

(2021) 02 DEL CK 0315

In the Delhi High Court

Case No : Letter Patent Appeal No. 731 Of 2019

Chattar Singh

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 16-02-2021

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(1)

Citation : (2021) 02 DEL CK 0315

Hon'ble Judges : Rajiv Sahai Endlaw, J; Sanjeev Narula, J

Bench : Division Bench

Advocate : Latika Chaudhary, Avnish Ahlawat, Tania Ahlawat, Nitesh Kumar Singh

Final Decision : Disposed Of

Judgement

Rajiv Sahai Endlaw, J

CM No.50412/2019 (for condonation of 64 days delay in filing appeal)

1. For the reasons stated in the application, the delay of 64 days in filing the appeal is condoned.

2. The application stands disposed of.

LPA No.731/2019

3. The appeal impugns the common judgment dated 13th August, 2019 in W.P. (C) 5070/2013 preferred by the appellant and in W.P.(C) 2059/2014

preferred by the respondent Delhi Transport Corporation (DTC), both with respect to the Award dated 13th March, 2013 of the Central Government

Industrial Tribunal (CGIT).

4. The appeal came up first before this Court on 22nd November, 2019 and vide subsequent order dated 4th December, 2019, notice thereof was

ordered to be issued. The counsels were heard on 8th February, 2021 and have been further heard today.

5. The undisputed facts are, (i) the appellant was in the employment of the respondent DTC, as a Driver, since the year 1974; (ii) in February, 1982,

the appellant absented from duty and the respondent DTC, deemed the appellant to have resigned, under Regulation 14(10)(c) of the Delhi Road

Transport Authority (Conditions of Appointment and Service) Regulations, 1952; (iii) the appellant approached the respondent DTC to join back but

the respondent DTC refused to take him on duty; (iv) the respondent DTC, vide letter dated 30th March, 1983 agreed to take the appellant on duty,

albeit as a daily wager; (v) the appellant again absented and was not taken back on duty; (vi) the appellant raised an Industrial Dispute and the

following Industrial Dispute was referred by the appropriate Government to the CGIT:

“Whether the termination of the services of Shri Chattar Singh is legal and justified and if not, to what relief is he entitled and what

directions are necessary in this respect.”

(vii) the CGIT, vide Award dated 15th December, 1999, directed reinstatement of the appellant, but qua back wages, reasoning that the appellant had

taken four years from framing of issues, for filing affidavit, awarded only 25% of the back wages to the appellant; (viii) the respondent DTC preferred

W.P.(C) 4336/2000 impugning the said Award but the said writ petition was dismissed vide order dated 27th November, 2001, in terms of Delhi

Transport Corporation Vs. Om Kumar (2002) 95 DLT 425, holding Regulation 14(10)(c) supra to be bad; (ix) the aforesaid judgment attained finality;

(x) the appellant raised another Industrial Dispute and the following reference was made by the appropriate Government:

“Whether the demand for regularization of Sh. Chatter Singh S/o Sh. Nand Lal on the post of Driver w.e.f. 15-12-99 in the proper pay

scale is justified; and if so, what directions are necessary in this respect?”

(xi) that the aforesaid Industrial Dispute was decided vide the Award dated 13th March, 2013; the CGIT, in the said Award, recorded (a) that the

respondent DTC, in spite of earlier Award dated 15th December, 1999 and dismissal on 27th November, 2001 of C.W.P No.4336/2000 preferred

there against, did not reinstate the appellant or pay him the 25% back wages;

(b) that the appellant moved an application under Section 33C(1) of the Industrial Disputes Act, 1947 for implementation of the Award; (c) that the amount of wages till the date of the Award were paid by the respondent DTC to the appellant in the said implementation proceedings but the appellant was not reinstated in service till 1st January, 2003; (d) that the appellant resumed duty on 1st January, 2003 but was being paid wages on a daily basis; (e) that the appellant represented, that he was entitled to wages as a regular employee and not as a daily wager, as he, prior to the first Industrial Dispute, was a regular employee and the direction of his reinstatement was as a regular employee; (f) however the respondent DTC did not accede; (g) that the appellant thus raised the second Industrial Dispute and on which reference aforesaid was made; and, (h) that the appellant, on reaching the age of superannuation, retired from service on 30th April, 2009; and, (xii) that the CGIT, vide the Award dated 13th March, 2013, held the appellant entitled to financial benefits i.e., difference of regular pay scale (revised from time to time) and wages paid to the appellant treating him as a daily wager, w.e.f. three years prior to the date of the reference order dated 22nd March, 2010, that is w.e.f. 22nd March, 2007 till the appellant worked on the said post i.e., till the date of his retirement on 30th April, 2009.

6. As aforesaid, both, the appellant as well as the respondent DTC, being dissatisfied with the Award dated 13th March, 2013 aforesaid, preferred the writ petitions and which were disposed of vide the impugned judgment.

