

(2006) 08 DEL CK 0081
In the Delhi High Court
Case No : LPA No. 429 of 2003

D.T.C.	Vs	APPELLANT
Subhash Chander Mehta and Others		RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952 — Regulation 14(10)(c)
Industrial Disputes Act, 1947 — Section 33, 33C(i)

Citation : (2006) 91 DRJ 609

Hon'ble Judges : Mukul Mudgal, J; Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : R.D. Makheeja, for the Appellant; Rajiv Bansal, Amicus Curiae, for the Respondent

Judgement

S. Muralidhar, J.—This appeal is directed against an order dated 29.11.2002 passed by the learned Single Judge disposing of the appellant's WP(C) 4948/2001 and affirming the Award dated 5.4.2000 passed by the Labour Court directing reinstatement of the Respondent No. 1 workman with full back wages.

2. The facts leading to the filing of the present appeal are that the Respondent No. 1 was appointed as Conductor-cum-Apprentice Workman with the appellant on 6.8.1976. Later on, his services were confirmed on 10.7.1978, According to the Respondent No. 1, he was assigned the duty of a Ticket Tally Clerk (TTC) in the Ticket Section of the Patparganj Depot, Delhi. There he found that a racket in the theft of tickets was being operated with the active connivance of one other TTC, the in-charge of the ticket section and other senior officers. At the end of each day in respect of the tickets deliberately got stolen, the TTC on duty would be made the scapegoat and forced to pay up a certain sum of money as compensation. His representations to the Senior Manager fell on deaf ears. On the contrary he was attacked on more than three occasions physically and threatened with further assault if he attempted to expose their mistakes. Instead

of taking actions against the said persons, chargesheets were issued against the Respondent No. 1. He was refused medical leave and was directed to report for duty at the very same place where he was receiving the threats to his life. In a third incident of assault he was badly injured some time in January 1984 and thereafter when he failed to report for duty, he was declared as absent and deemed to have resigned by an order dated 7.8.1984 in terms of Clause 14(10) (c) of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952 ("DRTA Regulations"), which reads as under:

(c) Where an employee fails to resume duty on the expiry of the maximum period of the extraordinary leave granted to him or where such an employee, who is granted a lesser amount of extraordinary leave than the maximum amount admissible, remains absent for duty for any period which together with the extraordinary leave granted exceeds the limit up to which he could have been granted such leave. under clause (b), he shall be deemed to have resigned his appointment and shall, accordingly cease to be in the employment of the Authority.

3. The case of the management on the other hand was that the Respondent No. 1 workman misbehaved with the checking officials on 21.7.1983 while he was on duty and was issued a chargesheet for the said misconduct. Thereafter he was asked to report for enquiry on every Monday and Friday but he submitted representation for change of the enquiry. The management denied the allegations of any collusion in respect of the theft of tickets and coercion of the TTCs. Since the Respondent workman was not reporting for duty from 11.1.1984 onwards, a reminder was sent on 3.4.1984. Thereafter a show cause notice was served on him on 4.6.1984. Ultimately by a memo dated 7.8.1984 he was declared absent and deemed to have resigned with effect from 12.4.1984 invoking Regulation 14(10)(c) of the DRTA Regulations. Admittedly this was done without any opportunity of being heard, or issuing any chargesheet or holding any enquiry in regard to the allegations of absence from duty.

4. The dispute arising from the memo dated 7.8.1984 was referred to the Labour Court, which by its award dated 5.4.2000 held that the declaration by the appellant of the deemed resignation of Respondent No. 1 by invoking Regulation 14(1)(c) tantamounted to the termination of his services and that this was in violation of the principles of natural justice since the workman was not given any opportunity of being heard before the making of such order. The Labour Court followed the judgment of Hon'ble Supreme Court in D.K. Yadav Vs. J.M.A. Industries Ltd., and held that requirement of natural justice had to be implied in the said regulation. It accordingly directed the reinstatement of Respondent No. 1 with full back wages.

