**(2006) 04 DEL CK 0049**

**In the Delhi High Court**

**Case No :** Writ Petition (C) 3342 of 2000

Girdhari Lal — APPELLANT

Vs

D.T.C. and Another — RESPONDENT

**Date of Decision :** 21-04-2006

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2006) 134 DLT 318

**Hon'ble Judges :** S. Ravindra Bhat, J

**Bench :** Single Bench

**Advocate :** Rasmeet Charya, for the Appellant; J.N. Aggarwal and Banamali Shukla, for the Respondent

## Judgement

S. Ravindra Bhat, J.—The writ petitioner claimed several reliefs in these proceedings under Article 226, but at the time of hearing, the principal grievances agitated were in respect of the withholding of pension, by the respondent Corporation (hereafter referred to as "the DTC"), and denial of promotion. Directions were sought to the DTC, in that regard.

2. The petitioner was appointed as Fitter by the DTC in 1956. He was later promoted as Mechanic in 1959 and subsequently promoted as Assistant Foreman in 1967. His services were terminated by recourse to Regulation 9 (b) framed by the DTC by mere issuance of a notice. That provision was challenged, in writ proceedings namely, CW 245/1978. That Regulation was declared void, by a Division Bench of this Court. The judgment setting aside the Regulation was upheld by the Supreme Court in its decision reported as Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, .

3. By judgment and order dated 29.9.1998 this Court allowed the petitioners writ petition and quashed the order of termination dated 25.6.1976. The Court held that the petitioner was entitled to continuity of service and seniority but as regards back wages he was directed to file an affidavit. The affidavit however, was not filed. As a result there was no direction to pay back wages. The

operative portion of the order dated 29.9.1998 is as follows:

For the reasons recorded above the rule is made absolute and the impugned order dated 25.06.1976 is quashed. The respondents are directed to reinstate the petitioner and the petitioner will be entitled to continuity of service and seniority. There will be no order as to costs.

4. On 5.1.1989 DTC issued an order reinstating the petitioner. That order reads as follows:

DELHI TRANSPORT CORPORATION (A GOVT. OF INDIA UNDERTAKING) I.P DEPOT. NEW DELHI

No. IPD/Re-instate/PFC(C&S)/89197 dated 5.01.89

Consequent upon the receipt of judgment dated 29.09.88 of the Hon''ble High Court of Delhi in the CWP No.245/78 in the matter of Shri Girdhari lal v. DTC the Court has quashed the termination order dated 25.06.1976 vide which the services of Shri Girdhari Lal, Foreman were terminated under clause 9 (b) of the DRTA (Conditions of Appointment & Service) Regulations, 1952.

Accordingly, Shri Girdhari Lal, Foreman is re-instated in service from the date he resumes duty on a Basic Pay of Rs.580/-p.m in the pay scale of Rs.580-30-700-35-945.

He will not be entitled to any wages for the intervening period i.e. from the date of termination to the date of re-instatement.

He will, however, be entitled to continuity of service for the purpose of retirement benefits and premature only.

The intervening period i.e. from the date of termination to the date of re-instatement will not be taken into account for the purpose of increment and leave benefits.

He is hereby directed to report to the Depot Manager, BBMD-I for further duties.

He is allotted Pay token No. 57466.

5. The petitioner did not report for duty and seems to have written a letter demanding that he should be given a suitable posting and also benefit for the intervening period. Eventually he reported for duties on 3.8.1982. He also moved an application in the disposed of writ proceedings. An application namely CM.6841/1992 was disposed on 1.3.1993 in terms of the following order:

C.M. 6841/1992

Counsel for the parties agrees that the petitioner will be allowed to resume duty w.e.f. 5.3.93 subject to the condition that the petitioner would file an affidavit that he was not gainfully employed any where from 1988 till date of joining. Mr. Vohra states that the petitioner will not claim any back wages. As regards his seniority and promotion he will agitate with the department according to law. In view of the statement of the parties the petitioner is directed to report for duty on 05.03.1993. The petitioner will not be entitled to claim any back wages. However, the question of promotion and seniority, if agitated by the petitioner, will be dealt with by the department in accordance with law. The application is disposed of. March 1, 1993 Sd/- C.L. Chaudhary, Judge

6. The petitioner was allowed to join duties by order, dated 13.4.1993 issued by the DTC. The relevant portion of the said order reads as follows:

In view of the orders of the Hon''ble High Court Shri Girdhari Lal, Foreman, is hereby taken back in service w.e.f. 5.3.93 on a basic pay of Rs.1640/- in the pay scale of Rs.1640-60-2600-EB-75-2900. He will not be entitled for any wages for the intervening period i.e. from the date of termination to the date of joining. The period from the date of High Courts orders/judgment dated 29.09.89 till he joins duty will not be taken into account for the purpose of increment and leave benefits.

