(2020) 12 DEL CK 0040

In the Delhi High Court

Case No : Civil Writ Petition No. 1787 Of 2001, 3114 Of 2010

D.T.C. APPELLANT

Vs

Kanwar Singh RESPONDENT

Date of Decision : 04-12-2020

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B, 33(2)(b)

Citation : (2020) 12 DEL CK 0040

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Manisha Tyagi, D.K. Sabat

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done through video conferencing.

2. These are two petitions filed by the Delhi Transport Corporation (hereinafter â??DTC). The first petition challenges the impugned order dated 28th

November, 2000 passed by the Industrial Tribunal, by which the application filed by the Petitioner under Section 33(2)(b) of the Industrial Disputes

Act, 1947 was rejected and the Petitioner was said to have not proved the allegations of mis-conduct against the Respondent. The operative portion of

the impugned order is set out below:

â??16. In view of the finding of the issue no. 1, I hold that petitioner has not been able to establish that the respondent committed

misconduct. The ingredients of provision of section 33(2)(b) of I.D. Act have not been fully satisfied. Consequently, the petition is

rejected.â??

3. In the second petition, the challenge is to the award dated 2nd April, 2009, by which the Tribunal had directed the Respondent/Workman to be

reinstated. The operative portion of the impugned award is set out below:

â??30. Relief:- in view of my findings on various issues referred to above, workman is entitled to be reinstated with continuity in service

and other consequential benefits but without back wages. Reference is accordingly answered. Award is accordingly passed.â??

4. The brief background is that the Respondent â?" Mr. Kanwar Singh was working as a Conductor in the DTC and he was on duty in a bus plying

from Delhi to Faridabad. The allegation of DTC was that he had embezzled a sum of Rs.50/- by cutting ticket-series while serving on the said bus.

Notice of misconduct was served upon the Respondent, an Enquiry Officer was appointed and an enquiry was conducted, report of which was

submitted to the Disciplinary Authority. Finally, vide order dated 22nd September, 1992, the Disciplinary Authority passed an order of removal from

service.

5. The DTC then moved an application under Section 33(2)(b) of the Industrial Disputes Act, 1947, before the Industrial Tribunal, seeking approval for

the action of removal. While the said petition was pending, the Workman also raised an industrial dispute, which was referred for adjudication. On

28th November, 2000, the DTCâ??s petition under Section 33(2)(b) was dismissed, which is the subject matter of challenge in W.P.(C) 1787/2001.

Thereafter, the Tribunal passed the impugned award dated 2nd April, 2009 in the Workmanâ??s petition, by which reinstatement was directed.

6. Ms. Manisha Tyagi, ld. counsel for DTC submits that in W.P.(C) 1787/2001, notice was issued on the first date of hearing, and for various reasons,

which are not being gone into, a sum of Rs. 6,88,435/- came to be paid to the Respondent, under the presumption that the same was the amount

payable under Section 17B of the Industrial Disputes Act. This payment has been reflected in the order dated 23rd November, 2009 and order dated

12th April, 2010. Since there was no order for release of such amounts, an internal enquiry was also conducted.

7. Ld. counsel further submits that without going into the question as to whether the said amount was payable at the time or not, the admitted position

is that the Workman has received the entire amount of Rs.6,88,435/-. She thereafter, submits that the Workman was reinstated in terms of the award

dated 2nd April, 2009, and has now superannuated w.e.f. 31 st March, 2014. It is her submission that since the award dated 2nd April, 2009 did not

grant any back wages to the Respondent, the amount of Rs.6,88,435/- was not liable to be paid.

8. On the other hand, Mr. Sabat, ld. counsel appearing for the Respondent submits that the Workman is not being paid his retirement benefits, pension

and other benefits, which are liable to be paid to him. Mr. Sabat, does not accept the fact that he is not entitled to back wages from the time of

removal till reinstatement.

9. After going through the records of this case and the orders passed in both these writ petitions, it is clear that the DTCâ??s application under

Section 33(2)(b) seeking permission to discharge the workman was dismissed. Thus, the workman was taken back in service in April 2009 and has

even superannuated in March 2014. The order dated 2nd April, 2009 passed by the Industrial Tribunal is clear to the effect that no back wages were

granted to the Workman. The said order having not been challenged by the Workman, has attained finality. The submission of ld. counsel for the

Workman cannot accepted by this Court. The DTC has also, in effect, also accepted the order dated 2nd April, 2009 and reinstated the Workman. In

view thereof, the challenge to the reinstatement in W.P. (C) 3114/2010 would no longer survive.

10. However, the only point that remains is whether the Workman is entitled to be given his retirement benefits or not. The order dated 23rd

November, 2009 reads as under:

â??The award that has been challenged by the management of the Delhi Transport Corporation directs only for reinstatement of the

respondent. This award does not grant him back wages. It sounds strange that the respondent has already been paid Rs.6,88,435/- by the

management of the petitioner under Section 17-B on account of his wages up to 30.09.2004. It seems that there is serious a lapse on the

part of the management of the petitioner in making payment to the respondent from state exchequer little realising that the payment is being

made for no work being taken from the respondent. The petitioner in case it was aggrieved by the impugned award then it could have reinstated the respondent without prejudice to its rights and contentions once an application under Section 17-B was filed so that payment

was not made to the workman without work. The chairman of the petitioner is, therefore, directed to conduct a factfinding inquiry to

ascertain the lapse on the part of the concerned official and take necessary action against him to ensure that public money is not wasted in

the manner it seems to have been done in the present case. The Chairman is directed to submit his report to this Court by next date of

hearing.