5. The appellant challenged the award of the Labour Court in Writ Petition (Civil) No. 4948 of 2001 in this Court. One of the issues in the writ petition concerned the validity of the action of the appellant in terminating the services of the Respondent No. 1 by invoking Regulation 14(10)(c) of the DRTA Regulations on

the ground of deemed resignation. By an order dated 7.5.2002 in LPA No. 208 of 2002 (D.T.C. v. Daya Nand), a Division Bench of this Court affirmed, an earlier order of a learned Single Judge holding the declaration of deemed resignation by invoking Regulation 14(10)(c) to be invalid. Relying on the judgment in Daya Nand (supra) case, the learned Single Judge, by the impugned order dated 29.11.2002 disposed of the writ petition in the instant case holding that it no longer survived.

6. The counsel for the appellant contended that the judgment in Daya Nand (supra) case of the Division Bench of this Court was carried in appeal to the Hon"ble Supreme Court by the appellant. The entire batch of appeals stood disposed of by a common order dated 26.4.2006 of the Hon"ble Supreme Court (D.T.C. v. Prakash Chand Civil Appeal No. 7110-7111 of 2004) directing the reinstatement of the workmen without back wages. He accordingly submitted that the present appeal should also be disposed of in terms of the said order of the Hon"ble Supreme Court. Mr. Rajiv Bansal Advocate, who was appointed as amicus curiae to assist this Court on behalf of the Respondent No. 1 workman submitted that the present case may not be covered by the said order of the Hon"ble Supreme Court and that on merits, the present appeal had to be dismissed.

7. The questions that arise for the consideration in this appeal are:

(a) Is the present appeal covered by the order dated 25.4.2006 passed by the Hon"ble Supreme Court?

(b) If the answer to the above question is in the negative, whether the award of the Labour Court in the instant case holding the termination of the services of Respondent No. 1 workman to be illegal, as affirmed by the learned Single Judge, is liable to be interfered with?

(c) What consequential order requires to be passed?

Re: Issue (a)

8. At the outset it must be noticed that validity of Regulation 14(10)(c) of the DRTA Regulations was examined by a learned Single Judge of this Court and following the judgment of the Hon"ble Supreme Court in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, , the learned Single Judge held the declaration of deemed resignation of the workman, by invoking Regulation 14(10)(c) of the DRTA Regulations, to be invalid. This judgment was taken up in an appeal and by the judgment dated 7.5.2002 in DTC v. Daya Nand (supra) a Division Bench of this Court held that the judgment of the learned Single Judge could not be faulted and accordingly dismissed the appeals filed by the DTC. The DTC carried the matter in appeal to the Hon"ble Supreme Court.

9. The order dated 25.4.2006 of the Hon"ble Supreme Court in DTC v. Prakash Chand (supra) states that the questions of law are left undecided. It also does not set aside the judgment of the Division Bench of this Court in Daya Nand

(supra). The operative portion of the said order of the Hon''ble Supreme Court reads as follows:

Considering the peculiar nature of the controversy and without going into the question of law raised, we feel that on the said circumstances involved, interest of justice will be best served if the following orders are passed.... .

10. Two things emerge from a reading of the above order dated 25.4.2006. First, it covered only those appeals before the Hon''ble Supreme Court. It was not intended to apply to all cases where Regulation 14(10)(c) had been invoked. Secondly, the Hon''ble Supreme Court did not pronounce on the correctness of the judgment of the Division Bench of this Court in Daya Nand (supra) case. Thus for all practical purposes, the decision of the Division Bench of this Court in Daya Nand (supra) case is still good law. Resultantly, the appellant cannot invoke Regulation 14(10)(c) to sustain the order dated 7.8.1984 by which Respondent No. 1 was deemed to have resigned. The present case is, therefore, not ipso facto covered by the said 25.4.2006 of the Hon''ble Supreme Court in DTC v. Prakash Chand (supra). Accordingly we answer issue (a) in favour of the Respondent No. 1 workman and against the appellant.

