
(2009) 10 DEL CK 0221

In the Delhi High Court

Case No : Writ Petition (C.) No. 12515 of 2009

Delhi Transport Corporation

APPELLANT

Vs

Sh. Ashok Kumar

RESPONDENT

Date of Decision : 20-10-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 10 DEL CK 0221

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : J.S. Bhasin, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—C.M. No. 13010/2009 in W.P.(C.) No. 12515/2009 Exemption as prayed for is granted subject to all just exceptions.

W.P.(C.) No. 12515/2009 and C.M. No. 13009/2009 (for stay)

The management of DTC (petitioner herein) in this writ petition seeks to challenge an order dated 16.05.2009 passed by the Labour Court in O.P. No. 22/1994 rejecting its approval application u/s 33(2)(b) for removal of the respondent from its service w.e.f. 25.02.1994 for alleged unauthorised absence from 29.01.1993 to 16.03.1993 and 08.04.1993 to 02.05.1993 (total 72 days).

2. Heard on admission.

3. Mr. J.S. Bhasin, learned Counsel appearing on behalf of the petitioner, has argued that the Court below has wrongly declined approval to the petitioner for removal of the respondent from its service. He has submitted that the Court below has failed to take into account the past conduct of the respondent in remaining unauthorizedly absent even in the past. Mr. Bhasin submits that the respondent had remained absent for 23 days in 1991, for 147 days in 1992 and again for 174 days in 1993.

4. I have carefully gone through the impugned order and have considered the submission regarding past conduct made on behalf of the petitioner. On giving my anxious consideration to the same, I have not been able to persuade myself to agree with Mr. Bhasin, learned Counsel appearing on behalf of the petitioner. The respondent, in the present case, was charge-sheeted for remaining absent unauthorizedly for 72 days, i.e., for 47 days from 29.01.1993 to 16.03.1993 and 25 days from 08.04.1993 to 02.05.1993. The inquiry regarding the said absence was made against him. The past conduct of the respondent was not the subject matter of the inquiry conducted by the Inquiry Officer. The Court below has taken all the facts and circumstances into consideration in rejecting the approval sought for by the management of the petitioner for removal of the respondent from its service. I am in complete agreement with the reasoning given by the Court below in the impugned order for rejecting the approval sought for by the management. In para 13 of the impugned order, the Court below has discussed the evidence produced by the management itself and the para 13 of the impugned order is extracted below:

In her cross-examination, she has stated that respondent had submitted leave application with medical certificates for the days mentioned in her report but same were submitted late. She has also stated that she cannot tell as to when the applications of the respondent was received. At the same time, she has also stated that DTC had sanctioned leaves without pay to the respondent for 47 days for the period 29.1.93 to 16.3.93 (47 days) and for the period 8.4.93 to 2.5.93 (25 days) and same was done before charge sheet was issued to the workman. In other words, her deposition in the court is contrary to the reports submitted by her which are Ex AW2/A and AW2/B respectively. However, fact remains that AW-2 has stated that whole of the period of absence of the workman had been treated as leaves without pay. Only question which arises is whether remaining on leave for 27 days and 25 days amounts to misconduct within the meaning of para 4 of Standing Rules 19 (h) which is reproduced as under:

4. Absence without permission-(i) An employee shall not absent himself from his duties without having first obtained the permission from the Authority or the Competent Officer except in the case of sudden illness. In case of sudden illness he shall send the intimation to the office immediately. If the illness lasts for is expected to last for more than 3 days at a time, applications for leave should be duly accompanied by a medical certificate, from a registered medical practitioner or the Medical Officer of the D.T.S. In no case shall an employee leave station without prior permission. (ii) Habitual absence without permission or sanction of leave and any continuous absence without such leave for more than 10 days shall render the employee liable to be treated as an absconder resulting in the termination of his services with the organization.

5. In paras 14 to 18 of the impugned order, the Court below has discussed and given reasons as to why the judgment of the Hon"ble Supreme Court in DTC v. Sardar Singh AIR 2004 SC 4161 is not applicable to the facts of the present case.

The material on record shows that the management of the petitioner had not conducted any inquiry to ascertain whether the respondent was actually suffering from the disease given in the medical certificate or that the medical certificate submitted by him was fictitious and had been procured just to support his case. The period of absence of the respondent from the service of the petitioner was the period during which he was ill and this fact is supported by the medical certificate produced by him when he went to join duties after he was declared medically fit to join duties by the doctor. Under the circumstances, the Court below has rightly reached to the conclusion that the alleged misconduct against the respondent could not be a ground to remove him from service and, for that reason, approval u/s 33(2)(b) was rightly declined.

6. In view of what has been stated above, I do not find any illegality or perversity in the impugned order that may call for an interference by this Court in exercise of its extraordinary discretionary writ jurisdiction under Article 226 of the Constitution. This writ petition, therefore, fails and is hereby dismissed in limine. The stay application is also dismissed.