

(2011) 04 DEL CK 0166

In the Delhi High Court

Case No : Writ Petition (Civil) No. 499 of 2011

Inderjeet Singh, Driver

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Citation : (2011) 5 AD 527 : (2012) 134 FLR 1025 : (2012) 3 LLJ 582 : (2011) LLR 901

Hon'ble Judges : Dipak Misra, C.J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Prashant Katara and Anil Mittal, for the Appellant; J.S. Bhasin, for the Respondent

Judgement

Sanjiv Khanna, J.—Inderjeet Singh, Petitioner had impugned the order dated 19th November, 2010, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (Tribunal, for short), dismissing his OA 3735/2010. During the course of arguments, the Appellant has confined his prayer to claim for back wages with effect from 22nd November, 2004 when he was acquitted by the High Court till the order of reinstatement was passed by the Respondent, Delhi Transport Corporation (DTC) on 5th June, 2007.

2. By the impugned order dated 19th November, 2010, back wages for the said period have been denied and the order dated 11th August, 2010 passed by the Respondent has been upheld.

3. The Petitioner was appointed as a Driver with the Respondent on 15th October, 1989.

4. FIR No. 76/98 was registered for murder of one Hemant on 24th June, 1998 and the Petitioner was arrested. On 26th August, 1998, the Petitioner was placed under suspension with effect from 25th June, 1998. The Petitioner was released on bail on 1st December, 1999 and the order of suspension was revoked and the Petitioner was allowed to resume duty on 12th January, 2000. By the judgment

dated 23rd July, 2000, the Petitioner was convicted and sentenced to 10 years rigorous imprisonment.

5. The Petitioner had informed the Respondent vide letter dated 4th October, 2002, about his conviction and that he had filed an appeal. Show cause notice dated 30th April, 2004 was issued why the Petitioner should not be dismissed from service on account of his conviction. The Petitioner at that time was lodged in Tihar Jail, submitted his reply stating, inter alia, that his appeal was pending. By order dated 20th May, 2004, the Petitioner was dismissed from service.

6. By judgment dated 22nd November, 2004, the appeal was accepted by the High Court and the Petitioner was acquitted. The Petitioner vide letter dated 6th December, 2004, informed the Respondent about his acquittal and asked them to reinstate him in service with full back wages. The Respondent, however, did not act on the said request and per force the Petitioner filed Writ Petition (Civil) No. 22777/2005. During the pendency of the said writ petition, vide order dated 5th June, 2007, the Petitioner was reinstated in service but without back wages from the date of dismissal i.e. 20th May, 2004 till reinstatement 5th June, 2007. However, this period was not to be treated as a break in service.

7. The aforesaid writ petition was transferred to the Tribunal and was numbered as 1286/2009. The said petition was disposed of with liberty to the Petitioner to challenge the order dated 5th June, 2007. This order was challenged in OA No. 2722/2009, in which the impugned order has been passed.

8. Arrest and subsequent conviction of the Petitioner in the criminal case was not as a result of any proceedings initiated by the Respondent. Conviction was not attributable to the Respondent. It is now well settled that if service of a government employee is terminated because of his conviction, but he is reinstated after his acquittal by the appellate court, he is not entitled to back wages as a matter of right. (See Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, (Gujarat) and another, Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and others, ; Hukmi Chand Vs. Jhabua Cooperative Central Bank Ltd., Jhabua (M.P.) and Another, ; Union of India (UOI) and Others Vs. Jaipal Singh, Naresh Ahlawat Vs. Mahanagar Telephone Nigam Ltd.,

9. However, the question in the present case is different. The aforesaid decisions will be applicable as far as period up to 22nd November, 2004 i.e. the date on which the Petitioner was acquitted by the High Court. But there is a gap between the said date and that of reinstatement of the Petitioner vide order dated 5th June, 2007. There is delay of two and a half years. The Respondent was required to and should have explained this time gap and the delay. There is no explanation for this delay. It is not even claimed that this delay is attributable to the Petitioner. Admittedly, the Petitioner had written letter dated 6th December, 2004 informing the Respondent about his acquittal by the High Court vide judgment dated 22nd November, 2004. Respondent should have acted

immediately thereafter and reinstated the Petitioner. Albeit, the Petitioner was compelled to file a writ petition and only thereafter the Respondent acted. The delay and laches in passing the order of reinstatement on 5th June, 2007 cannot be justified. The said lapse and blame are not attributed to the Petitioner and cannot be a ground to deny back wages for this period between, 22nd November, 2004 to 5th June, 2007.

10. Accordingly, the Petitioner is entitled to back wages with effect from 1st January, 2005 till 5th June, 2007. The date of 1st January, 2005 has been fixed keeping in view of the fact that the Petitioner had informed the Respondent about his acquittal vide letter dated 6th December, 2004. The aforesaid back wages will be paid within a period of two months from the date of receipt of this order with interest @ 8% from the date back wages became due till payment is made. The Petitioner is also entitled to costs, of Rs. 10,000/-. The writ petition stands disposed of accordingly.