

(2009) 08 DEL CK 0278

In the Delhi High Court

Case No : Writ Petition (C.) No. 1771 of 2005

Delhi Transport Corporation

APPELLANT

Vs

Shri Anup Singh

RESPONDENT

Date of Decision : 19-08-2009

Acts Referred:

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

Citation : (2009) 08 DEL CK 0278

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

Bench : Single Bench

Advocate : Ataul Haque, for the Appellant; R.K. Nain, for the Respondent

Final Decision : Disposed Off

Judgement

S.N. Aggarwal, J.—This is a writ petition filed by the DTC (hereinafter to be referred as the petitioner) seeking to challenge the award dated 28.07.2004 in I.D. No. 349/1998 directing reinstatement of the respondent with full back wages.

2. Briefly stated the facts of the case relevant for the disposal of this writ petition are that the respondent was employed as a Conductor with the petitioner with effect from February 1984. He was served with a charge-sheet on 20.11.1992, a true typed copy of which is Annexure P-2 at pages 28 & 29 of the Paper Book. The respondent vide said charge-sheet was accused of mis-conduct within the meaning of paras 6, 7 & 19(b) & (m) of the Standing Orders governing the conduct of DTC employees. The charge against the respondent was to the following effect:

On 20.10.2002, the respondent was performing his duty on Bus No. 6458 on inter-state route from Delhi to Ganga Nagar. The said bus was checked by the checking staff at 10:35 hours at Sharpur (Sirsa). The checking staff found that a group of four passengers was traveling in the bus without ticket. It was informed by the passengers that they had boarded in the bus at Fatehabad for going to Sirsa and had paid Rs. 35/- as fare to the respondent who did not issue tickets to

them.

3. The respondent vide afore-mentioned charge-sheet was called upon to give his response to the above-mentioned charge against him within ten days and liberty was granted to him to inspect any document relevant to the case from the records of the petitioner lying with the Depot Manager within 24 hours of receipt of the charge-sheet. The respondent gave his reply to the charge-sheet which was not found satisfactory by the management of the petitioner. A domestic inquiry into the charges was held against the respondent in which he was found guilty. After considering the inquiry report and other attendant circumstances, the Disciplinary Authorities decided to remove the respondent from its service and accordingly the respondent was removed from the service of the petitioner w.e.f. 08.04.1993.

4. Since a dispute with regard to a large number of DTC employees for their removal from service on account of mass-strike was pending adjudication before the Industrial Tribunal, the petitioner being the management, filed an approval application u/s 33(2)(b) of the Industrial Disputes Act, 1947, before the Industrial Tribunal for approval of its action for removal of the respondent from its service w.e.f. 08.04.1993. The approval sought for by the petitioner was declined by the Industrial Tribunal vide order dated 27.04.2001 in O.P. No. 204/1993.

5. During pendency of the approval application before the Industrial Tribunal u/s 33(2)(b) of the Industrial Disputes Act, 1947, the respondent raised an industrial dispute with regard to his removal from service of the petitioner and the said dispute was referred by the Government for adjudication before the Industrial Tribunal on 10.08.1998 and was registered as I.D. No. 349/1998. The Industrial Tribunal passed the impugned award dated 28.07.2004 and directed reinstatement of the respondent with full back wages merely relying on the order of approval dated 27.04.2001 in O.P. No. 204/1993 referred above. In doing so, the Industrial Tribunal has referred to a judgment of the Hon''ble Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, , according to which the workman was deemed to be in employment of the petitioner once approval for his removal was declined by the Industrial Adjudicator.

6. Admittedly, the industrial dispute raised by the respondent workman relating to his removal from the service of the petitioner w.e.f. 08.04.1993 which was registered as I.D. No. 349/1998 was not adjudicated by the Industrial Tribunal on merits.

7. Mr. Ataul Haque, learned Counsel appearing on behalf of the petitioner management, has relied upon a judgment of the Division Bench of this Court in Delhi Transport Corporation Vs. Ram Kumar and another, , to contend that the Industrial Tribunal was totally unjustified in disposing of the reference made to it vide I.D. No. 349/1998 merely relying on the order declining approval dated

27.04.2001 in O.P. No. 204/1993. The submission of Mr. Ataul Haque is that it was the duty of the Industrial Adjudicator to have decided the reference u/s 10 on merits without getting influenced by order passed on approval application u/s 33(2)(b). In Ram Kumar's case (supra), the Division Bench of this Court has held that grant or refusal of permission by the Industrial Tribunal u/s 33(2)(b) is not an adjudication and in terms of the said judgment the industrial adjudication comes only when the matter is referred u/s 10 of the Industrial Disputes Act 1947 to the Labour Court or the Tribunal.

8. In view of the judgment of the Division Bench of this Court, the Tribunal below was required to adjudicate the reference on merits notwithstanding refusal of approval for termination of the respondent from service w.e.f. 08.04.1993. This Court feels itself bound by the judgment of the Division Bench of this Court in Ram Kumar's case (supra), according to which the reference was required to be decided by the Industrial Adjudicator on merits though approval for removal from service was declined.

9. Under the circumstances, the impugned award which is not a judgment on merits, cannot stand the test of judicial scrutiny and the said award is, therefore, set aside. The case is remanded back to the Tribunal below/successor Court for fresh adjudication after giving an opportunity of hearing to both the parties. The parties are directed to appear before the Tribunal below/successor Court for directions at 2:00 P.M. on 28.08.2009. The Court below should make an endeavour to decide the reference afresh as expeditiously as possible, preferably within 6 months from today and the counsel appearing on behalf of both the parties have assured that they will not seek any adjournment on dates, as may be fixed by the Tribunal for hearing of the case.

10. In view of the above, this writ petition is allowed and stands disposed of with no order as to costs. Stay application also stands disposed of accordingly.