

(2007) 10 DEL CK 0201
In the Delhi High Court
Case No : LPA No. 1147 of 2007

Delhi Transport Corporation	Vs	APPELLANT
Ram Bhaj, Ex-Conductor		RESPONDENT

Date of Decision : 10-10-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33(2)

Citation : (2007) 10 DEL CK 0201

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Sumeet Pushkarna, Standing Counsel, for the Appellant; Anil Mittal, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—The short question that arises for our consideration in this appeal is whether the respondent is entitled to receive back wages with effect from the date of his termination till the date of his reinstatement i.e. 22nd June, 2005.

The service of the respondent was terminated with effect from 3rd October, 1994. Pursuant to an inquiry instituted by the appellant herein, an industrial dispute was raised by the workman " respondent which was referred to the Labour Court by the appropriate Government under reference dated 13th February, 1996. The appellant " Corporation also filed an application u/s 33(2)(b) of the Industrial Disputes Act, 1947 for approval of its action in terminating the services of the respondent " workman. The said application was, however, dismissed in default on 1st of August, 1996. On the reference, the Labour Court held that as the approval application of the Corporation was dismissed, Therefore, the workman would be deemed to be in continuous service. Consequently, a direction was issued on the aforesaid reference for reinstatement of the workman with full back wages and continuity of service. The aforesaid directions came to be challenged by the Corporation before the learned

Single Judge by filing a writ petition, which was dismissed by the learned Single Judge after referring to the various judgments of the Supreme Court.

2. Being aggrieved by the aforesaid decision, this appeal is filed mainly on the ground that the appellant should not be saddled with liability of making payment of entire back wages to the respondent as no service was received by the appellant from the respondent during the aforesaid period during which the respondent was out of service.

3. The respondent " workman was proceeded with in a departmental proceeding, on conclusion of which his service was terminated. The approval application, which was filed by the appellant u/s 33(2)(b) of the Industrial Disputes Act was, however, dismissed. In the reference proceedings, the Labour Court held that as the approval application was dismissed, Therefore, the workman would be deemed to be in service and he was not only entitled to reinstatement but would also be entitled to the full back wages and continuity of service. There cannot be any dispute to the fact that the Supreme Court in the case of M.D., Tamil Nadu State Transport Corporation Vs. Neethivilangan Kumbakonam, has held that wherever an application seeking approval u/s 33(2)(b) of the Act is declined, inevitable conclusion is that the workman continues in employment as if his services were never terminated. When an application u/s 33(2)(b) of the Act is rejected by the Tribunal, the order of termination stands obliterated as if it never existed and the workman continues in service and it will be deemed, as if his services were never terminated.

4. Being conscious of the aforesaid fact, the appellant management has raised a very limited dispute here. It was contended by the counsel for the appellant that there is no dispute to the fact that he is required to be reinstated, which they have already done as the respondent " workman was reinstated and joined on 22nd June, 2005. The limited contention was that the respondent " workman is not entitled to back wages as he has not worked for the aforesaid period. If a person is not allowed to work for the reason that his services are no longer required by the appellant or even though the workman is willing to work he has not been allowed to work by the appellant on the ground that his services stand terminated, the said person cannot be said to be at fault. In this case we find that there was no fault on the part of the respondent in not being able to work during the aforesaid period i.e from the date of his termination which was not approved till the date of reinstatement despite the fact that he was ready and willing to work.

5. There is nothing on record to show that the respondent was working elsewhere during the aforesaid period. The learned Single Judge has relied upon the ratio of the decision of the Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, . In the said decision also the Supreme Court has 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. In the said decision it was also

held that consequence of the same is that the employee would be deemed to have continued in service entitling him to all the benefits available. That being the position, there is no need for a separate or specific order for his reinstatement. (Also see: Indian Telephone Industries Ltd. v. Prabhakar H. Manjuare reported in (2003) 1 SCC 320)

6. We are of the considered opinion that the aforesaid ratio of the decision of the Supreme Court is fully and squarely applicable to the facts of the present case.

7. Learned Counsel relied upon the decision of this Court in Delhi Transport Corporation Vs. Virender Singh, . We do not think that the said decision helps the appellant. Once the application u/s 33(2)(b) of the Act is rejected, the employee would be deemed to be in service as if no order of dismissal was ever passed. In the present case, such application filed by the appellant was dismissed on 1st August, 1996. Even thereafter the appellant-Corporation did not reinstate the respondent-workman and kept quite. The respondent-workman was forced to make a reference u/s 10 of the Act which remained pending with effect from 13th February, 1996 till the final award was passed on 7th January, 2005. During these proceedings, the appellant-management did not inform the Labour Court about dismissal of the application u/s 33(2)(b) of the Act, by order dated 1st August, 1996. The award was ultimately passed directing reinstatement on 7th January, 2005, nearly nine years after the rejection of the application 33(2)(b) of the Act. We do not find any merit in the contention of the appellant that the Labour Court was not justified in granting the benefit of back wages along with the order of reinstatement, which direction has been upheld by the learned Single Judge. The decision of the Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma and Ors. (supra) had also come in the year 2002. But, this did not wake up the appellant-Corporation and thereafter, till 2005 no steps whatsoever were taken by the appellant-Corporation to reinstate the respondent-workman and to allow him to join duties. As rightly pointed out by the learned Single Judge, the conduct of the appellant-Corporation was dubious. It concealed material facts from the Labour Court about dismissal of its approval application u/s 33(2)(b) of the Act and prolonged the litigation. The appellant-Corporation cannot blame the respondent-workman and deny him benefit of back wages even when he was unemployed. In view of the above and following the decision of the Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma and Ors. (supra), we feel that the direction given by the learned Tribunal is justified in the present case. In the present case, approval application filed by the appellant " Corporation was rejected. Consequence of which is that approval to the order of termination of the appellant was not given by the Industrial Adjudicator. Consequence is that it will be deemed that the order of termination against the respondent " workman was never passed and, Therefore, the employee would be deemed to have continued in service entitling him to all the benefits available. The respondent having been reinstated and joined, he shall be entitled to full back wages in terms of the order of the learned Single Judge particularly in view of the fact that there is

nothing on record to show that the respondent was working elsewhere and was gainfully employed in any other place during the aforesaid period.

8. In terms of the aforesaid discussion, we hold that there is no merit in this appeal, which is dismissed.