



\$~42

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

+ **RFA 188/2014**

DELHI TRANSPORT CORPORATION

.....Appellant

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

versus

MAHINDER SINGH

.....Respondent

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 06.02.2014 passed in Suit No. 246/2011 by the Trial Court, whereby, the suit filed by the appellant/plaintiff has been dismissed for recovery of the wages paid to the respondent/defendant.
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 respondent was working with the appellant-Corporation as a driver and during his tenure, he was charge-sheeted. After a departmental inquiry, he was subsequently dismissed from his duties on 20.11.1991.
5. An application seeking approval was filed by the appellant/plaintiff



under Section 33(2)(b) of the Industrial Disputes Act, 1947 (I. D. Act), which was dismissed by the Industrial Tribunal vide order dated 19.01.2001. The respondent/defendant had also raised an industrial dispute against the appellant/plaintiff bearing ID No. 129/01 against his removal. An award dated 02.08.2003 was decided in favour of the respondent/defendant and he was made entitled to reinstatement in service with continuity of service and full back wages with consequential benefits.

6. The respondent/defendant filed an execution application for the award dated 02.08.2003 and recovered the back wages to the tune of Rs. 7,37,110/- by way of bank attachment vide pay order dated 11.06.2004.

7. The appellant/plaintiff challenged the orders dated 19.01.2001 and 02.08.2003 by filing W.P.(C) No. 5596/2001 and W.P. (C) No. 1771/2004.

8. Both the aforesaid writ petitions came to be decided in favour of the appellant *vide* order dated 13.12.2004, and this Court remanded the matter back to the Industrial Tribunal for fresh disposal.

9. The Industrial Tribunal *vide* Award dated 30.07.2008, dismissed the ID No. 129/2001 filed by the respondent/defendant and granted approval to the appellant herein for removing the respondent/defendant from service.

10. Thereafter, the appellant herein filed the aforesaid suit for recovery of Rs. 11,50,550/- along with *pendente lite* and future interest at the rate of 12% per annum.

11. The Trial Court *vide* impugned judgment and decree dated 06.02.2014, relying on the decision of this Court in the case of “**Delhi Transport Corporation v. Ramesh Chander**”¹ had dismissed the aforesaid suit while rendering the following pertinent findings:



“27 The Hon'ble Delhi High Court in "Delhi Transport Corporation vs. Ramesh Chander" reported as 140(2004) Delhi Law Times 86 after examining various aspects related to the workman under Industrial Dispute Act 1947 has held as under:-

"Under the circumstances, it is held as under:

- 1. The impugned order dated 26th February, 2003 is set aside. However, the Petitioner will pay to the Respondent workman, all wages and other benefits due to him until 13th February, 2004, that is, the date on which this Court stayed the impugned order. The payments should be made to the Respondent workman within six weeks from today.*
- 2. When any industrial adjudicator declines to grant approval to an order of dismissal or discharge passed under Section 33(2)(b) of the Act, it is obliged to treat the workman as being on duty as per the law laid down by the Constitution Bench of Supreme Court. Therefore, it must direct the employer to pay to the workman all wages and other benefits due to him until the date of the refusal order and it must also direct payment to be made within a specified and reasonable period of time.*
- 3. When a writ petition is filed challenging an order passed by an industrial adjudicator declining approval under Section 33(2)(b) of the Act, the writ Court also is obliged to treat the Respondent workman as being on duty as per the law laid down by the Constitution Bench of the Supreme Court. Consequently, the Respondent workman is entitled to wages and all other benefits as a result of the refusal by the industrial adjudicator to grant approval under Section 33(2)(b) of the Act until the order of refusal is stayed by the writ Court. Therefore, the writ Court should insist, as a rule, that the employer should pay to the workman his dues until such time as the impugned order continues to operate.*
- 4. When a writ Court sets aside the order passed by an industrial adjudicator declining approval under Section 33(2)(b) of the Act, it will take effect from the date the employer passed the initial order of dismissal or discharge. However, keeping in view that the Act is a beneficial legislation, it must not direct the Respondent workman to refund the amount received by him towards wages and other benefits."*

28 The above case squarely applicable in the facts and circumstances of the present case. In the present case, the defendant was working as a Driver with the plaintiff. His services were terminated by the plaintiff after holding domestic inquiry. The plaintiff filed an application for approval of termination before the Tribunal but the said approval was rejected vide

¹ 140(2004) DLT 86



order dated 19.01.2001. Thus the defendant was continue to be in service as per the law.

