

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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W.P.(C) No.1442/1991

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Date of decision: 1st July, 2010

DELHI TRANSPORT CORPORATION

..... Petitioner

Through: Mr. Alok Shankar, Advocate.

Versus

DELHI ADMINISTRATION & ORS.

..... Respondents

Through: Mr. Varun Kumar, Advocate for R-3.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported in the Digest? No

RAJIV SAHAI ENDLAW, J.

1. The petitioner DTC in this writ petition impugns the award dated 19th May, 1990 of the Labour Court on the following reference:-

“Whether the termination of services of Shri Tej Singh is legal and/or justified and if not, to what relief is he entitled and what directions are necessary in this respect?”

holding the termination to be violative of Section 25 F of the ID Act and directing the petitioner DTC to reinstate the respondent No.3 workman with full back wages in the scale of 260-400/equivalent revised scale on the post of conductor or in some other post in the said scale.

2. This Court vide *ex parte* order dated 2nd May, 1991 while issuing Rule in writ petition stayed recovery by coercive process from the petitioner. On application under Section 17 B of the ID Act being filed by the respondent No.3

workman vide order dated 26th May, 1994 and as clarified on 8th May, 2000 payment at the rate of last drawn wages was directed / ordered.

3. The Labour Court has found that the respondent No.3 workman was appointed as a conductor with the petitioner DTC w.e.f. 20th June, 1981 on daily wages; that he became a regular employee w.e.f. 20th December, 1981; that he met with an accident (when off duty) on 14th January, 1982 in which his leg was fractured; that he remained on leave from 15th January, 1982 to 11th June, 1982 without pay; that thereafter he was examined by the Medical Board of the petitioner DTC and given three months light duty; that he was given duty at the post of TTC which post then had the same pay scale as of a conductor; however subsequently the pay scales of the post of TTC became higher than that of a conductor and consequently the respondent No.3 workman was removed from the said post; that the respondent No.3 workman was again examined by the Medical Board but found unfit to work as a conductor owing to shortening of his leg and difficulty in boarding and alighting from the bus; that the petitioner DTC offered to the respondent No.3 workman the post of a peon which is below the post of a conductor but the respondent No.3 workman did not opt for the same; accordingly the petitioner DTC vide order dated 21st June, 1983 terminated the services of the respondent No.3 under Clause 9 (a)(i) of the DRTA (Conditions of Appointment & Service) Regulations, 1952.

4. The Labour Court in the award has noted that the petitioner DTC inspite of opportunities failed to produce any evidence and also failed to address arguments. The Labour Court has held that it being not in dispute that the respondent No.3 workman had worked for a period of more than 240 days in a year, was required to

be given notice and retrenchment compensation in terms of Section 25 F of the ID Act; that the same having not been done, the termination is illegal. It was also held that the respondent No.3 workman had disputed the fact that he was medically unfit to perform the duties of conductor and had stated so on oath; the petitioner DTC in the cross examination had not challenged the same though had suggested that the respondent No.3 workman's leg had been shortened and the respondent No.3 workman used to face difficulty in boarding and alighting from the bus. The Labour Court held that to be not sufficient to conclude that the respondent No.3 workman could not perform the duties of a conductor efficiently and it was for the petitioner DTC to produce medical evidence as well as other evidence to satisfy that the respondent No.3 workman was unable to perform duties of a conductor. The Labour Court also held that the petitioner DTC ought to have given further opportunity to the respondent No.3 workman to exercise the option of accepting the job as a peon. The petitioner DTC was also not held justified in offering a Class IV post of a peon to the respondent No.3 who was employed in a Class III post as a conductor.

5. The counsel for the petitioner has raised only one argument. A copy of the letter dated 19th June, 1982 of appointment of the respondent No.3 w.e.f. 20th December, 1981 has been handed over in the court. One of the conditions in the said letter is as under:-

“His appointment is purely temporary. He will be on probation for a period of one year. The period of probation can be extended up to two years by this Corporation, if considered necessary. During the probationary period his services shall be liable for termination at any time without notice and without assigning any reason therefor. He would be considered as having completed the period of probation satisfactorily only when a notification to this effect is issued from this office.”

The counsel contends that as on 21st June, 1983 the respondent No.3 workman was within the period of probation only and thus the termination of his services did not attract/invite Section 25F of the ID Act. It is urged that the Labour Court in the award impugned in this petition has totally ignored the said aspect and thus misdirected itself.

6. It was enquired from the counsel whether the letter, copy of which has been handed over in the court, was filed before the Labour Court. The counsel has fairly stated that he is unable to answer. Though I find that a ground in this respect has been taken in the writ petition but no copy of the said letter was filed along with the writ petition. In spite of the writ petition having remained pending for the last nearly 20 years, the file of the Labour Court has not been requisitioned in this Court till now. Considering the long period for which the matter has remained pending and the probability of the record being not available with the Labour court itself it was not deemed expedient to adjourn the matter. The counsel for the respondent No.3 workman stated that he has some copies of the record of the Labour Court and which were handed over in the court and taken on record.

