
(2010) 02 DEL CK 0178
In the Delhi High Court
Case No : Writ Petition (C) 1628 of 2004

D.T.C.	Vs	APPELLANT
Suraj Bhan and Others		RESPONDENT

Date of Decision : 23-02-2010

Acts Referred:

Citation : (2010) 168 DLT 614 : (2010) 125 FLR 893 : (2011) 3 LLJ 90

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Vinay Sabharwal, for the Appellant; Ravi Kant Jain, for R-1 and Manoj Kumar Rath, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This writ petition was preferred with respect to the award dated 8th May, 2002 of the Labour Court holding the pre-mature retirement by the petitioner of the respondent/workman as illegal and directing the petitioner to reinstate the respondent/workman from the date on which he was retired prematurely and to assign him the work of a peon and to protect his salary and benefits. This Court on 9th February, 2005 when this petition came up for admission held that the finding recorded in the award that the respondent/workman was denied employment as a peon on the ground that he is not an existing employee though found fit by the Medical Board, does not warrant interference; notice of the petition was issued only on the aspect of awarding full back wages while directing reinstatement of the respondent/workman. The operation of the award to the extent it awarded full back wages from 1991 to 1997 was also stayed and the said order remains in force till now.

2. The respondent/workman was employed as a driver with the petitioner/DTC since the year 1983. In the medical examination carried out on 12th June, 1991, the respondent/workman was found to be suffering from colour blindness and thus declared medically unfit for the post of driver and was vide letter dated 14th June, 1991 of the petitioner retired pre-maturely in accordance with the

regulations of the petitioner. The respondent/workman thereafter applied for his appointment as a peon or on any other post; he was medically examined on 7th November, 1991 and found fit for the post of peon. However, the petitioner/DTC did not so appoint the respondent/ workman for the reason of there being no vacancy available to the post of peon. Upon the respondent/workman raising an industrial dispute, reference was made on 12th June, 1997 to the following effect:

Whether the pre-mature retirement of Sh. Suraj Bhan is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?

3. The Presiding Officer of the Labour Court has held that the respondent/workman had consented for appointment to a lower post but was not so appointed for two reasons; firstly that he could not be re-designated as he was not in service and secondly that there was no vacancy in the lower post. The Labour Court relying upon *Narendra Kumar Chandla Vs. State of Haryana and others*, held that when an employee is afflicted with unfortunate disease due to which, he is unable to perform the duties of the post he was holding, the employer must adjust him in a post in which the employee is suitable and the last drawn pay has to be protected. The Labour Court in this regard also relied upon Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full WP(C) Participation) Act, 1995 (hereinafter referred to as the Disability Act) and held that even though the said Act was not enforceable in 1991 but in view of *Narendra Kumar Chandla (supra)*, the rights as given under the Act flow from Article 21 of the Constitution of India.

4. The counsel for the petitioner has contended;

(i) That *Narendra Kumar Chandla (supra)* only directs that an "an endeavour" has to be made by the employer to adjust a disabled employee in a post in which he would be suitable. It is argued that when there was no vacancy in the only other post i.e. of peon for which the respondent/workman was suitable, it cannot be said that the petitioner did not make any endeavour. It is further contended that there is no mandate as per this judgment to so absorb the employee in the absence of any vacancy.

(ii) That though the respondent / workman in the present case was pre-maturely retired in 1991, he raised the dispute only belatedly after six years in 1997. It is contended that as per the dicta in *Ajaib Singh v. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited* AIR 1999 SC 1351 such delay in raising the dispute can disentitle the workman to compensation for that period. It is urged that on the said principle the respondent/workman ought to be held not entitled to back wages till 1997. It is further informed that in the year 2005 a vacancy had occurred and the respondent / workman has already been appointed in the same. (iii) It is further contended that since there was no vacancy prior to 2005, the award in so far as awarding payment of back wages to the respondent / workman should be set aside.

(iv) That the respondent / workman had joined the employment with the petitioner as a driver and was fully aware that if he suffers from any disability he could not continue as a driver and would be pre-maturely retired under the regulations of the petitioner / DTC and thus now cannot be heard to contend otherwise. It is further contended that employment is but a contract and the contract stood frustrated upon the respondent/workman being unable to perform his duties owing to the disability suffered by him.

