

(2012) 07 DEL CK 0478

In the Delhi High Court

Case No : Writ Petition (C) 752 of 1998

Delhi Transport Corporation

APPELLANT

Vs

Vijay Singh and Others

RESPONDENT

Date of Decision : 11-07-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2012) 07 DEL CK 0478

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Anil Mittal, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—None appears for the petitioner inspite of the matter having been kept pending for sufficiently long time. Considering that the petition is of the year 1998 and the Chief Justice of India has at the beginning of the year announced that all matters pending for over of five years be disposed of by the end of this year, it is not deemed expedient to await the petitioner any further. The counsel for the respondent workman has been heard and with his assistance, the records have been perused. The petition impugns the ex parte award dated 08.08.1996 of the Industrial Adjudicator on the following reference:

Whether the termination of services of Shri Vijay Singh is illegal and / or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?

and holding the termination of services of the respondent workman to be illegal and directing the petitioner DTC to reinstate the respondent workman with continuity of service and full back wages. Notice of the petition was issued and vide ex parte order dated 18.02.1998, proceedings for recovery of the award amount stayed. Counter affidavit has been filed by the respondent. On 23.02.1998, it was clarified that there was no stay against reinstatement. Rule

was issued on 11.03.1999 and the order sheet of which date also records that the respondent workman had been reinstated in service. It was accordingly directed that he will be paid all the benefits and emoluments in accordance with law. The respondent workman filed CM No. 12079/1999 claiming that though he had joined his duties but no minimum wages even were being paid to him. Payment of minimum wages to the respondent workman was accordingly directed. The petition was dismissed for non prosecution on 11.10.2006 but was subsequently restored. Attempts for settlement were made before the Continuous Lok Adalat but remained unsuccessful. None appeared for the petitioner DTC on the last three dates i.e. 15.12.2011, 02.01.2012 and 02.07.2012.

2. The Industrial Adjudicator granted the relief aforesaid on the uncontroverted plea of the respondent workman that, he was appointed as Driver with the petitioner DTC first in the year 1989 but his services were terminated on 19.02.1990 for remaining absent without pay; that upon protest by him, he was re-employed on daily wages with effect from 09.07.1990 but was again removed on 18.10.1992 without any chargesheet or inquiry, on the ground of remaining absent for about 128 days during the year 1990-91 though he had submitted application for leave supported by medical certificate from the Medical Officer of the management. The Industrial Adjudicator held that the provisions of Section 25F of the Industrial Disputes Act, 1947 having not been complied with, the termination was bad.

3. It is the plea of the petitioner in the writ petition that the respondent workman was appointed as Retainer-Crew-Driver with effect from 01.06.1989; that due to excessive staff strength his services were dispensed with along with other such employees with effect from 20.02.1990; however all such employees were kept on select panel for future consideration; that the case of the petitioner along with others was considered and he was offered re-appointment vide letter dated 09.07.1990 inter alia on the condition that the employment was purely temporary and services liable to be dispensed with at any time without notice and without assigning any reason therefore; that thereafter the case of the respondent workman for absorption in the petitioner DTC was considered when it was discovered that during the period 09.07.1990 to 31.01.1992, the respondent workman had availed 128 days leave without pay and during the remaining days also had committed irregularities twice for which he had been cautioned; accordingly his services were dispensed with in accordance with para 4 (xiv) of the Executive Instructions regarding employment of Retainer-Crew-Drivers and under the terms and conditions of appointment of Retainer-Crew-Driver. It is thus the plea of the petitioner that there was no need for compliance with Section 25F of the I.D. Act. On perusal of the petition, it also transpires that at the time of filing thereof, Recovery Certificate of Rs. 47,905/- had been issued in implementation of the award.

4. The counsel for the respondent workman does not dispute the 128 days

absence as aforesaid of the respondent workman. His contention however is that the requisite leave applications of the entire said period were submitted. He further contends that admittedly no inquiry has been held and the provisions of Section 25F should be complied with qua temporary employees also. Moreover, he states that, in implementation of the award, the respondent workman has been working as a Driver of the petitioner DTC since 1998 and has been getting regular wages though as an appointee with effect from the year 1998 and without giving any benefit of employment since the year 1990. He further fairly states that the respondent workman, during the conciliation proceedings had agreed to waive off the back wages and is agreeable to the same even today. The only relief sought is that the emoluments of the respondent workman with effect from re-joining in the year 1998 be computed giving benefits of employment since the year 1990 and the said period of about six years be also counted in computing the retiral benefits of the respondent workman inasmuch as it is stated that he is due to retire on 31.10.2012.

5. There is no material on record for this Court to go into the question as to whether the respondent workman, for his absence of 128 days had submitted the requisite leave applications or not. That is also not the domain of the present petition. Considering all the aforesaid facts, I am of the view that the relief given by the Industrial Adjudicator of reinstatement and of which there was no stay and which has since been implemented and in pursuance to which the respondent workman is now in regular employment for the last over 14 years needs no interference. However, as far as the relief of full back wages and continuity of service is concerned, there is no plea on record of the respondent workman that he was unemployed for the period of the dispute. Moreover, it cannot be lost sight of that the employment of the respondent workman till then was on temporary basis and his services terminable though of course in compliance with Section 25F of the Act. For the said non compliance by the petitioner, it is felt that monetary compensation would be sufficient. The counsel for the respondent workman however states that the back wages of Rs. 47,905/- recorded in the order aforesaid are erroneous and during the conciliation proceedings, it was admitted by the petitioner DTC that the financial implication of the back wages was to the tune of Rs. 1,44,916/- . It is therefore felt that lump sum compensation of Rs. 2,00,000/- in lieu of the relief granted of continuity of service and back wages shall be sufficient and appropriate. It is clarified that while computing the retiral benefits of the respondent workman, the respondent workman shall be deemed to be in service only with effect from the date of re-joining in pursuance to the award. The petition is allowed and the award of the Industrial Adjudicator is modified to the aforesaid extent. The sum of Rs. 2,00,000/- be paid to the respondent workman along with his retiral benefits failing which the same shall incur interest at the rate of 11% per annum.

No order as to costs.