Re: Issue (b)

11. Since the Regulation 14(10)(c) has already been held to be invalid by a Division Bench of this Court in Daya Nand, which view remains undisturbed by the Hon''ble Supreme Court, we must proceed on the footing that the power in Regulation 14(10)(c) of the DRTA Regulations is not available to be invoked by the appellant. The appellant had therefore to justify the termination of the services of Respondent No. 1 de hors Regulation 14(10)(c). However, as is clear from the narration that follows, the appellant deprived itself of the opportunity of defending the said order of termination on merits before the Labour Court and by its conduct, invited an ex parte award dated 5.4.2000 against itself.

12. The industrial dispute arising from the order dated 7.8.1984 was registered as I.D. No. 199 of 1986. In reply to the claim of the Respondent No. 1 workman, the appellant filed its written statement denying the allegations. During the pendency of the above proceedings on 19.4.1993, the appellant made an offer of reinstating the workman. However, despite this undertaking, the Respondent No. 1 was not reinstated. As a result, the Respondent No. 1 workman sought to amend his claim by inserting the following averments in Para 20 of his claim:

Apart from the above, the management offered for duty/job to the workman in the Court itself which is apparent on the face of the order of the Court dated 19.4.1993 and despite repeated demands by the workman to give him duty/job the management has failed to offer job/duty to the workman till date.

13. Despite several opportunities, the appellant did not file a reply to the amended claim. Also at the hearing on 13.3.1997 neither was the written statement to the amended claim filed nor did any one appear on behalf of the

appellant herein. Accordingly, the Labour Court set the appellant ex parte. The appellant waited for six months and on 12.9.1997 filed an application for setting aside the ex parte order. By an order dated 27.5.1998, the Labour Court dismissed the application. No further challenge was made to the said order. The appellant also did not participate in the matter before the Labour Court thereafter. As is apparent from the award, the amendment moved by the workman to the claim statement was allowed and thereafter the workman filed affidavit of ex parte evidence on the basis of which the award dated 5.4.2000 was passed.

14. The appellant did not immediately challenge the said award. The award of the Labour Court was published on 25.9.2000 and became enforceable on 25.10.2000. On 13.12.2000 the Respondent No. 1 workman filed an application u/s 33 of the Industrial Disputes Act, 1947 (ID Act) for implementation of the award. It is only thereafter that on 4.1.2001 the appellant filed, a second application before the Labour Court for setting aside the ex parte order dated 13.3.1997, although a similar plea had already been rejected by the Labour Court on 27.5.1998. This application was again dismissed on 7.2.2002 by the Labour Court as not maintainable. It was observed by the Labour Court as under:

I have come to the conclusion that this application moved on behalf of the applicant/management on 10-01-01 is not legally maintainable in view of the fact that previous application dated 12-9-97 moved on behalf of the applicant/management for the same relief has already been dismissed on 27.5.98 by learned predecessor of this Court. Record further reveals that even the award has been passed in this case on 5-4-2000 which has been published on 25-9-2000 and became enforceable w.e.f. 25-10-2000. Considering all these facts and circumstances of the case as well as reasons given, this application moved by the applicant/management is dismissed as not legally maintainable and in fact moving of such application in spite of the dismissal of previous application for the same relief amounts to misuse the process of law. Accordingly this application moved on behalf of the applicant/management is dismissed.

No appeal was filed against the order dated 7.2.2002 dismissing the appellant's second application for setting aside the order dated 13.3.97 passed by the Labour Court setting the appellant ex parte. In the circumstances, the award of the Labour Court can hardly be faulted with.

