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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 26.02.2024*

+ LPA 158/2024
DELHI TRANSPORT CORPORATION Appellant

Through: Ms. Leelawati Suman, Advocate.

versus

SH. VIRENDER SINGH (DECEASED), THROUGH SMT.
MUKESH DEVI

..... Respondent

Through:

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR
REKHA PALLI, J (ORAL)

CM APPL. 11401/2024 -Ex.

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

CM APPL. 11400/2024 -Delay 50 days.

3. This is an application filed by the petitioner seeking condonation of delay of 50 days in filing the present appeal.
4. The application is, for the reasons stated therein, allowed and consequently the delay of 50 days in filing the appeal is condoned.
5. The application stands disposed of.

LPA 158/2024 and CM APPL. 11402/2024 -Stay.

6. The present appeal under Clause X of the Letters Patent seeks to



assail the order dated 06.11.2023 passed by the learned Single Judge in W.P.(C) No. 182958/2018. Vide the impugned order, the learned Single Judge has rejected the appellant's challenge to the award dated 13.07.2017 passed by the learned Labour Court, whereunder the penalty of dismissal imposed on the deceased respondent vide order dated 01.02.2007 was modified to that of compulsory retirement from the service. Consequently, the appellant has been directed to pay all the retiral benefits to the legal heirs of the deceased respondent. The learned Labour Court further directed that in case, the retiral benefits are not paid within one month from the date of publication of the Award, the appellant would be liable to pay interest at the rate of 9% per annum.

7. Learned counsel for the appellant submits that the learned Labour Court as also the learned Single Judge have failed to appreciate that it was not the first instance of the respondent remaining on unauthorized leave as he had, on earlier occasions as well, remained on leave without seeking prior permission. She further submits that the learned Labour Court has also failed to appreciate that there was an inordinate delay on the part of the family members of the deceased respondent in approaching learned Labour Court to assail the penalty order dated 01.02.2007.

8. Finally, she submits that even if this Court were to uphold the modification of the penalty order by the learned Labour Court, the direction awarding interest at the rate of 9% per annum on the retiral benefits was wholly uncalled for in the facts of the present case. She, therefore, prays that the impugned order and award be set aside.

9. Having considered the submission of learned counsel for the appellant, it would be apposite to begin by noting the relevant extracts of



the impugned order passed by the learned Single Judge. The same read as under:

“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 opt 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."

10. From a bare perusal of the aforesaid, it is evident that both the learned Labour Court as also the learned Single Judge have, while noticing the fact that respondent had remained on 55 days leave without seeking prior permission, taken into account that the respondent had along with his leave applications, submitted medical certificates which were not even verified. The learned Single Judge has also noticed that the deceased respondent was, on an earlier occasion, granted leave on account of same illness and



therefore, came to the conclusion that the case of the respondent was not considered fairly by the appellant. The learned Single Judge and the learned Labour Court were, therefore, of the view that taking into consideration the fact that the respondent had, after rendering 26 years of service, succumbed to his illness at the young age of 48 years, it was a fit case where the penalty of dismissal imposed on him was required to be modified. This order modifying the penalty has been passed by the learned Labour Court in exercise of its powers under Section 11 A of the Industrial Disputes Act.

11. In the light of the factual matrix as noted by both the learned Single Judge as the learned Labour Court, we are unable to agree with the learned counsel for the appellant that delay in approaching the learned Labour Court on part of the respondent was fatal. In the peculiar facts of the present case, wherein the respondent having succumbed to the illness due to which he was seeking leave, we see absolutely no reason to interfere with discretion exercised by the learned Labour Court. We, however find merit in the appellant's plea that this was not a fit case where award of interest was warranted.

12. For the aforesaid reasons, while we find no reason to interfere with the impugned order directing that the respondent be treated as having compulsorily retired from service, we set aside the direction for award of interest. This would, however, be subject to the appellant releasing the amount, in terms of the impugned order in favour of the legal heirs of the



respondent within 8 weeks. The appeal being meritless is accordingly dismissed.

REKHA PALLI, J

RAJNISH BHATNAGAR, J

FEBRUARY 26, 2024/ib