5. The counsel for the respondent workman has controverted the contention of the petitioner of delay on the part of the respondent/workman in raising the dispute. It is stated that the respondent/workman had on 9th January, 1992 made a representation / application for re-consideration of his pre-mature retirement to the Chairman of the petitioner/DTC. During the course of hearing, a copy of the letter dated 5th February, 1992 of the petitioner/DTC calling the respondent/ workman for hearing on the said representation has been handed over. The counsel for the petitioner has not disputed the said document. It is further contended that upon no action having been taken on his representation, the dispute was raised in 1994 itself and in accordance with law, was first pending before the Conciliation Officer and the reference came to be made in 1997. A copy of the summon dated 23rd March, 1994 of the Conciliation Officer and the reply dated 18th March, 1994 filed by the petitioner / DTC before the Conciliation Officer is handed over and which documents are also not controverted by the petitioner. The counsel thus contends that the respondent/workman has been pursuing the remedies continuously and cannot be blamed for any laches. He also contends that in *Ajaib Singh (Supra)*, the workman after termination on 16th July, 1974 had issued the notice of demand only on 8th December, 1981 and in those facts was held disentitled to back wages for that period. It is argued that the same is not the case here. He also relies upon *S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka*, holding that delay is not always culpable and depends on the facts of each case. It is contended that in the present case, even if there is any delay, the petitioner has not suffered there-from inasmuch as according to the petitioner the vacancy occurred only in 2005 when the respondent/workman was absorbed.

6. Taking up the plea of the petitioner of delay first, it is unfortunate that an organization such as the petitioner, has taken the plea contrary to facts and record. The documents handed over by the counsel for the respondent/workman and not disputed by the petitioner/DTC show otherwise. It is evident there-from that the dispute was raised before the authorities under the Industrial Disputes Act in early 1994 itself i.e. well within three years of the date of pre-mature retirement of the respondent/workman. It is further borne out that prior thereto the representation of the workman with the petitioner was pending. The petitioner/DTC has not stated that the representation made by the respondent/workman and for which hearing even was given had been disposed of much prior to the dispute being raised in 1994.

7. An aggrieved person, particularly a workman, is not expected to rush to the court immediately. When a workman is dealing with a public sector undertaking as the petitioner, he can legitimately expect the employer to be fair. The principle of the State being a model employer and thus being obligated to act fairly towards its employees has been consistently reiterated by the courts. Reference in this regard may be made to *The Workmen of Bhurkunda Colliery of Central Coalfields Ltd. Vs. The Management of Bhurkunda Colliery of Central Coalfields Ltd., & Dev Dutt Vs. Union of India (UOI) and Others*, . The costs and delays in litigation are well known. The reluctance of the common man in approaching the court can be gauged from a Chinese curse "May you be caught in a litigation, where you are in the right"! The conduct of the respondent/workman in the present case is not found to be such which could lead one or which could have led the petitioner/DTC to believe that the respondent/workman had accepted the decision of the petitioner/DTC to pre-maturely retire him.

8. I am constrained to observe that the conduct of the petitioner specially in raising the argument qua the non-applicability of the Disability Act owing to the same having come into force only after the order of premature retirement, of the respondent workman, having been passed by the petitioner is also found wanting and not becoming of a public undertaking which is a State within the meaning of Article 12 of the Constitution of India. At least such a litigant is expected to be fair and to place all the relevant material in its knowledge before the Court to enable the Court to come to a right conclusion considering that such a large undertaking is contesting against its workman who cannot be expected to know all the facts or to have all the information within his command. The onus / burden in this regard is more on the public sector undertaking. The Supreme Court in *City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Others*, has held that it is the constitutional obligation and duty of the State to place true and relevant facts by filing proper affidavits enabling the court to discharge its constitutional duties. The State and other authorities are bound to produce the complete records relating to the case. Once rule is issued by the court, the government and governmental authorities do not enjoy the same amount of discretion as that of the private party even in the matter of conduct of litigation. Similarly, the advocates, particularly the advocates representing the government, may be reminded of what the Supreme Court has held in *D.P. Chadha Vs. Triyugi Narain Mishra and Others*, The Supreme Court held that a lawyer must not hesitate in telling the court the correct position of law when it is undisputed and admits of no exception. A view of the law settled by the ruling of a superior court or a binding precedent even if it does not serve the cause of his client must be brought to the notice of the court unhesitatingly. This obligation of a counsel flows from the confidence reposed by the court in the counsel. A counsel being an officer of the court shall appraise the judge with the correct proposition of law whether for or against either party.

