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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 9147/2024 and CM APPL. 37411-37413/2024

DELHI TRANSPORT CORPORATION ....Petitioner
Through: Ms. Anuja Saxena, Advocate.

versus

ASHUTOSH .....Respondent
Through: Mr. Anil Mittal, Advocate.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

% 08.07.2024

1. The present writ petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India seeking writ of mandamus or any other appropriate writ/directions to set aside the order dated 08.12.2023 passed by the learned Central Administrative Tribunal ('Tribunal'), Principal Bench, New Delhi in O.A.2338/2017 titled ***"Ashutosh Vs. Delhi Transport Corporation".***

2. Notice issued.

3. Mr. Anil Mittal, learned counsel accepts notice on behalf of the respondent.

4. The petitioner-Delhi Transport Corporation ('DTC') is aggrieved by the impugned order dated 08.12.2023 passed by the learned Tribunal in O.A.2338/2017 titled ***"Ashutosh Vs. Delhi Transport Corporation"***

whereby order dated 18.05.2017 passed by it against the respondent has been set aside.

5. According to the petitioner-DTC, the respondent, who was working as Retainer Crew Conductor and was regularised w.e.f 22.07.1984 caught by the Delhi Police was found involved in printing bogus Bus Tickets of DTC alongwith other persons at a private printing press in Dakshin Puri Market, New Delhi, in respect of which FIR No.139/2001 under Sections 420/468/120B was registered at Police Station Ambedkar Nagar, New Delhi**.**

6. The respondent was arrested on 02.04.2001 and was released on bail on 30.08.2001. However, the respondent did not inform the authority regarding his imprisonment/police custody. The petitioner gained its knowledge on 05.04.2001 through an article published in the newspaper 'Times of India'. The respondent was placed under deemed suspension vide Memo No.GTK/AI(T)/CH-19/2001/248 dated 26.04.2001 w.e.f. 02.04.2001 in view of Circular No.ADM I (Misc)/94 dated 04.01.1994 read with Circular No.CVO/PA/98/Susp 143 dated 17.04.1998 and No. 9 ADM I (Misc)/98 dated 24.12.1998. The respondent alongwith other accused persons was chargesheeted under Sections 420/46B/473/120B/409/476 of the Indian Penal Code, 1860 ('IPC') in FIR No.139/2001 registered at Police Station Ambedkar Nagar.

7. The learned Court of Metropolitan Magistrate vide judgment dated 10.02.2014 held that there was no incriminating evidence on record to connect the respondent with the alleged charges and accordingly, he stood exonerated for the offence under Sections 471/409/120B of IPC.

8. The petitioner in the present petition has averred that judgment dated 10.02.2014 nowhere indicates that the exoneration of respondent is based on

merits and he has been given benefit of doubt in this order. It is averred that the respondent was placed under suspension w.e.f. 02.04.2001 till 20.01.2015 for not having informed the Department about his being in police custody, which is concealment of fact and his misconduct as per Rules and Regulations of DTC. Thus, a show-cause notice dated 09.02.2015 was served upon the respondent for failing to inform about his arrest within 48 hours, which is mandatory as per Rules.

9. In his reply to show-cause notice dated 11.02.2015, he submitted that he has informed about his arrest to a relative on 01.04.2001 and that his case has been decided by the Court and he has been acquitted in the case and therefore, the allegations levelled against him were false and baseless.

10. The respondent also submitted that the salary paid by the petitioner – Department from 02.04.2001 till 21.01.2015 was insufficient and requested the Department to pay his dues of ACP, DA increments, leaves, pay commission as per his entitlement.

11. The petitioner-Department vide its communication bearing No. Narela Depot/Asst. Mannager (Traffic)/CH.11 /15/328 dated 20.03.2015 informed the respondent that his reply has not been found satisfactory and that the pay and allowances made to him during his suspension period are restricted to subsistence allowance already paid and that his period of suspension has been considered only for the purpose of continuity in service and not other benefits.

