

Dtc Vs. Sukhbir Singh

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Court : Delhi

Decided On : Mar-21-2013

Judge : V. K. Jain

Appellant : Dtc

Respondent : Sukhbir Singh

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on:

19. 03.2013 Judgment pronounced on:

21. 03.2013 LPA 768/2012 & CM 19674/2012(delay in filing) DTC Through : Appellant Ms. Avnish Ahlawat with Ms. Latika Choudhary and Mr. Vaibhav Misra, Adv. versus SUKHBIR SINGH Through : + Respondent Mr. H.K.Chaturvedi, Ms. Anjali Chaturvedi, Mr. Ajit Kumar Jain and Mr. C.M.Verma, Adv. LPA 774/2012 & CM 19822/2012(delay in filing) SHUKHBIR SINGH Through : Appellant Mr. H.K.Chaturvedi, Ms. Anjali Chaturvedi, Mr. Ajit Kumar Jain and Mr. C.M.Verma, Adv. versus DELHI TRANSPORT CORPORATION Respondent Through : Ms. Avnish Ahlawat with Ms. Latika Choudhary and Mr. Vaibhav Misra, Adv. CORAM: HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE V.K. JAIN V.K. JAIN, J.

CM Nos. 19674/2012 (delay in filing) in LPA 768/2012 and CM 19822/2012(delay in filing) in LPA 774/2012 For the reasons stated in the applications, the delay in

filing the appeals is condoned. The applications stand disposed of. LPA 768/2012 and LPA 774/2012 1. The respondent, who was working as a driver with DTC on daily wage basis, was served with a chargesheet on 18.11.1994 on the following allegations: That the driver/ workman was duty on bus no.9766 route no.118 on dated 20.09.1994 and when it reached at More Gate at 9.30 am and the time keeper asked the driver/ workman to perform the trip on route no.324 at 9.35 am to Mayur Vihar Phase-I and the workman forced the time keeper to record the time at 10.00 am but the time keeper did not do so; then the workman abused and manhandled him and also recorded a complaint of starting trouble in the bus and went away. When the bus was checked by the checking staff at about 11.00 am, the workman was not found in the bus and he came at 11.30 am and after that he was taken the bus to the Noida Depot.

2. In the inquiry conducted against the respondent, he was held guilty and consequently he was removed from service of the appellant vide order dated 26.10.1995. On a dispute being raised by the respondent with respect to his removal from service, a reference was made to the Labour Court for adjudication. Vide order dated 19.05.2009, the Labour Court held as under:17. Hence with the available material permitted under section 11-A of the I.D. Act, I am to hold that the entire charges are not proved in total. The first charge of intentionally delaying the bus to go on route no.324 is with a false excuse of starting trouble falls to the ground. Under the above circumstances, I find that the order of removal passed against the workman is not justified.

3. The Labour Court, while directing reinstatement of the respondent and payment of a sum of Rs 30,000/- as litigation expenses to him, did not grant any back wages. Being aggrieved from the award, to the extent he was refused back wages, the respondent filed W.P(C) No. 823/2010. The learned Single Judge vide order dated 08.08.2012 disposed of the writ petition with the following operating order:

10. The line of decisions on the point are that the criteria for granting back wages are the length of service, whether the appointment was in consonance with the statutory rules, whether there existed any vacancy etc. Applying the criteria to the facts of the present case that the Petitioner was working as a driver on regular

basis, had put in nearly 7 years of service when he was terminated but since there has been a delay of the trial on account of the Petitioners conduct and the fact that the Petitioner has only stated that he was unemployed and has not even averred that he made efforts for finding alternative employment during this period while balancing the various circumstances, I deem it fit to modify the impugned award dated 19th May, 2009 to the extent that the Petitioner is entitled to 50% back wages. Ordered accordingly.

4. LPA No. 768/2012 has been filed by DTC, to the extent the learned Single Judge granted 50% back wages to the workman. LPA No. 774/2012 has been filed by the workman Sukhbir Singh to the extent back wages were restricted to 50%.

5. The allegations against the workman can be divided into the following three charges: (i) he forced the Time Keeper to record the time as 10.00 A.M. though actually the time was 09.35 A.M. when the bus reached Mori Gate; (ii) he abused and manhandled the Time Keeper; (iii) he was found absent from the bus between 11.00 A.M. to 11.30 A.M.. The Labour Court returned a finding in favour of the workman as far as the first charge is concerned. However, no finding was rendered with respect to second and third charges, as dissected by us. There was no finding as to whether the workman had abused and manhandled the Time Keeper or not. Similarly, there was no finding as to whether the workman was found absent from the bus between 11.00 A.M. to 11.30 A.M. or not. Thus, when the Labour Court held that entire charges were not proved in total, it, while holding that only the first charge was proved, did not return a finding on the other allegations against the workman.

6. In our view, the Labour Court was required to record specific finding also with respect to the second and third charges, as dissected by us since the question whether the workman would be entitled to back wages and if so, to what extent would depend upon the finding of the Labour Court on all the three charges. We, therefore, set aside the order passed by the learned Single Judge as well as the order by the Labour Court and remit the matter back to the Labour Court for giving finding on second and third charges, as dissected by us, within a period of four weeks of the receipt of this order. Both the appeals stand disposed of. There shall

be no order as to costs. V.K.JAIN, J CHIEF JUSTICE MARCH 21 2013 bg

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