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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 04.01.2023

+ W.P.(C) 6392/2017, CM APPL. 26438/2017 -Stay.
CM APPL. 42069/2017 -Place on record doc. by Petr.
DELHI TRANSPORT CORPORATION

..... Petitioner

Through: Mr. L.K. Passi, Ms. Rubi Pasi, Advs.

versus

RANBIR SINNGH

..... Respondent

Through: Mr. Shailender Negi with Mr. Amit
Kumar, Advs.

Mr. Chandan Prajapati, Adv. for Mr.
R.K. Nain, Adv. for respondent.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The petitioner/Delhi Transport Corporation has approached this Court assailing the award dated 04.07.2016 passed by the learned Labour Court. Vide the impugned award, the learned Labour Court, after agreeing with the petitioner/management that the respondent was guilty of remaining unauthorisedly absent from duty, has, by exercising its power under Section 11A of the Industrial Disputes Act, 1947 (the Act), modified the penalty of termination of his services as imposed on him, vide order dated 20.05.2009, to that of retirement. The learned Labour Court had accordingly, directed the petitioner to

release the retiral and all other consequential benefits including pension to the respondent within a period of one month from the date of the order, failing which, the same were directed to be paid with interest @ 9% per annum.

2. This Court, while issuing notice in the present petition, had stayed the operation of the impugned award subject to deposit of 50% of the arrears payable under the impugned award. Consequently, the petitioner had deposited a sum of Rs. 3,09,808/- towards the arrears payable to the respondent for the period between 21.05.2009 to 30.09.2017.
3. The brief factual matrix as emerging from the record shows that the respondent had joined the services of the petitioner in the year 1984. In September 2007, when the respondent went to his native village, Kami, P.O. Tharu Udlepur, District Sonipat, Haryana on account of demise of his mother, he did not return back to join duty and continued to remain on leave till 03.09.2008.
4. It is the case of the petitioner that this period of respondent's leave was unauthorised as neither any leave application in the prescribed format had been received from him nor had any leave been sanctioned to him by the petitioner. On the other hand, it is the respondent's case that he had no other option but to stay back in his village, not only to take care of his ailing wife but also to take care of the minor children of his younger brother whose wife was also, at that time, ailing and had ultimately succumbed to her illness in December, 2007. It is the further case of the respondent that he had duly submitted leave applications along with medical certificates from private doctors of

the village who were treating his wife but since the same were not in accordance with the prescribed guidelines, they were not taken into account by the petitioner/management. Consequently, he was issued a chargesheet on 11.08.2009 on the ground of him having remained on unauthorised leave for the period between 20.09.2007 to 03.09.2008.

5. Before the Enquiry Officer, the respondent, while declining to take the assistance of any co-workman, admitted that he had not submitted any leave application in the prescribed format. It was, however, his case that on account of the peculiar circumstances of his family, he was not in a position to forward his leave application from the village in the prescribed format. Treating this as an admission on the part of the respondent as having remained on unauthorized leave, the Enquiry Officer gave a report holding him guilty of the charges levelled against him. Based on this report, the respondent's services came to be terminated by the petitioner vide its order dated 20.05.2019.
6. Being aggrieved, the respondent raised an industrial dispute before the learned Labour Court. Vide the impugned award, the learned Labour Court, while agreeing with the petitioner that there was no infirmity in the departmental enquiry as also qua the finding against the respondent of having remained on unauthorized leave from 20.09.2007 to 03.09.2008, has modified the punishment imposed on him. The learned Labour Court has, by taking into account the respondent's 25 years long service, directed that he be treated as having retired from service on the date of passing of the termination order. It is in these circumstances that the present writ petition came to be filed before this Court.

7. Learned counsel for the petitioner submits that once the learned Labour Court agreed with the petitioner on both counts by holding that the respondent was guilty of misconduct and there was no infirmity in the enquiry, there was no reason for the learned Labour Court to interfere with the punishment of termination awarded by the Enquiry Officer. He submits that the respondent remained on unauthorized leave for almost one year and therefore, the penalty of termination of service imposed by the petitioner could not be said to be, in any manner, disproportionate. He, therefore, prays that the writ petition be allowed and the impugned award be set aside.
8. On the other hand, learned counsel for the respondent supports the impugned award by contending that even though the respondent had not submitted his leave applications in the requisite format, the same was only on account of the compelling circumstances of the illness of his wife and sister-in-law, with the latter having ultimately succumbed to her illness. He contends that the learned Labour Court, after taking into account the reasons as to why the respondent was compelled to remain on leave as also the fact that he had duly submitted applications from private doctors qua the illness of his family members, rightly came to the conclusion that the penalty of termination from service imposed on him was shockingly disproportionate. He submits that the impugned award directing that the penalty of termination be modified was just and proper. He, therefore, prays that the writ petition be dismissed.
9. Having considered the submissions of learned counsel for the parties and perused the record, I find that the learned counsel for the