He is directed to report to Manager, Training School, (CWS-I) for further duties.

He is allotted pay token No.57466. Sd/- Manager (ADMN.) PLD.

7. After joining duties, the petitioner approached this Court by filing CCP 30/1995 claiming that certain service benefits had been withheld. The Contempt Petition was disposed off on 1.1.1995 permitting him to represent to the DTC in that regard. The petitioner did so on 6.11.1995 and 6.1.1996. The DTC by its impugned order dated 2.2.1996 declined to accede his request for promotion and stated that it would be considered in the event of occurrence of vacancy, after determining his suitability. By an order, dated 2.9.1996, DTC decided that the petitioner was not entitled to pension. The petitioner had attained the age of superannuation, and retired on 31.8.1996. The said order, impugned in these writ proceedings reads as follows:

No. TRG/Settlement/684 2.9.96

Shri Girdhari Lal S/o Late Hukam Chand, Ex-Foreman, P.T.No.57466 of this Unit was taken back in service as on 15.04.93 vide memo No. PLD-IV (B&M)/93/1498 dated 13.04.93. He has retired w.e.f. 31.8.86 vide TRS/96/329 dated 19.04.96. He has opted pension but not entitled for the same.

Accordingly provident fund dues of the ex-employee are hereby released. The amount thereof may please be paid through cheque to Sh. Girdhari Lal, R/o 6/31, Gali No.3, Vishwas Nagar, H.No.527, Shahdara, Delhi 110 032.

As per clearance certificate of the Unit, a sum of Rs. Nil is recoverable towards loan against C.P. Fund from the Ex-employee.

The Provident Fund Settlement Committee has accorded the approval for the above in its meeting held on 05.08.96.

 

Sd/-

02.09.96.

Manager (Trg)

8. The petitioner had filed CCP No.92/1996 for initiation of contempt proceedings in view of the impugned order and the order dated 2.2.1996. That petition was disposed by order dated 21.2.2000 granting him liberty to challenge them in appropriate proceedings, in accordance with law. The petitioner has, Therefore, approached this Court by way of the present proceedings.

9. It is contended by Ms. Rasmeet Charya, learned counsel, that with the order of reinstatement, and the issuance of a consequential order on 5.1.1989, the DTC was under an obligation to grant continuity of service for all purposes including seniority and pension. In not doing so and in virtually offering fresh terms of employment with effect from 13.4.1993, it acted contrary to law.

10. It was contended that the petitioners termination, effected on 25.6.1976, was a nullity, and so established, by a judgment of this Court, which had struck down and set aside the Regulation itself. As a result, the petitioner automatically became entitled to all consequential benefits. Merely because back wages were denied, DTC could not treat him as a fresh employee and ignore his entire previous length of service for the purpose of pension and other benefits.

11. Counsel also relied upon the terms of Office Order No.16 dated 27.11.1992 by which DTC introduced a pension scheme with effect from 3.8.1981. The benefit of that scheme, was extended to all existing employees, including those who retired w.e.f 3.8.1981 onwards and even those who did not expressly opt, it but were otherwise falling within its terms. Being existing employees, they were deemed to have opted for pension in terms of Clause 9 of the Scheme. As a result, the petitioner, being one entitled to employment and continuity of service as per directions of the court dated 29.9.1998 and who had also reported for duty on 3.8.1992, was entitled to pension.

12. Learned counsel also submitted that the petitioners claim for promotion could not have been ignored in view of the express directions to grant continuity of service for the period he had illegally terminated.

13. Mr. J.N. Aggarwal, learned Counsel submitted that although the termination order of 25.6.1976 was set aside in the earlier round of litigation, the Court had consciously withheld back wages. The DTC issued an order on 5.1.1989 reinstating the petitioner as a Foreman on the basic salary of Rs.580/- in the pay scale of Rs.580- 945 even though at the time of his termination, the petitioner was merely officiating in that post. In fact DTC treated the petitioner as having been promoted and regularized to the post of Foreman on 5.1.1989. Yet the petitioner chose to stay away from duties on the pretext that he ought to be given monetary benefits. He chose to report only on 3.8.1992 and thereafter approached the court and was ultimately reinstated on 13.4.1993. In these

 

circumstances, the DTC could not be held liable for granting continuity of services from the previous period of service.

14. It was also contended on behalf of DTC that petitioner had attempted to secure the reliefs sought here, by way of contempt proceedings, which were declined. The counsel submitted that the stand of DTC in denying pension, in the peculiar facts of the case, could not be characterized as arbitrary or illegal. The petitioner was himself responsible for the situation, which arose, resulting in his disentitlement to pension.