12. Being aggrieved, the respondent approached the Tribunal by filing O.A.1579/2015 wherein vide order dated 20.03.2015, the Tribunal set aside order dated 20.03.2015 passed by the petitioner –Department with direction to pass a speaking order on respondent's representation.

13. Yet again, the Disciplinary Authority of the petitioner while passing speaking order dated 18.05.2017 rejected the claim of the respondent.

14. The respondent again approached the Tribunal by filing O.A.2338/2017, which was disposed of vide order dated 08.12.2023, observing as under:

> *"4. On hearing learned counsel for both the parties and perusing the pleadings available on record, we find that the crux of the matter hinges on the word "Duty" which has already been decided by the respondents for the period of suspension under question. The very fact that the term "Duty" has been used would imply that all the consequential benefits in terms of full pay etc. would flow therefrom.*
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> *5. In view of the above, we are of the considered opinion that the moment the term "Duty" has been used for regularizing the period of suspension, the respondents are duty bound to pay full salary for the period of suspension and any other consequential relief that follows, as per rules.*
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> *6. We, therefore, dispose of the present OA by giving the following directions:-*
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> *(i) The impugned order dated 18.05.2017 is hereby quashed and set aside qua the stand of the respondents that the pay and allowances paid during suspension period, without doing any work, are restricted to payments already made and nothing more on this account shall be payable.*
>
> *(ii) Inasmuch as the period of suspension has already been treated as 'Duty' by the respondents they are directed to pay full pay and allowances applicable as per rules along with any other consequential benefits that flow out of it.*

15. The petitioner has challenged the decision of the learned Tribunal dated 08.12.2023 on the ground that the Tribunal has failed to consider that

the respondent concealed the factum of his arrest in FIR No. 134/2001. The respondent did not work for DTC for almost 14 years. However, he was paid 75% of the suspension allowance even though his suspension was on serious charges.

16. During the course of hearing, learned counsel appearing on behalf of the petitioner submitted that the exoneration of respondent by the learned Metropolitan Magistrate is not on merits but he has been acquitted only on giving benefit of doubt.

17. It was submitted that the word 'Duty' means continuity to perform the work whereas the respondent did not work for 14 years i.e. from 02.04.2021 till 20.01.2015. However, till date he has been given 75% of the subsistence allowance and thereby, he is not entitled to be paid full pay and allowances alongwith consequential for the period he has rendered his services. Thus, setting aside of impugned order dated 08.12.2023 passed by the learned Tribunal is sought by the petitioner.

18. To the contrary, the stand of the respondent is that since he has been acquitted in the criminal case, he deserves to receive the consequential benefits.

19. Relevantly, learned Tribunal in the impugned judgment has noted that the competent authority itself has decided that the suspension period of respondent shall be treated as 'Duty' solely for the purpose of continuity of service, this implies that all the consequential benefits in terms of full pay would flow to him.

20. There is no dispute that the respondent was working as Conductor and was put under suspension from 02.04.2001 till 2015. Pursuant to his acquittal in criminal proceedings, the petitioner vide order dated 18.05.2017

has observed that the respondent was suspended on serious charges. He has been acquitted giving benefit of doubt after not having worked for almost 14 years and thus is request cannot be accepted.

21. In our considered opinion, once the respondent has been acquitted of the charges even if it was giving benefit of doubt, having not worked during the suspension period is not his fault and thus, he cannot be deprived of his legitimate rights, which would have accrued to him had he been on 'Duty' and not suspended from services.

22. In our considered opinion, the Tribunal is justified in setting aside order dated 18.05.2017 passed by the petitioner. Consequentially, treating the petitioner's suspension period as on 'Duty' he deserves to receive pay and allowances applicable at the relevant time.

23. With aforesaid observations, the present petition is accordingly dismissed.

24. Pending applications, if any, stand disposed of.

SURESH KUMAR KAIT, J

GIRISH KATHPALIA, J

JULY 8, 2024
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