List on 12.04.2010.

Order dasti under the signatures of the Court Master.â??

11. In the above order, this Court noticed that the payment of the amount was quite a strange development as back wages were not awarded to the

Workman. Accordingly, the Court directed a fact-finding inquiry to be conducted.

12. The enquiry was conducted by the Vigilance Department of the DTC and report dated 7th June 2010 was also submitted. Thereafter in order

dated 12th April, 2010 this Court records as under:

â??Vide order dated 23rd November, 2009 the Chairman of the petitioner DTC was directed to conduct a factfinding inquiry. The counsel

for the petitioner states that the facts were not correctly represented before this Court on that date. The position as it emerges is as under:-

This writ petition has been filed against the order of the Labour Court rejecting the application of the petitioner DTC under Section 33(2)

(b) of the Act. Though the writ petition was accompanied with an application for stay of the said order but no stay was granted and the

application remained pending. On 20th September, 2004 finding that there is no stay of the order impugned, the petitioner DTC was

directed to deposit the entire wages due to the respondent workman until 30th September, 2004 in this Court. CM No.12349/2003 was filed

by the respondent no.1 workman under Section 17B of the Act and which was also pending. The petitioner DTC instead of depositing the

amount in this Court as ordered, on 17th February, 2005 handed over a cheque for Rs.6,88,435/- to the counsel for the respondent

workman and it was noted in the order of that date that the same is towards payment as directed under Section 17B. However there was no order under 17B. The counsel for the petitioner DTC today clarifies that the aforesaid payment was in terms of the order dated 20th

September, 2004 but instead of being deposited in the court was erroneously handed over to the respondent workman. No further payment

has been made to the respondent workman, thereafter. The application under Section 17B remains pending.

Today, it is also disclosed that the respondent workman had also raised an industrial dispute qua his removal from service. In the said

industrial dispute an award is stated to have been now made in March, 2009 in which the workman though has been held to be entitled to

reinstatement but without any back wages. It is stated that the petitioner DTC is filing a writ petition challenging that award of

reinstatement. The counsel for the respondent workman states that the respondent workman has not challenged yet the award granting him

only reinstatement and denying him any back wages.

In view of the award aforesaid, it appears that the petitioner is not entitled to the sum of Rs.6,88,435/-so received by him. In the

circumstances, the inquiry by the Chairman directed by this Court on 23rd November, 2009 is justified. The counsel for the petitioner DTC

states that the said inquiry is underway. The outcome thereof be stated by way of affidavit definitely within six weeks of today.

In view of the aforesaid, it will be expedient to hear this writ petition along with the writ petitions challenging the award on the industrial

dispute.

List on 28th July, 2010 awaiting the other writ petitions, if any.â??

13. A perusal of the fact-finding report shows that the responsibility has been assigned on the accounts department for having prepared the cheque in

the name of the Workman instead of the Registrar, DHC. The conclusions of the report are as under:

â??xxx

Dy.

The officials of Accounts Department (HQ) i.e. Manager(Pay)HQ Sh. Begram, Accountant(Pay)HQ Shri Sant Parkash and the then A.I.

(pay) Sh. Bhim Singh, who also did not bother to examine the relevant documents viz sanction proposal/approval of L.F.C., relevant Court order dated 20.09.04 already provided, while processing preparation of cheque requested for by the D.M. (KJD). Thus, the recklessness on

the part of Accounts Department i.e. Pay & Bill Section (HQ) in the matter of cheque preparation for aforesaid workman cannot be ruled

out. However, except Sh. Bhim Singh the then A.I.(Pay), the remaining employees as discussed has already been retired from the services of

the Corporation. Hence, Sh. Bhim Singh the then A.I.(Pay) is also responsible for not gone through sanction approval at the time of cheque

preparation.

The panel Advocate not advocating the matter/properly had already been depanelled for his laxity by the competent authority as per

approval dated 04.08.05.

The position of facts finding/fixing up responsibility asked for, is emerged out on the basis of material available, discussion of evidences

and various statement is being submitted for further course of action at appropriate level.â??

14. Insofar as the retirement benefits are concerned, there is no doubt from a reading of the above orders as also the Inquiry Report, that the amount

of Rs. 6,88,435/- has been, rightly or wrongly, paid to the Workman. Accordingly, since the Workman has served with DTC w.e.f. 2009-10 and

superannuated in 2014, the Workman would be entitled to retirement and other benefits, including pension. However, release of the said amount would

be subject to adjustment of the amount already paid to the Workman of Rs. 6,88,435/-.

15. The DTC is accordingly directed to release the retirement benefits and other statutory dues, if any, to the Workman after adjustment of Rs.

6,88,435/-, and any other sums which the Workman may have already received. The pension etc. would be paid to the Workman in accordance with

the applicable rules. Ordered accordingly.

16. Both writ petitions are disposed of, in the above terms.