

(2009) 09 DEL CK 0357

In the Delhi High Court

Case No : Writ Petition (C.) No. 4826 of 2001

Shri Jeet Singh

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 10-09-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 09 DEL CK 0357

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : Rakesh Kumar, for the Appellant; J.S. Bhasin, for the Respondent

Final Decision : Allowed

Judgement

S.N. Aggarwal, J.—The petitioner has filed this writ petition under Article 226 of the Constitution against Delhi Transport Corporation seeking the following prayers:

A) reinstate the petitioner in service with full back wages and continuity of service from 06.07.1992; with consequential benefits.

B) pay the entire dues/arrears as accrued to him since 06.07.1992 onwards till date as applicable according to law.

C) Cost of the writ may also be awarded to the petitioner.

D) Any other order as deemed fit and proper in the circumstances of case be also passed in favour of petitioner and against the respondent.

2. Briefly stated the facts of the case relevant for addressing the above prayers made by the petitioner in this writ petition are as follows.

The petitioner was working as a Driver in Delhi Transport Corporation (respondent herein). He was served with a charge-sheet dated 06.03.1991 for remaining absent unauthorizedly for 26 days in December 1990, 22 days in

January 1991 and 27 days in February 1991. After holding a domestic inquiry against him, the respondent decided to remove him from service w.e.f. 06.07.1992. Since at that time an industrial dispute concerning Delhi Transport Corporation workers' demand for implementation of Fourth Pay Commission Report was pending adjudication before the Industrial Tribunal, an application for approval u/s 33(2)(b) being O.P. No. 263/1992 was filed by the respondent before the Tribunal before whom the earlier industrial dispute was pending. This approval application filed by the respondent management was rejected by the Tribunal vide order dated 16.10.2000. The respondent being aggrieved by the said order of rejection filed a writ petition being W.P.(C.) No. 4161/2001 in this Court. The writ petition being W.P.(C.) No. 4161/2001 seeking to challenge the rejection of approval application u/s 33(2)(b) has been dismissed on merits vide order dated 10.09.2009. The consequence of dismissal of respondent's writ petition being W.P.(C.) No. 4161/2001 is that the order of rejection passed by the Tribunal rejecting the approval u/s 33(2)(b), has attained finality.

3 The Constitution Bench of the Hon'ble Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, has held as under:

If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement.

4. It is evident from the above judgment of the Constitution Bench of the Hon'ble Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.'s case (supra) that if approval u/s 33(2)(b) is not granted by the Tribunal, then order of dismissal or discharge is deemed to have never been passed and consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits that are available to him.

5. In M.D., Tamil Nadu State Transport Corporation v. Neethivilangan, Kumbakonam 2001 IV AD (S.C.) 485, it was held by the Hon'ble Hon'ble Supreme Court as under:

By passing the order of discharge or dismissal de facto relationship of employer and employee may be ended but not the de jure relationship for that could happen only when the Tribunal accords its approval. The relationship of employer

and employee is not legally terminated till approval of discharge or dismissal is given by the Tribunal. In a case where the Tribunal refuses to accord approval to the action taken by the employer and rejects the petition filed u/s (2)(b) of the Act on merit the employer is bound to treat the employee as continuing in service and give him all the consequential benefits. If the employer refuses to grant the benefits to the employer the latter is entitled to have his right enforced by filing a petition under Article 226 of the Constitution. There is no rational basis for holding that even after the order of dismissal or discharge has been rendered invalid on the Tribunals rejection of the prayer for approval the workman should suffer the consequences of such invalid order of dismissal or discharge till the matter is decided by the Tribunal again in an industrial dispute. Accepting this contention would render the bar contained in Section 33(1) irrelevant. In the present case as noted earlier the Tribunal on consideration of the matter held that the employer had failed to establish a prima facie case for dismissal/discharge of the workman, and therefore, dismissed the application filed by the employer on merit. The inevitable consequence of this would be that the employer was duty bound to treat the employee as continuing in service and pay him his wages for the period, even though he may be subsequently placed under suspension and an enquiry initiated against him.

6. In view of the judgment of the Hon''ble Supreme Court in M.D., Tamil Nadu State Transport Corporation's case, the petitioner is entitled to have all the reliefs treating him as continuing in service of Delhi Transport Corporation till the age of his superannuation.

7. The counsel for both the parties in the course of hearing have submitted that the petitioner has already reached the age of superannuation during the pendency of the proceedings in the present writ petition sometime in 2007. Since the petitioner has already reached the age of superannuation, the question of his reinstatement in service is out of place. What he is entitled is for wages for the period intervening between the date of removal and the date of superannuation besides all other terminal benefits given to an employee on superannuating from service in normal course.

8. In view of what has been stated above, this writ petition is allowed and the respondent is hereby directed to pay the entire dues/arrears accrued to the petitioner for the period intervening between the date of his removal and the date on which he had reached the age of superannuation. The respondent is stated to has made some payment to the petitioner during the pendency of the present writ petition. Needless to say that the respondent is entitled to adjustment of payment, if any, made by it to the petitioner during the pendency of the present writ petition while computing the arrears payable to him in terms of this order. The petitioner is entitled to all other consequential benefits treating him in service till the date of superannuation. The arrears be paid to the petitioner by the respondent within a period of eight weeks from today.

This writ petition stands disposed of in terms referred above.