
(2009) 05 DEL CK 0244

In the Delhi High Court

Case No : Writ Petition (Civil) No's. 22768 and 22860 of 2005

Delhi Transport Corporation

APPELLANT

Vs

Sh. Sahab Singh (EX-Conductor)

RESPONDENT

Date of Decision : 14-05-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2009) 05 DEL CK 0244

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Ataul Haque, for the Appellant; Nemo, for the Respondent

Judgement

V.K. Shali, J.—By this common order, the writ petition bearing WP(C) No. 22768/2005 in case titled DTC v. Sh. Sabah Singh and WP(C) No. 22860/2005 titled DTC v. Sh. Sabah Singh shall stand disposed of.

2. In the writ petition bearing No. 22860/2005, the petitioner has challenged the order dated 14.10.1996 passed by the learned Industrial Tribunal-II in OP No. 103/1995 titled DTC v. Sh. Sabah Singh, by virtue of the which the learned Tribunal had dismissed the said petition for grant of approval by the petitioner u/s 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) as the petitioner had failed to pay the cost which was imposed on the petitioner earlier.

3. In the other writ petition bearing WP(C) No. 22768/2005, the petitioner has challenged the award dated 05.4.2005 passed by the learned Labour Court -VII in ID No. 39/1996 titled DTC v. Sh. Sahab Singh by virtue of which a reference made to the learned Labour Court was answered in affirmative by observing that since the approval application of the Management u/s 33(2)(b) of the Act was dismissed accordingly, the respondent/workman was directed to be reinstated with payment of full back wages and all other consequential benefits from the date of his illegal removal from service by the petitioner /Management.

4. Briefly stated the facts of the present writ petition are that the petitioner was employed as a Conductor on 15.5.1979 by the petitioner. He was issued a charge sheet on 15.12.1993 for non issuance of tickets to the passengers after collecting the fare from them. This resulted in giving the charge sheet to him and holding of a domestic enquiry. The domestic enquiry has held the respondent guilty of the misconduct and accordingly, he was visited with the punishment of dismissal before this decision could become operative, an application for grant of approval u/s 33(2)(b) of the Act was made to the learned Labour Court which was dismissed on 14.10.1996 on the ground that the petitioner/Management had failed to pay/deposit the costs which was imposed earlier on him. This clearly shows that the approval was not granted.

5. In ID No. 39/96, a reference was made on account of removal of the respondent/workman in the following terms of reference, which reads as under:

Whether the removal of Shri Sabah Singh from the service by the management is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?

6. Reference was decided on 5th April, 2005 by the Labour Court on the basis of the non grant of approval by the Labour Court. Since the permission for removal was not granted to the petitioner, the Labour Court referred to Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, and held that his termination of service of the respondent /workman was illegal and therefore, he was entitled to be reinstatement with payment of full back wages and continuity of services.

7. It has been contended by the learned Counsel for the petitioner that even if the costs was not paid on 14.10.96, the Labour Court ought to have given one more opportunity to pay the sum or in any case decided the approval application on merits and got the cost recovered by adopting correspondence.

8. It was also contended by counsel for the petitioner that the learned Single Judge in case titled DTC v. Kusum Pahaljani and Anr. 2000 (56) DRJ Supp 133. This Court in a similar fact situation where the evidence of the petitioner / Management DTC was closed on account of non-payment of cost and the application for grant of approval was rejected, the High Court set aside the order of the Labour Court subject to payment of cost of Rs. 10,000/- and permitted the petitioner /Management to adduce evidence with regard to the validity of their application seeking approval of the Labour Court u/s 33(2)(b) of the Act.

9. The Division Bench of this Court in LPA No. 480/2000 decided on 07.2.2002 in another case titled DTC v. Sh. Hari Narain Giri and Anr. had also set aside the order of the learned Single Judge in WP(C) No. 4702/97 by placing reliance on the order dated 14.8.2001 passed by the learned Single Judge in WP(C) No. 5016/2001 and permitted the parties to adduce evidence.

10. Learned Counsel for the respondent/workman who had argued the matter

earlier had not been able to contravene any of the submissions made by counsel for the petitioner or cite any judgment to the contrary to the one which has been cited by counsel for the petitioner. A perusal of the judgment relied upon by counsel for the petitioner and the impugned order dated 14.10.96 shows that the learned Labour Court has acted in undue haste in not giving an opportunity to adduce evidence and pay the cost. I, accordingly feel that the order of the learned Labour Court dated 14.10.96 was hasty. Inasmuch as the order does not show that a reasonable, just and fair opportunity was given to the petitioner to either make the payment or to get the adjudication of his application for approval done on merits.

11. I, accordingly set aside the order dated 14.10.96 passed in OP No. 103/1995 subject to their payment of costs of Rs. 10,000/- to the Delhi Legal Aid and Advice Committee within four weeks from today and remand the matter back to the learned Labour Court to decide the same afresh after permitting the petitioner to adduce evidence.

12. Needless to say that the Labour Court shall not give more than two opportunities spread over a reasonable period of time after the receipt of the order.

13. So far as the order dated 05.4.2005 in ID No. 39/96 is concerned, since the reference has been answered in favour of the respondent/workman on the ground that the approval application of the petitioner was rejected. This order will also have to be set aside. This is on account of the fact that the order regarding grant of approval application dated 14.10.96 itself has been aside, therefore, as a consequence, this order is also deserves to be set aside and the petitioner shall decide the entire question of grant of approval or the legality of the order of termination in terms of the reference in one order as expeditiously as possible. It is hoped that the Labour Court-II shall make an endeavour to decide the matter as early as possible preferably not beyond a period of four weeks from the date of the order.

14. With these directions, the order dated 14.10.96 passed in OP No. 103/95 and the award dated 5.4.2005 passed in ID No. 39/96 are set aside and the matter is remanded back to the learned Labour Court.

15. Learned Counsel for the petitioner is directed to appear before the learned Labour Court on 2nd July, 2009. Copy of this order be sent to the respondent / workman for the purpose of intimation. No order as to costs.