7. The Single Judge has disposed of the writ petitions of the appellant as well as of the respondent workman, reasoning (i) that in the Award dated 15th December, 1999, no issue was raised as to the status of the appellant i.e. whether he was a daily wager or a regular employee and consequently there was no finding of the CGIT, that he was a regular employee; (ii) that the appellant joined the duty in terms of the Award dated 15th December, 1999, on 1st January, 2003 and retired on 30th April, 2009; (iii) that the belated plea for regularization, raised by the appellant after the retirement, was not maintainable; and, (iv) however, no interference was warranted in the financial benefits granted to the appellant by the Award dated 13th March, 2013; accordingly, the respondent DTC was directed to pay to the appellant, the amount in terms of the Award dated 13th March, 2013, within four

weeks therefrom.

8. Though the respondent DTC has accepted the aforesaid judgment but the appellant, feeling aggrieved therefrom, has preferred this appeal.

9. After hearing the counsels on 8th February, 2021, it emerged that the main bone of contention between the parties is, whether the Award dated

15th December, 1999 directed reinstatement of the appellant as a regular employee or as a daily wager. While the counsel for the respondent DTC

contends that the direction for reinstatement was as a daily wager and the appellant, on re-joining, was entitled only to daily wages and till the date of

his superannuation, the counsel for the appellant workman contends that the reinstatement was as a regular employee and the appellant, on rejoining,

was entitled to wages of a regular employee (Driver) and the appellant is also entitled to superannuation benefits as a regular employee. Finding that

the relevant documents and pleadings with respect to the first Industrial Dispute were not on record and not available with the counsels also, the

hearing was adjourned to today, permitting the counsels to place the same on record.

10. Today, the counsels state that they have been unable to find any additional documents. The counsel for the respondent DTC has however, during

the course of hearing, emailed (a) letter dated 19th May, 1982 of the respondent DTC to the appellant; (b) document dated 9th May, 1984 of the

respondent DTC dispensing with the services of the appellant; (c) written statement of the respondent DTC to the claim petition in the first Industrial

Dispute; and, (d) letter dated 11th October, 1983 of the respondent DTC to the appellant.

11. We have heard the counsels further and proceed to adjudicate on the basis of material on record. As aforesaid, the question to be adjudicated is,

whether the Award dated 15th December, 1999 in the first Industrial Dispute, is of reinstatement of the appellant as a daily wager or as a regular

employee. It is not in dispute that the appellant was a regular employee of the respondent DTC, as a Driver, since 1974 and was working in the

regular pay scale of Drivers. It is also not in dispute that on his absents from duty without leave, he was, on 30th April, 1982, deemed to have

resigned from the employment of the respondent DTC, as per the then Regulations of DTC. It is also not in dispute that on representation of the

appellant, he was appointed as a Retainer Crew Driver, on daily wages, w.e.f. 12th October, 1983 and thereafter his services were again dispensed

with, this time as a daily wager, on 9th May, 1984. It is yet further not in dispute that the appellant raised the Industrial Dispute only thereafter.

Unfortunately, the documents vide which the Industrial Dispute was raised are not available and which could have shown whether dispute was qua

the deemed resignation w.e.f. 30th April, 1982 or qua termination dated 9th May, 1984, after being retained as a daily wager w.e.f. 12th October,

1983. Even the reference made and as reproduced in the Award dated 15th December, 1999 of the CGIT, does not give the date of termination qua

which reference was made; however from the notification making the reference being dated 19th February, 1986, it is evident that the dispute was

raised after the termination dated 9th May, 1984.

12. A perusal of the first Award dated 15th December, 1999 shows, (i) the CGIT to have recorded the question involved as, "whether termination

effected by the management on the ground of deemed resignation in terms of para 14 (10)(c) of DATA (Conditions of Appointment and Services)

Regulations, 1952, can stand the scrutiny of law"; (ii) the CGIT to have recorded the plea of the appellant, that while several other employees who

abstained from work on medical ground, for longer period, were taken on duty on regular basis, the appellant had been discriminated against and no

charge sheet also was served on him and no notice period pay was given to him; (iii) the CGIT to have recorded the defence of the respondent DTC

as, that the "reference has not been made by Central Government, by accepting appointment as Retainer Crew Driver, the workman had set his

hand on approval over earlier termination"; (iv) the CGIT to have recorded the contention of the respondent DTC that the appellant, after resuming

duty as a daily wager, again absented himself from duty and his services were terminated in accordance with the executive instructions, vide order

dated 9th May, 1984 and that the appellant had not completed 240 days during the second tenure; (v) the CGIT to have recorded that the respondent

DTC did not lead any evidence; (vi) the CGIT to have held that the defence of the respondent DTC about deemed resignation was not sustainable;

(vii) the CGIT to have recorded that the respondent DTC did not place on record the letter of fresh appointment of the appellant; (viii) the CGIT to

have recorded that the respondent DTC had not taken the plea of fresh appointment in the conciliation proceedings; (ix) the CGIT to have recorded that the deemed resignation brought condition of the services of the appellant into effect and thus constituted an Industrial Dispute; (x) the CGIT to have held that deemed resignation had been held to be bad in D.K. Yadav Vs. J.M.A. Industries Ltd. (1993) 3 SCC 259 and Uptron India Ltd. Vs. Shammi Bhan (1998) 6 SCC 538; (xi) the CGIT to have held that the action of the respondent DTC was contrary to the principles of natural justice; and, (xii) the CGIT to have held that the respondent DTC had failed to establish the plea of fresh appointment and according to the appellant his reinstatement was in continuation of previous employee and thus non-completion of 240 days in the fresh employment was immaterial.