9. My research shows that in SLP (C) No. 1575/1991 titled *Shri Vedi Prakash*

Singh, Conductor v. DTC, the Supreme Court vide order dated 5th August, 1991, (as reported in Delhi Transport Corporation Vs. Presiding Officer, Labour Court IV and Another,) held:

Assuming that the Corporation is right that the appellant is now not fit to be a Conductor, there is another aspect which the authorities have failed to take into account. From annexure "A" to the rejoinder affidavit, it appears that several posts are being treated equivalent to that of a Conductor, and having regard to the medical report, it cannot be suggested that the appellant is unfit for being entrusted with the duties of any of these posts. On the last date when the matter was heard in part, we had drawn the attention of the counsel for the respondents to this aspect and the case was adjourned for the respondents to consider the feasibility of appointing the appellant as a Junior Telephone Operation, Confidential Clerk, Counter or in any other equivalent post. The learned Counsel for the appellant states today that the Corporation is not prepared to offer the appellant a post in Class III. The learned Counsel however has not been able to suggest any acceptable reason in support of the stand of the respondents. While we find a policy being adopted in this country of taking measures to rehabilitate handicapped persons, the respondents are referring (sic; refusing) to accommodate the appellant in an equivalent post without any valid ground. Having considered all the relevant circumstances we therefore direct that appropriate orders shall be passed by the respondents within a period of three weeks from today offering a post, equivalent to the post of Conductor, to the appellant. His continuity of the service shall also be maintained. So far the back wages are concerned, the respondent shall allow the same for the intervening period at the rate payable for a Class IV job.

10. In Baljeet Singh Vs. Delhi Transport Corporation, it is noted that the DTC had vide Office order dated 13th November, 1995 provided a scheme for payment of compensation to those employees who were rendered medically unfit in the posts to which they were appointed. Thereafter, a circular dated 11th October, 1996 was issued stating certain modifications in the earlier scheme. It is not understandable as to why, notwithstanding such schemes of the petitioner/DTC, the respondent/workman was pre-maturely retired and/or benefit of such schemes even not given.

11. Similarly, in Shri Sunil Kumar Vs. Delhi Transport Corporation and Another, this Court held that the petitioner/DTC ought to have endeavored to find a position for the workman which would permit him to continue in service even if his injury has disabled him to discharge the functions of his post and that it is not open to the petitioner/DTC to claim that the termination of service on the grounds of medical disability was valid.

12. I may also notice that recently in Delhi Transport Corporation Vs. Sh. Harpal Singh, , the Division Bench of this Court has after consideration of the entire gamut of case law, while holding that the provisions of Section 47 of the Disability Act cannot be given retrospective operation, has held that in a pending

proceeding, the benefit thereof can certainly be extended. This has been held to be the mandate of Article 41 of the Constitution of India. The Disability Act had come into force before commencement of the proceeding before the Labour Court in the present case and thus no fault can be found with the Labour Court giving the benefit of Section 47 to the respondent/workman. In fact, the fault lies with the petitioner/DTC in inspite of aforesaid dicta in its own cases, not only not bringing the same to the notice of the Court but also contending otherwise.

13. In relation to drivers of Road Transport Corporations, the Supreme Court in Anand Bihari and others Vs. Rajasthan State Road Transport Corporation, Jaipur and another, has also held that the cases of workman suffering disability owing to occupational hazard cannot be compared with the disabilities arising for reasons not attributable to employment. In that case also direction for absorption in other posts was issued. I find that DTC has also been a party to a disability case in Shri Dilbagh Singh Vs. Delhi Transport Corporation, in which also it was directed to reinstate the driver with back wages.

14. I may also notice that the Disability Act was enacted to meet the international commitment proclaimed at the Economic and Social Commission for the Asian & Pacific Region meet held in Beijing from 1st to 5th December, 1992. The said meet adopted the proclamation on "The Full Participation and Equality of People with Disabilities in the Asia and Pacific Region". It will thus be seen that the Disability Act, though came into force on 7th February, 1996, has its roots in what was agreed to as far back as in 1992. Moreover, in view of the judgments aforesaid, the Disability Act particularly Section 47 thereof does not create any new rights but is a recognition of pre-existing rights recognized by various judgments even prior to the coming into force the said Act.

15. In view of the above discussion, the petition miserably fails. The petitioner, inspite of the well settled legal position in cases in which the petitioner/DCT itself was a party, obtained a stay from this Court of the award thereby depriving the respondent/workman from the back wages from 1991 to 1997. The award directs payment of interest at 9% per annum for the delay in payment. In view of the conduct of the petitioner / DTC as noticed above, it is directed that petitioner / DTC shall be liable to pay interest on the amounts so withheld of the respondent/workman at the rate of 12% per annum during the period of pendency of this petition.

With the aforesaid direction, the petition is dismissed.