7. Finding no discussion whatsoever in the award on the aforesaid plea of the counsel for the petitioner DTC, the pleadings before the Labour Court were perused. The petitioner DTC in its reply has pleaded that the services of the respondent No.3 workman were terminated under Clause 9(a)(i) of the Regulations and which has been noticed in the award also. However, the Labour Court has not discussed as to what the regulation 9(a)(i) is. Another counsel for the DTC present in court during the hearing handed over a copy of the said regulations. From a perusal thereof, Rule 9(a)(i) is found as under:-

“9. Termination of Service:- (a) Except as otherwise specified in the appointment orders, the services of an employee of the Authority may be terminated without any notice or pay in lieu of notice:-

(i) During the period of probation and without assigning any reasons thereof.”

8. From the aforesaid it is clear that the order of termination was treating the respondent No.3 workman as serving the period of probation. It was enquired from the counsel for the petitioner as to whether there is any document to show that the period of probation which was for one year from 20th December, 1981 to 19th December, 1982 was extended for another year. The counsel again expresses helplessness but states that even if there was no order of extension of probation, as per clause aforesaid of the appointment letter, probation would be treated as satisfactorily completed only when a notification to that effect is issued by the petitioner DTC. It is contended that no such notification has been issued. The Supreme Court in *Wasim Beg Vs. State of Uttar Pradesh* AIR 1998 SC 1291 held that where there is a rule requiring a specific act on the part of the employer (either by issuing an order of confirmation or any similar act) which would result in confirmation of the employee, in such cases unless there is such an order of confirmation, the period of probation would continue and there would be no deemed confirmation at the end of prescribed probationary period.

9. I have again perused the counter affidavit to the writ petition filed by the respondent No.3 workman. The respondent No.3 workman therein has pleaded that the invocation of Regulation 9(a)(i) by the petitioner DTC was a colourable exercise of power. In para 15 of the counter affidavit it is also pleaded that the respondent No.3 workman was in the regular appointment of the petitioner but he has not pleaded any notification of successful completion of probation having

been issued. The termination otherwise on 21st June, 1983 is within two years of the start of the probationary period. I may also notice that it was not the case of the respondent No.3 workman before the Labour Court that the invocation of Regulation 9(a)(i) was a colourable exercise of power.

10. From the order of termination having been issued under Regulation 9(a)(i) and from the pleadings aforesaid it can safely be assumed that the termination was within the probation period and while the respondent no.3 workman was serving as a probationer. The same would negate the logic given by the Labour Court of violation of Section 25F. It is the settled law that Section 25F is not applicable to termination of services of a probationer. Reference in this regard may be made to ***Rajajinagar Coop. Bank Ltd. Vs. K. Gururaj*** (2001) 10 SCC 681 where the Supreme Court held that when the dispensation of services is done prior to the probation period coming to an end and in terms of the order of appointment, the provisions of Section 25F would not be attracted.

11. However the fact remains that the petitioner DTC before the Labour Court failed to take the aforesaid plea expressly and also failed to lead any evidence or address arguments. The Labour Court cannot thus be faulted much in ignoring the said aspect. The petitioner DTC after pleading that the termination was under Regulation 9(a)(i) relied more on the respondent No.3 workman having been given the offer for a lower post and having declined the same. Again from the pleadings before the Labour Court as well as in the writ petition it stands established that the respondent No.3 workman was made an offer of a lower post but declined the same; he insisted on alternative employment at an equivalent post. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation)

Act, 1995 provides for the same. The said Act does not have retrospective application as held recently by the Division Bench of this Court in *DTC Vs. Harpal Singh* 156 (2009) DLT 481 and it was not in operation at the time of the award in the present case. Nevertheless, even prior to the said Act, the DTC had a policy for offering employment at an equivalent or a lower post to such disabled employees. However the respondent no.3 workman being a probationer, the benefit of Section 47 of the said Act cannot be given to him.

12. The reasoning of the Labour Court of the petitioner being not medically unfit is found to be contrary to the evidence of record. The award also notices and a perusal of the cross examination of the respondent No.3 workman before the Labour Court also shows that the respondent No.3 workman did admit the shortening of his leg. The said fact spoke for itself and there was no need for the petitioner DTC to lead any evidence to prove that such shortening of leg disabled the respondent No.3 workman from performing the duty of a conductor.

13. Similarly, the Labour Court misread the pleadings and the evidence before it to hold that inspite of refusal by the respondent No.3 workman to accept the lower post of peon offered to him, the petitioner DTC ought to have again made the offer to the respondent No.3 workman.

14. Though on the aforesaid basis the award cannot be sustained but the fact remains that the petitioner DTC failed to present its case properly before the Labour Court. The age of the respondent No.3 workman was enquired about during the hearing and he is stated to be 57 years of age at present. The retirement

age of a conductor is informed to be 60 years. He would thus have only about 3 years of service left. No case for reinstatement at this stage is made out.

15. In the entirety of the facts, it appears that besides the payments under Section 17B already received by the respondent No.3 workman, the respondent No.3 workman should be entitled to some compensation. Considering all the aspects, compensation in the amount of Rs.75,000/- is found to be just. The petition therefore succeeds. The award directing reinstatement with back wages and all benefits is set aside and quashed and modified to an award only for payment of compensation of Rs.75,000/- besides the payments already received by the respondent No.3 under Section 17B of the Act and of which he will not be required to refund any part. The payment as aforesaid be made within six weeks failing which it shall incur simple interest at the rate of 9% per annum.

The petition is disposed of.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

1st July, 2010
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