union of India and Another*.⁵

ANALYSIS AND FINDINGS:

5. The Court has considered the aforementioned submissions and documents

⁵ (2012) 3 SCC 178



referred to by the counsel for parties. The central issue before us is the appropriateness of the Labour Court's decision to modify the punishment of the deceased workman from termination to retirement.

6. Although we find merit in the Petitioner's contention that the findings under the issues framed by the Labour Court are in favour of the Petitioner, however, the modification of the punishment warrants closer scrutiny. In this regard, key insights of the Labour Court's reasoning can be drawn from paragraphs 11 and 12 of the Impugned Award, which are as follows:

"11. ... Due to length of his service, punishment dated 01.02.2007 terminating him from service is slightly disproportionate to the proved misconduct. So, it is held that there was no illegality in removing claimant from job, but the act of the management is unjustifiable.

Issue No.3:

12. The claimant had joined the management on 08.06.1981. He expired on 20.11.2007. So, relief of reinstatement is ruled out. Taking into account 26 years and 5 months length of service of the deceased workman, the order dated 01.02.2007 passed by the management for terminating him from service, is slightly modified to the extent that the deceased workman shall be deemed to have retired on the date of termination of service i.e. 01.02.2007. All retirement and consequential benefits like pension (if he had opted for no pension, then pension be not given) and others be given to LRs of deceased workman. The management is directed to pay the said benefits to LRs of deceased workman within a month from the date of publication of the award, failing which it shall be liable to pay interest on it @ 9 per cent per annum from today till realization. Reference is answered accordingly. Award is passed accordingly."

7. From the above, it is evident that the Labour Court acknowledged the length of service of the deceased workman and opined that the termination dated 01st February 2007 was disproportionate. Given that the deceased workman passed away on 20th November 2007 – reinstatement was not a viable remedy. Considering his service of over 26 years, the Labour Court modified the termination order to a deemed retirement as of 01st February



2007 and accordingly, the benefits, and other entitlements of the workmen were directed to be awarded to the legal representatives of the deceased workman.

8. The crucial point of contention before us pertains to the period of his absenteeism in 2005. As per paragraph 11 of the Impugned Award, the workman was absent for 55 days between 01st January to 30th June, 2005. It has been brought to our attention by the counsel for Respondents that the Impugned Award erroneously implies that it was the Respondent who was unwell during this period, when in fact, it was the deceased workman, Respondent's husband, who was ill. Although this specific issue was not raised earlier in the proceedings, the counsel for Petitioner acknowledges that the workman was granted leaves on medical grounds in 2004. We note that the leave applications, explicitly referring to the workman's ill-health, are attached from page 153 onwards in the petition. Therefore, Petitioner's refusal to accept the workman's leave application for his continued illness in 2005 is a point of concern. This refusal, juxtaposed with the earlier sanctioned medical leaves in 2004, raises questions about the consistency and fairness in handling the workman's leave applications, particularly in light of his medical condition.

9. The counsel for the Petitioner argues that the medical test reports and prescriptions submitted are insufficient to substantiate the workman's claims of ill-health. Any doubts regarding the authenticity of these documents could have been further investigated. However, an essential factor emerges from the Petitioner's own actions. The management had instructed the workman to appear before the Medical Board on 05th February, 2007, as per their communication dated 24th January, 2007. Intriguingly, the workman was



terminated on 01st February, 2007, four days prior to this scheduled medical examination. The Court observes that no clear rationale has been provided for this pre-emptive termination, effectively denying the workman the opportunity to present his medical records to the Medical Board for verification. This sequence of events raises significant concerns about the procedural fairness in the workman's termination process. Consequently, the Court finds it challenging to disregard these facts and circumstances, which suggest a possible lapse in due process. Furthermore, the case laws cited by the Petitioner are distinguishable in the context of this case, given the unique circumstances surrounding the workman's dismissal.

10. The Court recognizes that unauthorized absenteeism, particularly in the context of a government corporation, should not be condoned given the inherent responsibilities of public service. However, it is a well-established principle that in determining whether such absence constitutes a failure of devotion to duty or behaviour unbecoming of a government servant, the nature of the absence requires examination – whether it is wilful or due to compelling circumstances. In the present case, the Court finds that there were compelling medical reasons that rendered it impossible for the deceased workman to report for duty. Notably, he was previously granted leave for medical issues. This context is crucial in assessing the proportionality and appropriateness of the actions taken against him. Furthermore, the untimely demise of the workman at the young age of 48 – leaving behind a wife and two children after over 26 years of service to the Petitioner-corporation – is a poignant reminder of the human element in this case. It is particularly noteworthy that he had more than 20 years remaining until his scheduled retirement on 31st October, 2019, a milestone he sadly did not reach.



11. Having thoroughly reviewed the circumstances surrounding the workman's absence, this Court concurs that his absenteeism, under the given medical conditions, cannot be deemed wilful. Considering the length of his service and the compelling nature of his medical situation, the Tribunal's decision to modify the punishment to retirement appears to be a judicious and humane course of action. Therefore, this Court upholds the Tribunal's decision, finding no fault in the Impugned Award.

12. The counsel for the Petitioner has requested a reconsideration of the interest component awarded to the workman's legal representatives in the Impugned Award. However, it is pertinent to note that since the passing of the Impugned Award in 2007, no monetary benefits have been disbursed to the Respondent (the widow) or their children. They have been deprived of the financial benefits rightfully due to them, despite their father's long and dedicated service. In light of these circumstances, the Court finds no compelling reason to reduce the interest component as awarded. This interest serves not only as a financial redress for the delay but also as a measure of justice for the family's prolonged deprivation of benefits.

13. Considering the above, the stay granted against the Impugned Award *vide* order dated 15th November, 2019, stands vacated. We direct that arrears be paid to the legal representatives of the deceased workman in terms of the Impugned Award within one month from the date of uploading of this judgment.

14. Dismissed.

SANJEEV NARULA, J

NOVEMBER 6, 2023/as