

(2020) 02 DEL CK 0637

In the Delhi High Court

Case No : Civil Writ Petition No. 5876 Of 2011

D.T.C.

APPELLANT

Vs

Radha Charan

RESPONDENT

Date of Decision : 06-02-2020

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2020) 02 DEL CK 0637

Hon'ble Judges : Najmi Waziri, J

Bench : Single Bench

Advocate : Avnish Ahlawat, Nitesh Kumar Singh, Fidel Sebastian, Harini Raghupathy

Final Decision : Allowed

Judgement

Najmi Waziri, J

1. This petition impugns the award dated 17.07.2010 on the ground that although it was found that the respondent had not disclosed all relevant facts apropos the pendency of criminal proceedings against him yet the learned Industrial Tribunal concluded that for the said default it could not be construed that the respondent was a person of doubtful integrity.

2. It is not in dispute that two FIRs were registered against the respondent, one in the year of 1990 and another in the year of 1997. He was employed by the DTC as a Retainer Crew Conductor on 20.08.1998. On an intimation being received by the management about his antecedents, it was enquired into and it was revealed to the management that indeed the aforesaid two criminal cases were pending against him. It is another matter that subsequently in a third case which had been pending all along, he had been acquitted by the Court concerned at Aligarh, Uttar Pradesh. In other words, there were three cases pending against him, and resultantly after working for 150 days he was removed from service. It is the case of the management that a person who knowingly conceals such

information and involvement in criminal proceedings, would obviously be hiding something from the management so as to deprive the management from taking an informed view about his employability. Therefore, such person would obviously be classified in the category of 'doubtful integrity'.

3. The learned counsel for the petitioner submits that interestingly despite the termination of service from the year 2000, the respondent has availed the benefit of wages under section 17(B) of the Industrial Disputes Act, 1947. He had already attained the date of superannuation on 31.12.2016.

4. In this regard, the impugned order has reasoned as under:-

"17. Here the Workman was appointed as a retainer crew conductor and he did not disclose the pendency of cases at the time of his appointment. This non-furnishing of information has been termed by the Management as a person of doubtful integrity. Except this concealment of fact there is nothing on record to substantiate the fact of his 'doubtful integrity'. No. doubt in the attestation form warning has been given to the candidate in respect of furnishing false information or suppression of any information which would be disqualification or which may lead to termination of service if it is later on noticed by the Management. But the information which the Workman has suppressed in his attestation form is only in respect of such cases. Even during the arguments it has been pointed out by Ld. AR for the Workman should have furnishing of this information in respect of pendency of such cases, but his non-furnishing of this information except any other allegation should not have been construed as a person of 'doubtful integrity'. The fact that the Workman was employed as a retainer crew conductor who worked with the Management for over a period of 1-1/2 year and his services have been terminated in the early years of his career only for his fault for non-furnishing of pendency of cases and there being no other allegation, his services as a retainer crew conductor should not have been dispensed with. The action of the Management though cannot be said to be illegal one, but is unjustified one. Even the Workman has produced certified copy of the judgment passed by Chief Judicial Magistrate, Aligarh, in case No. 121/97, u/s 323, 325, 504 IPC, P.S. Kher, Aligarh, acquitting the Workman. Thus, these issues are accordingly decided in favour of the Workman and against the Management."

5. The learned counsel for the respondent submits that the case was put up to the Minister Transport, Govt. of NCT of Delhi who recommended that the respondent be reinstated and regularised. The Court would note that the said recommendation by itself would not grant any right to the workman because it can best be treated as a case to be examined, whether as per the rule he could be regularised. The suggestion/recommendation of the Minister was duly considered and it was found that the respondent did not qualify as per the rules to be reinstated. The learned counsel for the petitioner has brought the relevant records. Court has perused the same and found that there is a note of the Chief General Manager Personnel to this effect that the case was duly considered and

was not found fit for reinstatement. The recommendation of Minister, dated 30.06.2000, and subsequent recommendations too were duly considered and CMD of DTC had informed the Minister that his case has been re-examined many times and he was not found fit to be reinstated because he had withheld importation information apropos criminal cases pending against him.

6. The learned counsel for the respondent submits that the genesis of the inquiry against the respondent was out of a personal grievance of the complainant with the respondent. Be that as it may, the nature of information which was withheld by the respondents would go beyond the alleged personal lis or personal grievance. Therefore, the said contention is rejected.

7. The learned counsel for the respondent further submits that punishment meted out to the respondent is disproportionate and harsh as he is removed from service. This contention too is untenable because the induction of a workman/employee in an institution is based upon the principle of "good faith" especially when a prospective candidate is asked to disclose specific information apropos criminal cases pending against her or him. In the present case the respondent deliberately did not disclosed the pendency of two criminal cases pending against him. The management was deprived of taking an informed decision apropos the integrity of the said candidate. His joining the DTC was based upon incorrect information.

8. The respondent has been out of service since 2001 and has been paid emoluments under section 17B of the Industrial Disputes Act, 1947. The respondent has not been paid monies on the basis of last drawn wages but on applicable minimum wages as per direction of this Court, in the circumstances, the minimum wages being mere subsistence level remuneration. It would be fair for DTC not to recover the monies from the respondent.

9. For the reasons aforementioned, the petition is allowed. The impugned order is set aside.