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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA 144/2014 and CM APPL. 6828/2014**

DELHI TRANSPORT CORPORATIONAppellant
Through: Mrs. Avnish Ahlawat, Standing
Counsel with Ms. Aliza Alam, Advs.

versus
SHRI CHAND RAMRespondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER
% **19.12.2024**

1. The instant appeal has arisen out of a judgment and decree dated 28.10.2013, passed in CS No. 186/2011, by the Trial Court, whereby, the suit for recovery has been dismissed.
2. Heard Mrs. Avnish Ahlawat, learned standing counsel assisted by Ms. Aliza Alam, learned counsel for the appellant.
3. None appears for the respondent.
4. The facts of the case would indicate that the defendant/respondent was employed as a Reatiner Crew driver by the plaintiff/appellant and during his tenure, his services were terminated *vide* order dated 01.09.1989, on account of declaring him deemed to have resigned from the service for being absent from the duty beyond three months.
5. An industrial dispute was raised by the respondent herein for reinstatement in the service with continuity of service and payment of back wages. The Labour Court passed an award dated 16.08.1989 in his favour, directing him to be entitled to be reinstated with continuity of service and 50% back wages. The High Court dismissed a Writ Petition bearing no.



2424/2000 preferred against this order by the plaintiff/appellant *vide* order dated 19.10.2001. Further, an appeal bearing LPA No. 75/2002 before the Division Bench was also dismissed *vide* order dated 07.05.2002.

6. In the meantime, an application for Execution of the award dated 16.08.1999 was filed by the respondent/defendant and the respondent/defendant recovered a sum of Rs. 6,04,884/- as back wages for the period between 18.08.1989 and 31.08.2004.

7. The appellant/plaintiff preferred a civil appeal no. 7137-38/2004 before the Supreme Court of India. The same was disposed of *vide* order dated 25.04.2006 and an order directing reinstatement without laying any claim for back wages was passed. The said order reads as under:-

“Heard learned counsel for the parties. Considering the peculiar nature of the controversy and without going into the questions of law raised, we feel that on the special circumstances involved interest of justice would be best order if the following order is passed:

(1) Concerned respondents shall be reinstated - without their laying any claim for back wages. The respondents in C.A. Nos. 7135-7136/2004, 7112-7113/2004, 7114-7115/2004, 7120- 7121/2004, 7122-7123/2004, 7131-7132/2004 and 693/2005 are willing to join back without laying any claim for back wages.

(2) It is submitted by learned counsel for the concerned respondents that the period covered may be taken into account for the purpose of continuity so that certain retiral/pensionary benefits can be availed by them. We find the suggestion to be fair and reasonable. The arrangement is also accepted by learned counsel for the appellant-Corporation.

(3) If the concerned respondents file their joining reports within three weeks from today at Head Quarter, their joining report shall be accepted by the concerned authority.

(4) So far as the respondent in C.A. Nos. 7127-7128/2004 is concerned it is brought to our notice by learned counsel for the respondent that he had been removed on 2nd February, 1989 and has expired in 2001 . Learned counsel for the respondent who was appearing for him in this Court submits that there is a pension scheme in force for those who were in employment of the Corporation as on 3.8.1981. That being so, the pension scheme shall be made applicable to the widow of deceased respondent Ranbir Singh.

In Civil Appeal No. 7137-7138/2004, there is no. appearance on behalf of



the respondent. Our order in relation to the respondents in the connected civil appeals shall apply so far as he is concerned.

So far as Civil Appeal Nos. 7737/2004 is concerned, it is pointed out by learned counsel for the appellant-Corporation that by now even otherwise he has attained the age of superannuation. In his case the applicable pension scheme shall be made applicable and the retiral benefits available shall be extended to him.

The appeals are disposed of accordingly.

Civil Appeals Nos. 7110-7111/2004, 7129-7130/2004, 7133-7134/2004: These appeals are adjourned by four weeks.”

8. Accordingly, the respondent/defendant was reinstated and allowed to resume duties w.e.f. 24.07.2006. However, it is the case of the appellant/plaintiff that in terms of the order of the Supreme Court dated 25.04.2006, since the respondent/defendant was not entitled to any back wages, he was liable to refund the back wages received by him along with 12% interest. The appellant/plaintiff then served a notice dated 09.06.2006 upon the respondent/defendant but no amount was refunded by the respondent/defendant.

9. Hence, the appellant filed the suit for recovery of the wages which were already paid to the tune of Rs. 6,04,884/-. The aforesaid civil suit came to be dismissed by the Trial Court precisely on the ground that the appellant/ plaintiff had paid the wages in terms of the award.

10. So long as specific findings are not rendered by the Court with respect to refund of the wages, setting aside the award itself would not entitle the employer to seek recovery of wages already paid. Further, it observed that the Order of the Supreme Court dated 25.04.2006 nowhere held that if back wages have already been paid, then the appellant/plaintiff is entitled to recover the same.

11. The relevant findings of the Trial Court read as under:-

“ After hearing the arguments and going through the record, I found that



in the present case, the onus was upon the plaintiff to prove and establish that they got a right to •; recover the amount already paid. The plaintiff in this regard relied upon the judgment, certified copy Ex.PW1/3, the relevant part has already reproduced in the argument of Ld.counsel for plaintiff. From the judgment, it is clear that the Supreme Court of India has not allowed respondent to claim the back wages from the appellants i.e. the plaintiff herein. But the order is silent with respect to the situation if the back wages are already paid. The Apex Court nowhere held that if back wages have already been paid, then the appellant i.e. the plaintiff herein will be entitled to recover the same. So far as the excess amount is concerned, no such evidence has been brought on record that there was any excess amount paid by the plaintiff to the defendant. Under the circumstances, in my opinion the plaintiff has failed to discharge the onus. The issues are accordingly decided against the plaintiff.”

12. The Court also notes that the Supreme Court in its final order dated 25.04.2006 had put the entire controversy to rest by passing a detailed Order.

13. The Supreme Court in the case of **Stawbroad Manufacturing Co. v. Gobind**¹, ruled that if approval for dismissal is not granted under Section 33(2) (b), the dismissal order becomes void from the date it was issued. Consequently, the employee is considered to have never been dismissed or discharged and is entitled to wages from the date of the initial dismissal to the date of disapproval.

14. Therefore, in light of the decision rendered by the Supreme Court, this Court opines that there is no reason to interfere with the impugned judgment and decree passed by the Trial Court. Accordingly, the instant appeal fails and the same is hereby dismissed along with the pending application(s).

PURUSHAINDR KUMAR KAURAV, J

DECEMBER 19, 2024/aks/dp

¹ 1962 AIR 1500