

(2008) 05 DEL CK 0118

In the Delhi High Court

Case No : LPA No's. 278 and 284 of 2008

Delhi Transport Corporation

APPELLANT

Vs

Pradeep Kumar

RESPONDENT

Date of Decision : 28-05-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2008) 05 DEL CK 0118

Hon'ble Judges : A.P. Shah, C.J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Sumeet Pushkarna and Shaista Siddiqui, for the Appellant;

Final Decision : Dismissed

Judgement

1. These appeals are preferred by the appellant - Delhi Transport Corporation against the common order dated 8th October, 2007 passed by the learned single Judge in writ petition No. 507/2006 filed by the appellant - Corporation and writ petition (civil) No. 5724/2005 filed by the respondent - workman.

2. Brief facts leading to the appeals are set out herein under:

3. The respondent - workman was employed as a driver with the appellant - Corporation. On 11.12.1991, the police arrested him on charges of kidnapping and rape of a girl. On 17.1.1992, the Depot Manager of Shahdara Depot-II issued a charge sheet to the respondent workman on the ground of concealing the fact of his arrest from the employer, i.e., the appellant - Corporation, which amounted to misconduct within the meaning of paras 19(f), (k) and (m) of the standing orders of the Corporation. An inquiry was conducted into the charges and the respondent - workman was found guilty and thereafter he was removed from service on 19.10.1992

Immediately thereupon, the appellant filed an approval petition before the Tribunal u/s 33(2)(b) of the Industrial Disputes Act seeking approval of its action of removing the respondent - workman from service. In the said proceeding, a

preliminary issue was framed to decide whether the inquiry conducted by the appellant - Corporation against the respondent - workman was legal and valid and in accordance with the principles of natural justice. The Tribunal recorded a finding that the inquiry was fair and proper but went on to hold that since in any case the respondent - workman did inform the appellant - Corporation about his arrest, before the letter of the police was received in the depot and the reporter submitted his report to the Depot Manager, therefore, the report of the inquiry officer was held to be perverse.

After the preliminary issue was decided as above, the appellant - Corporation made a request to lead additional evidence to establish the charges, which request was granted and Shri Desh Pal (AW-2) was produced as a witness by the appellant - Corporation for leading his additional evidence, who filed his affidavit, Ex.AW-2/A and relied upon the documents AW-2/A to Ex.AW-2/6. As seen from the order of the Tribunal, the said witness had only deposed in his affidavit that on receipt of the inquiry report, a show cause notice was issued to the respondent - workman pursuant to which the removal order was passed, and that nothing had been said in the affidavit about his alleged misconduct. In this view of the matter, the Tribunal held that since the inquiry report already stood vitiated vide order dated 6.9.2001, and in the absence of the appellant - Corporation having been able to prove the charges by leading additional evidence, the appellant - Corporation had failed to prove the misconduct committed by the respondent - workman. Consequently, the Tribunal dismissed the approval petition filed by the appellant - Corporation.

Being aggrieved, the Corporation filed WP(C) No. 507/2006 seeking for quashing and setting aside the impugned order and for holding the Corporation to be entitled to the approval sought by it u/s 33(2)(b) of the Industrial Disputes Act, whereas the workman in his petition being WP(C) No. 5724/2005 has prayed for a direction to be issued to the Corporation to reinstate him in service with full back wages from the date of his termination till the date of his reinstatement, in view of the rejection order dated 2.9.2002.

4. The learned single Judge, following the law laid down by the Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Verma and Ors. reported in AIR 2007 SC 643, dismissed the writ petition filed by the Corporation and allowed the writ petition filed by the respondent - workman holding that the workman is deemed to have been in service for all effects and purposes from the date with effect from which his services are terminated.

