
(2008) 11 DEL CK 0150
In the Delhi High Court
Case No : L.P.A. No. 189 of 2008

Phool Singh

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 07-11-2008

Acts Referred:

Citation : (2009) 120 FLR 727

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Pradeep Kumar, for the Appellant; Uday Tiwary, for the Respondent

Final Decision : Allowed

Judgement

Dr. S. Muralidhar, J.—This appeal is directed against the impugned order dated 23rd January, 2008 passed by the learned Single Judge in CM Application No. 8352 of 2006 in WP(C) No. 5183 of 2003.

The appellant who was employed with the respondent Delhi Transport Corporation ("DTC") was dismissed from service on 24th May, 1993. The industrial dispute arising therefrom was referred to the Labour Court for adjudication. By an order 17th July, 2002 the Labour Court held that the domestic enquiry conducted by the DTC was in violation of the principles of natural justice. The Labour Court, by an award dated 7th October, 2002, directed reinstatement of the appellant with 75% back wages.

2. DTC filed Writ Petition (C) No. 5183 of 2001 in this Court challenging the award dated 7th October, 2002. Rule was issued by the learned Single Judge and the award was stayed by an order dated 4th December, 2003. Thereafter, the appellant filed an application being CM No. 11835 of 2003 u/s 17-B of the Industrial Disputes Act, 1947 ("I.D. Act"). By an order dated 25th October, the learned Single Judge disposed of the said application u/s 17-B I.D. Act by directing that the appellant would be paid the last drawn wages from the date of the award till 31st October, 2004 within a period of six weeks and that the

appellant would be paid the current wages on month to month basis without default. The writ petition came to be dismissed in default on 16th February, 2005. On an application of the DTC, the writ petition was restored by an order dated 20th March, 2006 and the interim order was revived.

3. The respondent filed a further application being CM No. 8352 of 2006 for modification of the order dated 25th October, 2004 passed in CM No. 11835 of praying for a direction to the DTC to pay him last drawn wage or minimum wage, whichever was higher. The said application was resisted by the DTC by pointing out that the appellant had already recovered an amount of Rs. 1,94,521/- as 75% of the back wages for the period 24th May, 1993 to 31st December, 2002. It was submitted that in the circumstances, direction of payment of minimum wage which was higher than the last drawn wage is not justified. The appellant also filed CM No. 8351 of 2006 seeking clarification of the order dated 25th October, 2004 that he was entitled to adjust the 17-B amount towards back wages for the period 24th May, 1993 to 31st December, 2002. Both applications were dismissed by the learned Single Judge by holding that since no review application had been filed by the appellant against that order 25th October, 2004, the prayer for modification could not be entertained.

4. We have heard learned Counsel for the parties and perused the records. We are of the view that the impugned order of the learned Single Judge cannot be sustained in law. It is well settled in *Dena Bank (I) v. Kirti Kamar T. Patel* 1998 (78) FLR 45 (SC), and *Dena Bank (II) v. Ghanshyam JT* 2001 (Supp I) SC 229, and as explained by the judgment of the Full Bench of this Court in *Delhi Development Authority v. Smt. Omvati* (decision dated 24th May, 2006 in LPA No. 84 of 2002) that u/s 17-B, I.D. Act the Court can, in its discretion, award minimum wages or the last drawn wages whichever is higher. The plea of the appellant that he should be awarded minimum wages which is higher than the last drawn wages is justified. The appellant will of course have to file an undertaking that in the event of DTC's writ petition being allowed, the difference between the last drawn wages and the minimum wages would be refunded by the appellant.

5. Since the respondent has already recovered 75% of the back wages for the period 24th May, 1993 to 31st December, 2002 this order directing the DTC to pay minimum wages on a monthly basis to the appellant will be operative for the period from 1st January, 2003. The arrears will be paid within eight weeks from today. The respondent will continue to pay the appellant the minimum wages on or before 10th of each month. This is subject to the appellant filing an undertaking within four weeks from today that in the event of DTC succeeding in the Writ Petition (C) No. 5183 of 2003, the appellant will, refund to it the difference between the last drawn wage and the minimum wage paid to him in terms of this order.

6. The impugned order of the learned Single Judge is, accordingly, set aside. The appeal is allowed with the aforementioned directions.