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

+ **RFA 328/2009**

DTC

.....Appellant

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

versus

UPENDER DUTT , EX CONDUCTOR

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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19.12.2024

1. The instant appeal has arisen out of judgment and decree dated 06.05.2009, passed in Suit No. 332/2008, 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 Retainer Crew Conductor by the plaintiff/appellant and during his tenure, he was charge-sheeted for misconduct. After a formal inquiry, he was subsequently dismissed from his duties on 11.10.1993.
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 resultantly, was dismissed by the Court on 07.07.2003. The



respondent/defendant, thereafter, raised an industrial dispute registered as I.D. No. 234/1995 and *vide* award dated 06.12.2003, the respondent/defendant was directed to be reinstated into service from the date of his removal along with necessary benefits. The execution petition was filed by the respondent/defendant and an amount to the tune of Rs. 7,15,000/- was released in his favour on 11.06.2004.

6. The appellant/plaintiff, however, challenged the Order dated 07.07.2003, whereby, the approval application was dismissed, and the award dated 06.12.2003, in writ petitions bearing W. P. (C) 6314/2004 and W. P. (C) 394/2005, respectively. Both the writ petitions were allowed *vide* common order dated 06.09.2006 in favor of the appellant. The LPAs bearing no. LPA 2054/2006 and LPA 2056/2006 against the order passed by the writ Court were also dismissed by the Division Bench of this Court *vide* order dated 18.01.2008. It was, thereafter, that the suit for recovery was filed.

7. The Trial Court while taking into consideration the fact that the respondent/ defendant was paid the wages in accordance with the order passed by the competent Court, dismissed the suit *vide* judgment and decree dated 06.05.2009. The Court has essentially held that on a decision passed by the higher Court if the earlier decision is turned down, the same would not entitle the appellant/plaintiff employer to recover the wages.

8. The Trial Court has placed reliance on the decision of this Court in the case of ***Delhi Transport Corporation vs. Ramesh Chander***¹, The findings in paragraphs nos. 8 to 12 read as under:-

"8 Admittedly, the Defendant Sh. Upender Dutt, employed with the

¹ 114(2004) DLT 86.



Plaintiff as Conductor since 23.9.1982 was charge-sheeted by the Plaintiff on account of misconduct and his services were terminated after holding an Inquiry Into the charges. The Defendant, admittedly, raised an Industrial Dispute and the Labour Court passed an Award dated 6.12.2003. Further, the application under Section 33(2)(b) of I.D Act seeking approval of the action regarding removal of Defendant from the services was dismissed by the Industrial Tribunal II. The Plaintiff was directed to reinstate the Defendant in service with all the benefits and the Defendant, accordingly, received a sum of Rs.7,15,000/-.

9 Ld, Counsel for the Defendant vehemently argued that the Plaintiff is not entitled to get refunded the amount received by the Defendant. The argument has great force in view of the decisions pronounced by the Apex Court and our own High Court. In Delhi Transport Corporation Vs Ramesh Chander [114(2004) DLT 86] Hon'ble High Court has held as under:-

'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 the 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 the payment to be mode within a specified and reasonable period of time',

Hon'ble High Court, further, held that :-

'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.'

It was further held as under:-

' 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.

10 In the instant case, the Defendant received a sum of Rs. 7,15,000/- after the approval application of the Plaintiff was dismissed and an Award was



made in favour of the Defendant by the Industrial Tribunal. Hon'ble High Court quashed the said Award vide order dated 06.09.2006. The Apex Court in (1973) 1 SCC 813 observed that the Industrial Disputes Act is a beneficial legislation and its provisions have to be construed liberally because it is a legislation enacted for the welfare of workers. Proceeding on this basis it can not be said by any stretch of imagination that the Act permits an employer to recover wages paid to a workman upto the date when, approval under section 33(2)(b) of the Act is declined.

11 In view of such interpretation, as discussed hereinabove, the Act does not permit the employer to recall wages paid to the workman up to the date the approval under Section 33 (2) (b) of the Act is declined. A pragmatic and reasonable view of the matter has to be taken. The wages and other benefits paid to the workman are required to be paid and if so paid, are not required to be refunded by him.

12 In view of the discussion, hereinabove, I hold that the Plaintiff is not entitled to the refund of the said amount. The suit is, accordingly, not maintainable and liable to be dismissed. The suit is accordingly dismissed. No order as to costs. Decree sheet be drawn. File be consigned to record room."

9. Besides the aforesaid unassailable and impeccable findings the findings rendered by the Trial Court, it appears that the Division Bench of this Court while dismissing the appeal of the respondent/defendant has also taken note of the fact that a sum of Rs. 7,15,000/- was paid to the respondent/defendant by the appellant-Corporation. Even after taking note of the aforesaid aspect, no consequential directions were issued by the Division Bench, therefore, the Trial Court decision is based on proper appreciation of the law which does not require any interference. The observations rendered by the Division Bench of this Court in paragraph no. 15 of the order dated 18.01.2008 read as under:-

"During the course of arguments we were also apprised with the fact that a sum of Rs. 7,15,000/- has already been paid to the appellant by the respondent corporation. As the issue quantum of compensation payable if any was not raised by any of the parties either in the writ petition or in this appeal, therefore, we are not commenting on merits of the same."

10. In view of the aforesaid decisions, this Court is not inclined to



interfere with the impugned judgment and decree passed by the Trial Court.

11. Accordingly, the appeal fails and the same is, thereby dismissed.

PURUSHAINDR KUMAR KAURAV, J

DECEMBER 19, 2024

aks/dp