29 The defendant also raised the industrial dispute before the Labour Court vide ID No. 129/09. The dispute raised by the defendant was decided by the Labour Court in favour of the defendant and Award dated 02.08.2003 Ex.PW1/3 was passed. Vide said Award the Ld. Presiding Officer of the Labour Court has held that the service of the workman were terminated illegally and unjustifiably, therefore, he was held entitle for reinstatement of service. Pursuant to the said Award Ex.PW1/3, defendant initiated proceedings for implementation of the Award and in that proceeding recovered a sum of Rs. 7,37,170/-. The defendant has thus received a sum of Rs. 7,37,170/- from the plaintiff towards his back wages in compliance of the Award dated 02.08.2003 Ex.PW1/3.

30 The plaintiff had challenged the said Award by filing the Writ Petition(C) No. 17717/04. They have also challenged the order of rejection of approval by filing the Writ Petition (C) No. 596/01 and the Hon'ble High Court finally allowed both the Writ Petitions thereby set aside the Award passed by the Ld. Presiding Officer of the Ld. Labour Court and remanded the matter back. The Ld. Tribunal thereafter vide order dated 30.07.2008, Ex.PW1/6 dismissed the ID dispute raised by the defendant and granted the approval of the plaintiff.

31 The result of the order passed by the Ld. Presiding Officer of the Ld. Tribunal would be that the defendant would not be entitled for reinstatement and any service benefit after passing of the said order dated 30.07.2008. However, the amount received by the defendant prior to the passing of the order dated 30.07.2008 towards his wages cannot be recovered by the plaintiff. The said amount was paid to defendant towards his wages and it has been held in several occasion that the Industrial Dispute Act is a beneficial legislation and its provision has to be construed liberally because it is a legislation enacted for the welfare of the workers.

32 One of the factors that has weighed with me in arriving at his conclusion is that while dealing such cases, it is necessary to take into account not only the law of the land but the vagaries of the defendant. Therefore, one has to take a pragmatic and reasonable view and after doing so, I am of the opinion that the amount paid to the defendant towards his wages and other benefit under the Award are not required to be refunded. The said amount was received by the defendant from the plaintiff towards his back wages and the amount of back wages received by the defendant can not be recovered by the plaintiff from the defendant as held by the Hon'ble High Court in the above judgment.

33. In view of the facts and circumstances, I am of the considered view that the defendant has received an amount of Rs. 7,37,170/- from the plaintiff towards back wages and other benefits as per the Award dated 02.08.2003 which has been set aside by the Hon'ble High Court and finally by the Ld. Industrial Tribunal vide order dated 30.07.2008. The



defendant has been working as an employee of the plaintiff after rejection of approval application of the plaintiff and continue to be in that capacity up till 30.07.2008 when the approval of his termination has been granted by the Ld. Tribunal. The defendant has thus received the said, amount from the plaintiff towards his wages pursuant to the Award passed in his favour. Therefore, plaintiff is not entitled to recover the said amount from the defendant. The plaintiff has failed to discharge the onus of Issue No. 3, same is accordingly, decided against the plaintiff. ”

12. The Court takes note of the decision of the Supreme Court in the case of ***Stawbroad Manufacturing Co. v. Gobind***², wherein it was 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 as never having been dismissed or discharged and is entitled to wages from the date of the initial dismissal to the date of disapproval.

13. In view of the aforesaid, this Court does not find any 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.

PURUSHAINDR KUMAR KAURAV, J

DECEMBER 19, 2024

aks/dp

² 1962 AIR 1500