15. The Writ Petition (C) No. 4948 of 2001 challenging the award was filed in this Court by the appellant only on 16.8.2000, one year and four months after the passing of the award dated 5.4.2000. The case of the appellant in the writ petition was based essentially on Regulation 14(10)(c). There was no explanation in the writ petition for the failure on part of the appellant to appear before the Labour Court and allowing the award to be passed ex parte. It was contended that the "writing of letters to the Respondent No. 1 workman asking him to report for duty was sufficient compliance with the principles of natural justice. As already noticed, the writ petition was dismissed on the ground that the

Regulation 14(10)(c) which formed the very basis for the termination order stood invalidated in view of the order of the Division Bench in Daya Nand. No attempt was made by the appellant before the Learned Single Judge to defend the termination on merits de hors Regulation 14(10)(c). In those circumstances, we are of the view that the order of the learned Single Judge also does not warrant interference.

16. This letters patent appeal also deserves to be dismissed on the ground of unexplained delay of 117 days in filing the appeal. The explanation is that a certified copy of the impugned order dated 25.11.2002 was received on 8.1.2003 and that thereafter the matter was examined by the legal department and it was decided to file an appeal. It is stated that these steps led to the delay in filing the appeal. We find this explanation to be sketchy and wholly inadequate to condone the delay in filing the appeal.

17. Even otherwise, on merits, we find no ground to interfere. The order dated 7.8.1984 was admittedly made without notice to the Respondent No. 1 and without affording him an opportunity of being heard. The order is in fact an order of termination of the services of Respondent No. 1 and visits him with adverse civil consequences. It is violative of the principle of natural justice and has been rightly held to be illegal by the Labour Court. We have before us an appellant that has not chosen to appear before the Labour Court, not challenged the rejection of its application for setting aside the orders declaring setting it ex parte, not chosen to explain in the writ petition before the learned Single Judge the reasons for its absence in the Labour Court, and not attempted to defend its impugned order of deemed resignation of Respondent No. 1 on merits before the learned Single Judge. Even before us, the counsel for the appellant was unable to show how the order of deemed resignation of the Respondent No. 1 could at all be sustained. We are of the considered view that in these circumstances the award of the Labour Court does not call for any interference whatsoever. Issue (b) is answered accordingly. Even the laches and delay at every stage of the proceedings by the appellant disentitles it to the discretionary indulgence under Article 226 of the Constitution of India.

Re: Issue (c)

18. The workman has been out of service since 7.8.1984, i.e. for over 22 years. After a long battle of nearly 16 years in the Labour Court, the Respondent No. 1 workman finally succeeded in establishing that the termination of his services by the appellant was illegal. Nevertheless, he was unable to get the said award enforced and was dragged into further litigation in this Court first before the learned Single Judge and then before the Division Bench. It is stated in the memorandum of appeal that the appellant has paid the Respondent No. 1 a sum of Rs 1,06,880/- in terms of the interim award. However, from the application filed by the workman u/s 33C(i) of the ID Act, before the Labour Court on 13.12.2000, it appears that the dues on account of back wages as on that date was in the sum of Rs 7,94,672/-. After accounting for the interim relief already

received, a sum of Rs 4,89,617/- on account of wages from 12.4.1984 to 25.12.2000 was recoverable. The amount would obviously be higher if one were to calculate the back wages due as of date.

19. In view of the long years of litigation, the appellant should not be permitted to avoid implementing the award of the Labour Court any further. We accordingly direct that workman should be reinstated forthwith. In the facts and circumstances of the case, however, we think it appropriate to modify the award of the Labour Court only to the extent of back wages and we direct that instead of full back wages, the Respondent No. 1 workman may be paid 75% of the back wages. The appellant should also pay the Respondent No. 1 the costs of litigation which are quantified at Rs. 10,000/-. The reinstatement of Respondent No. 1 workman, and the payment to him of arrears of back wages and costs as directed should be made by the appellant not later than six weeks from today and in any event not later than 15th October, 2006. The DLSA will also pay a sum of Rs. 5,000/- to Shri Rajiv Bansal, Advocate who ably assisted this Court as Amicus Curiae on behalf of the Respondent. A copy of this judgment be sent to the DLSA.

20. With the above directions, the appeal is disposed of.