petitioner is correct in urging that the learned Labour Court itself was of the view that the respondent had remained on unauthorised leave for the period between 20.09.2007 to 03.09.2008. I cannot, however, lose sight of the fact that even the Enquiry Officer had noted that the respondent had submitted leave applications along with medical certificates from private doctors in the village of the respondent. Undoubtedly, these certificates were neither in the prescribed format nor were accompanied by any certificates from government hospitals. The learned counsel for the petitioner is, therefore, justified in urging that the mere submission of these leave applications by the respondent could not be treated as leave having been sanctioned in his favour. However, in my considered opinion, once the respondent had before the Enquiry Officer, given an explanation regarding the reasons for his absence and not furnishing of leave applications in the prescribed format, it could not be said that he had admitted his guilt of having remained on unauthorized leave, as has been presumed by the learned Enquiry Officer.

10. In the light of these circumstances from which it emerges that the respondent had sought to give an explanation for his leave, the learned Labour Court has, while passing the impugned award, modified the penalty imposed on the respondent. While modifying the penalty, the learned Labour Court has taken into consideration all these aspects, including the 25 years long service of the respondent. In my considered view, these factors were rightly taken into account by the learned Labour Court and therefore, it cannot be said that this exercise of its jurisdiction under Section 11A of the Act by the learned Labour

Court in directing that the order of termination be modified to that of retirement, was perverse or arbitrary in any manner.

11. As noted hereinabove, the learned Labour Court has under the impugned award, directed that the termination of the petitioner w.e.f. 20.05.2009 be treated as his retirement from service. However, what needs to be noted is that the respondent was employed with the Delhi Transport Corporation, which renders an important service to the general public of NCT of Delhi and therefore, if an employee were to remain on leave without prior sanction, the same is likely to cause grave inconvenience to the general public and, therefore, cannot be countenanced.

12. In this regard, reference may be made to the observations of the Apex Court in ***Delhi Transport Corporation versus Sardar Singh, 2004 SCC (L&S) 946*** which reads as under:

9. When an employee absents himself from duty, even without sanctioned leave for a very long period, it prima facie shows lack of interest in work. Para 19(h) of the Standing Orders as quoted above, relates to habitual negligence of duties and lack of interest in the authority's work. When an employee absents himself from duty without sanctioned leave, the authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's work. Ample material was produced before the Tribunal in each case to show

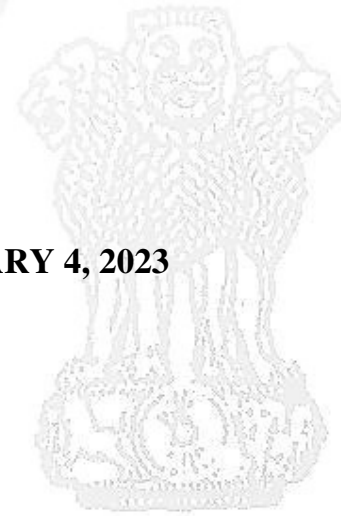
as to how the employees concerned were remaining absent for long periods which affects the work of the employer and the employee concerned was required at least to bring some material on record to show as to how his absence was on the basis of sanctioned leaves and as to how there was no negligence. Habitual absence is a factor which establishes lack of interest in work. There cannot be any sweeping generalisation. But at the same time some telltale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings.

13. Taking into account the aforesaid factors as have also been noticed by the learned Labour Court, I am of the considered view that the direction for payment of full pension to the respondent, for the period between 20.05.2009 till the date of the passing of the award, is unsustainable.
14. The petitioner, having remained on leave, without his leave being sanctioned, does not deserve to receive full pension from the date of his initial termination. It would, therefore, be in the interest of justice that the respondent is paid only 50% of pension for the period between 20.05.2009 till the date of the passing of the award. He will, however, be entitled to receive full pension w.e.f. 04.07.2016.
15. The writ petition is, accordingly, disposed of by modifying the impugned award to the aforesaid extent. Since the petitioner has

already deposited a sum of Rs. 3,09,808/- payable under the award, the Registry is directed to release the said amount in favour of the respondent with accrued interest thereon. The petitioner will, within a period of 8 weeks, pay the further amounts as may be payable to the respondent in terms of this order. In case, the arrears are not released within a period of 8 weeks, the same will carry interest @ 6% per annum.

(REKHA PALLI)
JUDGE

JANUARY 4, 2023
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