
(2012) 03 DEL CK 0184
In the Delhi High Court
Case No : LPA No. 188 of 2012

Delhi Transport Corporation	Vs	APPELLANT
Sh. Deep Chand through L.Rs and Others		RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47

Citation : (2012) 03 DEL CK 0184

Hon'ble Judges : A.K. Sikri, Acting C.J.; Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Avnish Ahlawat, for the Appellant; Padma Kumar, S.Adv., for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.

Caveat Pet. No.240/2012.

1. The counsel for the caveators/respondents has appeared; the caveat stands discharged. CM No.4208/2012 (for condonation of delay).

This application is filed for condonation of 40 days delay in filing the appeal. The counsel for the respondents states that subject to the appeal being finally heard at the admission stage itself, the delay be condoned. This is acceptable to the counsel for the appellant. Since the appeal is being finally heard today itself, the delay in filing the appeal is condoned. 2. The CM stands disposed of.

LPA No.188/2012 & CM No.4207/2012 (for stay).

3. This Intra-Court appeal impugns the judgment dated 17th November, 2011 of the Single Judge of this Court dismissing W.P.(C) No. 5979/2001 preferred by the appellant DTC. The said writ petition was filed by the appellant DTC impugning the award dated 14th November, 2000 of the Industrial Adjudicator. The

Industrial Adjudicator vide the said award had directed the appellant DTC to reinstate the respondent workman with full back wages. Since the respondent workman, during the pendency of the writ petition, had died on 10th April, 2010, the learned Single Judge while dismissing the challenge to the award, directed the appellant DTC to pay to the legal heirs of the deceased workman the full wages which the deceased workman would have earned till his retirement on attaining the age of superannuation on 28th February, 2004.

4. The deceased workman was appointed as a driver on 14th May, 1983. The medical check held on 27th July, 1991 found him unfit for performing the duty as driver. The appellant DTC on 4th August, 1992 pre-maturely retired the deceased workman from employment. The departmental appeal preferred by the deceased workman was also dismissed. The deceased workman raised an industrial dispute on which the following reference was made:-

Whether the termination of service of Shri Deep Chand by way of retirement is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?

5. The Industrial Adjudicator in the award dated 14th November, 2000 (supra) held the action of the appellant DTC, of pre-maturely retiring the deceased workman owing to disability acquired by deceased workman during employment, to be in contravention of The Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 and held the deceased workman to be entitled to the benefit of Section 47 thereof. The termination of services of deceased workman by way of pre-mature retirement was thus held illegal and the appellant DTC was directed to reinstate the deceased workman in service and treat him in continuous employment without any break in service and to give him full back wages from the date of pre-mature retirement till the date of reinstatement. It was further directed that even if there was no vacancy, the deceased workman be kept on supernumerary post until a suitable post was available or till he attains the age of superannuation.

6. It was the contention of the appellant DTC in the writ petition that the Industrial Adjudicator erred in applying the provisions of the Disabilities Act which was enacted after the deceased workman was pre-maturely retired.

7. The learned Single Judge relying on DTC v. Harpal Singh 156 (2009) DLT 481 (DB) held the benefit of the Disabilities Act to be available even in cases where the premature retirement was prior to the coming into force of the said Act but the proceedings were pending. The learned Single Judge further held that since the appellant DTC had after finding the deceased workman unfit for performance of duties as driver continued him for some time as Ticket Tallying Collector though on a temporary arrangement and subject to regular vacancy, for this reason also it could not thereafter have pre-maturely retired him by invoking Regulation No.10 of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952. As aforesaid since the workman

had died on 10.04.2010, direction for payment of wages till the date of superannuation on 28th February, 2004 was sought.

8. We may notice that independently of the Disabilities Act and prior thereto also, in various judgments (as detailed in D.T.C. Vs. Suraj Bhan and Others, . DTC was held not entitled to terminate employment on ground of disability acquired during employment. To the same effect is the judgment of another Division Bench of this Court in Delhi Transport Corporation Vs. Sh. Manmohan,

9. The counsel for the appellant DTC has limited the challenge in the present appeal to the date on which the deceased workman would have superannuated. It is stated (and it is not disputed by the counsel for the legal heirs of the deceased workman) that the learned Single Judge while directing payment of wages till 28th February, 2004 has taken the age of superannuation as 60 years. It is argued that the deceased workman employed as driver was to superannuate at the age of 55 years and which he would have attained on 28th February, 1999. It is thus contended that the direction for payment of wages beyond 28th February, 1999 is bad.

10. Though the counsel for the deceased workman had sought to urge that since the reinstatement of the deceased workman would not have been as a driver, the retirement age of a driver ought not to be applied to him but the counsel for the appellant DTC has invited our attention to the judgment dated 9th January, 2009 of the Division Bench of this Court in LPA No.1214/2007 titled DTC v. Shri Dharam Pal and in other connected matters and which unequivocally lays down that the age of superannuation of a driver in DTC is 55 years and Section 47 of the Disabilities Act does not extend the tenure of service of a driver and the benefit granted to such driver despite incurring disability during the tenure of service is up to 55 years only and does not extend the service beyond 55 years so as to enable him to continue in service, may be at a lower post, for which the normal age of retirement is 60 years. The same view was reiterated in Harbhajan Singh Vs. Delhi Transport Corporation and Another

11. In view of the dicta aforesaid of Coordinate Benches and with which we respectfully agree, the matter need not be discussed any further.

12. We accordingly partly allow this appeal by modifying the direction contained in the judgment of the learned Single Judge to payment of wages till 28th February, 1999 instead of till 28th February, 2004. Else we concur with the judgment of the learned Single Judge. The appeal is disposed of; no order as to costs.