5. Learned Counsel appearing for the appellant - Corporation vehemently submitted that concealment of vital information of being involved / arrested in a rape and kidnapping cannot be treated as a minor infraction of rules. Such information could have been given even from jail or by family members, much less on being later released on bail. In the present case, though the respondent - workman was released on bail on 28.12.1991, he did not give information about his arrest in such case immediately. He submits that the Tribunal as also the

learned single Judge failed to see that there is sufficient material to grant approval u/s 33(2)(b) of the Industrial Disputes Act.

6. We find absolutely no merit in the submissions of the learned Counsel.

7. The Tribunal had noted that while the respondent - workman was arrested on 11.12.1991, he was sent to judicial custody on 13.12.1991 and was bailed out on 28.12.1991, and finally informed the appellant - Corporation of the fact of his arrest on 6.1.1992. The letter written by the concerned SHO on 12.12.1991 was received in the Depot of the appellant - Corporation on 8.1.1992, i.e., two days after the letter of the workman dated 6.1.1992 was received in the Depot, by which he informed the appellant about his arrest. It was also taken note of that the report dated 15.1.1992 made by Shri Dhuli Chand, on the basis of which the charge sheet was issued to the respondent - workman, did not make any mention of the letter received from the respondent - workman, but the fact of the receipt of the letter from the SHO alone was mentioned therein. The Inquiry Officer found fault with the report of Shri Dhuli Chand, but still went on to hold that the respondent - workman was guilty of misconduct in view of the fact that he did not inform the Depot Manager about his arrest till 6.1.1992, though the relevant rules of the Corporation required him to intimate the appellant - Corporation about the fact of his arrest immediately after such arrest. The Tribunal, on consideration of the evidence and material on record, found that the delay of a week in intimating about his arrest cannot be treated as unreasonable delay and there was no intention on the part of the respondent - workman to conceal the fact of his arrest from the Corporation. It was also noted that though the appellant - Corporation was given an opportunity to lead further evidence to prove the misconduct as alleged against the respondent - workman, at its request, but the Corporation failed to lead any additional evidence and nothing has been said by the Corporation witness about the alleged misconduct.

8. We do not find any perversity or illegality in the view taken by the Tribunal, which has been confirmed by the learned single Judge.

9. Learned Counsel appearing for the appellant - Corporation raised an alternative plea that the learned single Judge was not justified in directing payment of full back wages. He placed heavy reliance on a recent decision of the Supreme Court in *United Bank of India Vs. Sidhartha Chakraborty*,

10. We find that the alternative submission of the Corporation is equally without any merit. In *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Verma and Ors.* (supra), the Supreme Court has categorically held that if approval is not given, nothing more is required to be done by the employee as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need for a separate or specific order for his reinstatement.

11. It is settled law that once the approval application filed by the management

is dismissed, the concerned workman is deemed to have been in service for all effects and purposes from the date with effect from which his services stood terminated. Reliance placed by the learned Counsel for the appellant on the decision of the Supreme Court in *United Bank of India v. Sidhartha Chakraborty* (supra) is misconceived. In that case the bank took the stand that the provisions of Section 33(2)(b) of the Industrial Disputes Act were not mandatory and it relied on a decision of the Supreme Court in *Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another*, . The High Court, however, relying on a subsequent decision of the Supreme Court in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Verma and Ors.* (supra) held that the decision in *Punjab Beverages (P) Ltd. v. Suresh Chand* (supra) cannot have any application having been overruled in Jaipur Zila case (supra). In paragraph 10 of the judgment, the Supreme Court restricted the quantum of back wages to rupees two lacs having regard to the peculiar facts of the case and the background in which the disciplinary action was taken against the workmen therein, and the position in law as stood at the relevant time the order of dismissal was passed.

12. In the instant case, the petition for approval was made by the appellant - Corporation in accordance with Section 33(2)(b) of the Industrial Disputes Act, but the appellant - Corporation failed to lead any evidence in spite of being given an opportunity to lead such further evidence and consequently the approval petition came to be rejected.

13. The respondent - workman, in our opinion, is entitled to full back wages from the date of removal till his reinstatement.

14. The appeals have no merit and are dismissed.