
(2006) 08 DEL CK 0098

In the Delhi High Court

Case No : Writ Petition (C) No. 6584 of 2005 and C.M. No. 2863/06

Delhi Transport Corporation

APPELLANT

Vs

Shri Balraj Singh

RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2006) 133 DLT 273 : (2006) 111 FLR 838 : (2007) 1 LLJ 933

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : J.S. Bhasin, for the Appellant; Rasmeet K. Charya, for the Respondent

Judgement

Manju Goel, J.—The respondent was an employee of the petitioner Corporation as a Driver. He was charge-sheeted on 7.7.1988 for having been absent for 112 days" without sanctioned leave. He was charged with misconduct within the meaning of para 95(1) of D.M.C. Act read with para 19(h) and (m) of the Standing Orders governing the conduct of DTC employees. Thereafter an enquiry was ordered. The respondent admitted before the Enquiry Officer that he had availed of 112 days" leave without pay and asked for forgiveness. The Enquiry Officer returned a finding on 7.9.1988 that the charges have been proved. The respondent was eventually removed from the service of the petitioner Corporation under Clause 15(2)(vi) of the D.R.T.A. (Condition of Appointment and Service) Regulation, 1952. The respondent raised an industrial dispute about the illegality and unjustified ability of the termination of his employment. The Tribunal passed an Award on 4.8.2004 It appears from the Labour Court's Award that no objection to the validity of the enquiry into the alleged misconduct was raised. The only contention of the workman before the Labour Court was that the workman had availed of 112 days" leave without pay and that this did not constitute any misconduct. The Labour Court relying upon the judgment of this Court in the case of Sardar Singh v. DTC in LPA No. 361/2002 held that there was no misconduct. The Labour Court, accordingly, directed the petitioner to

reinstate the workman/respondent herein and to pay him back wages and other dues from the date of his termination from service. It is submitted by the management/petitioner before this Court that the judgment relied upon by the Labour Court has since been set aside by the Supreme Court in the case of Delhi Transport Corporation Vs. Sardar Singh, . Since the judgment relied upon by the Labour Court has been upset by the Supreme court, the Award has naturally to be set aside as the same was not based on correct principles of law.

2. What is submitted now by the respondent is that the respondent had not remained absent unauthorisedly and that he had submitted his applications. This, however, is a plea which is altogether new. It was admitted before the Labour Court and also before the Enquiry Officer that he had availed of 112 days" of leave without pay. There was no plea that he had actually applied for leave. His absence was treated as leave without pay. In the case of Sardar Singh v. DTC (supra) also the workman had remained absent and his absence had been treated as leave without pay. This did not mean that his absence was authorised or that there was no misconduct. In para-9 of the judgment this position has been considered. It specifically said, after referring to para 19(h) of the Standing Orders under which the petitioner was charged, that when an employee absents from duty without sanctioned leave, the authority can on the basis of the record come to a conclusion about the employee being habitually negligent in duties and exhibited lack of interest in the employer's work. Further, the Supreme court has already ruled in the case of State of M.P. v. Harihar Gopal (1969) 3 SLR 274 that even when an order is passed for treating absence as leave without pay for the purpose of maintaining correct record of service, the same would not mean that the misconduct is condoned. Admittedly, the respondent was absent without any sanctioned leave. If subsequently his absence is treated to be leave without pay, that would not amount to condoning the misconduct of having been absent without sanctioned leave and thereby showing lack of interest in the work of the employee. In the present case the respondent has been unauthorisedly absent for more than 100 days during the period 1.6.1987 to 31.5.1988. Except for about two days, for no other date any medical certificate was produced. The charge, it is pointed out by the learned Counsel for the respondent was not that he was absent without leave but was that he had shown lack of interest in the work of the Corporation. In the case of DTC v. Sardar Singh (supra) the Supreme Court has held that being absent for long duration without leave itself was sufficient to show lack of interest in the work of the Corporation. It is futile for the respondent to even attempt to plead that despite the fact that during this period of nearly one year the respondent has remained absent without sanctioned leave for more than 100 days, he has not evinced lack of interest. The respondent was a Driver in the petitioner Corporation which is engaged in providing public transport facility. As such, he is one of the most important workers of the petitioner. His absence from duty without sanction may jeopardise the very business of the petitioner. His absence, without sanctioned leave, for more than 100 days is indicative of lack of interest. Hence, the misconduct was

sufficiently established. The termination was also justified. The Award is liable to be set aside.

3. At this stage, the respondent makes a prayer for remanding the case back to the Labour Court. I do not think that there is anything left for the Labour Court to adjudicate once the judgment relied upon by the Labour Court has been found to have been upset by the Supreme Court. As mentioned earlier, the case depends entirely upon the admission of the workman namely being absent for more than 100 days without sanctioned leave. No further adjudication or trial is required to be done. The error of the Labour Court is in appreciation of the correct position of fact and law. If the Award is set aside, there is no option but to uphold the punishment imposed by the management. I do not see any usefulness in remanding the matter to the Labour Court.

4. The respondent has made an application (CM 2863/06) u/s 17B of the Industrial Disputes Act. Since the present writ petition challenges the Award of reinstatement in service, the provisions of Section 17B are attracted. The respondent has filed an affidavit that the respondent remained unemployed from the date of removal. There is no rebuttal to this affidavit. The provisions of Section 17B prescribes payment of full wages last drawn during the period of pendency of the writ petition when the workman remains unemployed. The judgment of this Court in the case of Food Craft Instt. And Ors. v. Rameshwar Sharma and Anr. 2006 VI AD (Delhi) is cited by the respondent to plead that the wages last drawn can be granted from the date of the Award. Reference in this judgment has been made to Apex Court judgment in the case of Regional Authority, Dena Bank and Another Vs. Ghanshyam, After going through the judgment of the Supreme Court in the case of Dena Bank v. Ghanshyam (supra) relied upon by this Court in the case of Food Craft Instt. and Ors. (supra), I find that there is no finding that benefit u/s 17B has to be given from the date of the Award. In the present case, since I have already held that the dismissal of the workman was not unjustified, it would not be proper to Award back wages from the date of the Award itself. In this situation the application u/s 17B is allowed directing the petitioner to pay to the workman full wages last drawn with effect from the date of presentation of the writ petition till the date of its disposal.

5. After the petitioner has paid the wages u/s 17B, as ordered now, the amount of Rs. 5,23,516/- deposited by the petitioner vide Cheque No. 973942 dated 27.6.2005 will be released to the petitioner. 6. Writ petition and CM 2863/2006 stand disposed of. The Award is set aside with the above observations.