13. On the aforesaid analysis and reading of the first Award dated 15th December, 1999, our unequivocal opinion is, that the deemed resignation w.e.f. 30th April, 1982 was the subject of the first Industrial Dispute and was held to be bad and thus the direction of reinstatement of the appellant in the first Award was as a regular employee and not as a daily wager, pursuant to fresh appointment, which as per the first Award dated 15th December, 1999 was not even proved by the respondent DTC.

14. Once the aforesaid conclusion is inescapable, the subsequent proceedings of the second Industrial Dispute and writ petitions thereagainst are rather unfortunate.

15. The respondent DTC having not interpreted the first Award dated 15th December, 1999 as of reinstatement on regular basis, though the appellant correctly applied under Section 33C(1) of the Industrial Disputes Act but during the hearing it is informed that on doubts being expressed with respect to maintainability thereof, the same was withdrawn and instead the second Industrial Dispute raised.

16. Though the only question in the second Industrial Dispute was, whether the reinstatement of the appellant pursuant to the first Award in the first Industrial Dispute was as a regular employee or as a daily wager and on finding with respect thereto being returned, the Award of back wages had to be in terms of the first Award i.e., at 25%, but the CGIT, instead of doing so, sought to modify the earlier award by granting relief with respect to back wages for a period of three years preceding the second industrial dispute

only.

17. In view of the aforesaid facts, we are unable to agree with the reasoning of the Single Judge, that in the first Industrial Dispute, no issue was raised as to the status of the appellant i.e. whether he was a daily wager or a regular employee and the appellant was not entitled to raise the said dispute after retirement. As aforesaid, it is clearly evident from the Award in first Industrial Dispute that the dispute raised was with respect to deemed resignation on 30th April, 1982, as a regular employee; once the same was quashed/set aside and reinstatement directed, such reinstatement axiomatically had to be as immediately before 30th April, 1982 i.e. as a regular employee. Once the appellant had raised the first Industrial Dispute with respect to deemed resignation w.e.f. 30th April, 1982, there was no need for him to raise a specific dispute with respect to his status. The respondent DTC, in the proceedings of the first Industrial Dispute, in fact, failed to prove any fresh appointment as a daily wager; thus all that was required to be held in the second Industrial Dispute, though wrongly raised, was that the direction in the Award of the first Industrial Dispute, for reinstatement of the appellant, was as a regular employee.

18. Supreme Court, recently in judgment dated 10th January, 2020 in C.A. Nos.201-202/2020 titled Nand Kishore Shravan Ahirrao Vs. Kosan Industries (P) Ltd. has held, that the Labour Court having awarded reinstatement, continuity of service would follow as a matter of law since it was not specifically denied. Else, in Deep Chandra Vs. State of U.P. (2001) 10 SCC 606, Manager Reserve Bank of India Vs. S. Mani (2005) 5 SCC 100, Gangadhar Pillai Vs. Siemens Ltd. (2007) 1 SCC 533 and Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (2013) 10 SCC 324, it has been held that the direction to reinstate the workman means, he gets back the same status.

19. Resultantly, the judgment of the Single Judge is set aside and we now correct the aforesaid error in the proceedings, by clarifying that the Award dated 15th December, 1999, directed reinstatement of the appellant as a regular employee, with 25% back wages; the appellant thus, in implementation thereof, was entitled to 25% of the back wages as a regular employee, from the date not paid, till the date of reinstatement and wages as a regular employee from the date of rejoining till the date of superannuation

and other financial/superannuation benefits, as a regular employee.

20. This appeal is accordingly disposed of, by directing the respondent DTC to, within 8 weeks hereof, pay to the appellant workman (i) 25% of back

wages as a regular employee, w.e.f. 1st May, 1982 till the date of rejoining on 1st January, 2003, pursuant to the Award dated 15th December, 1999,

less the amounts already paid; (ii) the regular wages of a Driver, from 1st January, 2003, till the date of retirement on 30th April, 2009, less the

amounts already paid; (iii) superannuation benefits including arrears of pension, if any, as a regular employee, w.e.f. 1st May, 2009 to the date of

payment, less the amounts already paid; and, (iv) to, in future, continue to pay the pension, if any applicable, as a regular employee.

21. The appeal is disposed of.