15. Counsel lastly submitted that in any event the petitioner had accepted gratuity including the employers share in June 1976, upon termination of his services. As far as pay fixation was concerned, it was submitted that the petitioner was merely officiating as Foreman, when he was originally terminated in 1976. When he joined on13.4.1993, the previous pay scale had been replaced by those recommended by the report of the 4th Pay Commission to Rs.1640-2900; his pay was fixed in that grade. Regarding promotion it was submitted that the petitioner was a matriculate and could be considered for promotion as Asstt. Engineer/ Manager (Technical) upon completing 8 years actual qualifying service in the Feeder Grade. The petitioner did not fulfill that condition and Therefore ineligible for promotion.

16. The factual narrative would show that the termination effected in 1976 was by invocation of hire and fire power under Regulation 9(b). The Regulation was declared void by this Court as well as by a Constitution Bench of the Supreme Court. Therefore, the order of termination itself was a nullity from inception. The Court, however, did not grant back wages but directed extension of all the other benefits including continuity of service and seniority. The petitioner undoubtedly did not report for duties for a period of more than three and a half years. Eventually, he approached DTC, reporting for duties, though conditionally, on 3.8.1992. Even then he was not taken into service the DTC permitted him to report on 13.4.1993.

17. The above discussion shows that the order of the Court directing DTC to grant continuity of service had become final. It was thus understood and rightly so when DTC issued the order dated 5.1.1989. However, the subsequent lapse or omission on part of the petitioner in not reporting for duties but insisting on certain preconditions led to complications and had been cited as a ground for refusing to consider his entire previous services, for purposes of service benefits other than back wages. While there is no doubt that the period between 5.1.1989 and 13.4.1993 cannot be treated as one for which the petitioner can insist upon reckoning of service, for purposes of continuity, the denial of the entire length of previous service, by the DTC in my opinion, is without any rationale or justification. Both, the orders dated 5.1.1989 and 13.4.1993 do not exclude consideration of the previous service for purposes of benefits. Indeed the order of 13.4.1993 merely states that the period from the date of High Court''s order dated 29.9.1988 till the petitioner joined duties would not be taken in to

 

account for purposes of increment and leave benefits. On the face of such a stipulation, the stand taken in these proceedings that the petitioner cannot secure the benefit of pension -which was admittedly introduced by virtue of a Circular dated 7.11.1992 ( i.e. prior to 13.4.1993) is arbitrary. Even if the petitioners period of absence were to be ignored, the basic criteria spelt out in the Circular dated 27.1`1.1992 namely, of the person being an existing employee would stand fulfilled. This is because with the quashing of the termination order in 1988, and the issuance of the order of reinstatement, dated 5.1.1989, the petitioner reacquired his status as an employee. He even reported for duties on 3.8.1992. In view of these circumstances, the position taken by the DTC that the petitioner was disentitled to pension and that the order issued in April, 1993 virtually amounted to fresh employment, cannot be countenanced.

18. The DTC has not denied the petitioners admitted length of service between 1956 and 1976; it has also not disputed the entitlement to continuity of service (though not to back wages) for the period between 1976 and 1989. Thus the petitioner was clearly entitled to reckon at least that period, when he rejoined duties in 1993. There is of course justification for excluding the period on 5.1.1985 and 13.3.1993 because the petitioner did not work for that duration. However, the previous period as also the period from April 1993 to 31.8.1996 have to necessarily be taken into consideration. This, coupled with the fact that the petitioners entitlement to be treated as an existing employee in November, 1992 on account of the Courts declaration " (which had become final) fortify his claim for pension; he is entitled to the relief.

19. As far as the contention that the petitioner had secured terminal benefits in 1976 is concerned, I am of the view that a such a plea could not be put forward because at that point in time, there was no choice for the petitioner; he was a terminated employee and he had no means of knowing whether he would succeed in the litigation which he did 13 years later.

20. On the issue of promotion, I am of the opinion that the stand of the DTC cannot be held illegal. The DTC asserted that promotion to the higher post is based upon actual qualifying service of 8 years in the feeder cadre. The petitioner did not work for the concerned period and he has to blame himself for that situation. Therefore, he is not entitled to the relief of a direction to promote him.

21. In view of the foregoing discussion, the impugned order dated 2.9.1996 has to be quashed to the extent that it denies benefit of pension. Having regard to the fact that the petitioner did not approach the Court immediately but filed the wit petition in the year 2000, it would not be a sound exercise of discretion to direct the respondents to pay the entire arrears of pension.

22. In view of the foregoing discussion, the writ petition is allowed to the extent that a direction is issued to the respondent to fix the pension of the petitioner as per his entitlement, (in the light of the above discussion) with effect from

 

1.9.1996, take into consideration subsequent revisions in pension amounts and issue an appropriate order as to his entitlement within a period of 8 weeks from today. The respondent DTC shall also ensure that arrears of pension on the basis of such pension fixation order are paid to the petitioner for the period 1.4.2000 till date, within the said period of 8 weeks from today.

23. Rule made absolute in the above terms. No costs.

 