Delhi Transport Corporation Vs Lakhmi Chand

Court: Delhi High Court

Date of Decision: Sept. 11, 2018

Acts Referred: Industrial Disputes Act, 1947 â€" Section 25F

Hon'ble Judges: C.Hari Shankar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

C.HARI SHANKAR, J.

1. The petitioner challenges Award, dated 30th April, 2014, passed by the Labour Court, whereby the termination of the respondentworkmanÃ¢â‚¬â„¢s

service, by the petitioner, on 9th August, 1989, has been declared to be illegal, and, in view of the fact that the workman had crossed the age of

superannuation, the petitioner has been directed to pay him full wages, from 9th August, 1989 till the date when the workman reached the age of

superannuation (14th December, 2001), excluding the period from 24th April, 1989 till 22nd February, 1991, during which the workman remained in

judicial custody.

2. The facts are undisputed, and may be presented thus:

(i) The respondent was appointed as a driver, with the petitioner, on 1st November, 1974, and brought on monthly rate with effect from 1st August,

1975.

(ii) The respondent was arrested, and under incarceration from 24th April, 1989 to 21stFebruary, 1991. During this period, however, he submitted

letters/applications, on 4th May, 1989 and 16th May, 1989, claiming that he was sick and requesting for sanction of leave. He also submitted medical

certificates, covering the period from 23rd April to 8th May, 1989.

Thereafter, the respondent remained absent.

(iii) After treating the absence of the respondent from 19th April to 20th April, 1989 as sick leave, from 21st April to 8th May, 1989 as earned leave

and from 9th May to 8th August, 1989 as extraordinary leave without pay, the respondent was deemed to have resigned from the post under

Regulation 14(10)(c) of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952 (hereinafter referred to as

Ã¢â‚¬Å“the RegulationsÃ¢â‚¬â€). For ready reference, Regulation 14(10)(c) may be reproduced, thus:

Ã¢â‚¬Å“Where an employee fails to resume duty on the expiry of the maximum period of extraordinary leave granted to him or where such an employee,

who is granted a lesser amount of extraordinary leave that the maximum amount admissible, remains absent from duty for any period which together

with the extraordinary leave granted exceeds the limit after which he could have been granted such leave under Clause (b), he shall be deemed to

have resigned his appointment and shall accordingly ceased to be in the employment of the authority.Ã¢â‚¬â€

(iv) On 20th June, 1989, a memo was issued, by the petitioner to the respondent, informing him that he was absenting himself from duties with effect

from 9th June, 1989, without information or prior permission from the competent authority.Ã, He was advised to report for duty and, if ill, to report to

the Medical Board for medical checkup immediately. This was followed by a second memo, dated 21st July, 1989, to the same effect.

(v) However, the respondent neither reported for duty nor appeared before the Medical Board. He was, therefore, declared as deemed to have

resigned with effect from 10th August, 1989 under Regulation 14(10)(c) of the Regulations supra, vide order of the said date, which, forming as it does

the fulcrum of the present controversy, has necessarily to be reproduced, in extenso, thus:

Ã¢â‚¬Å“D.T.C. B.B.M.D.II. DELHI-9,Ã, Ã, Ã, Ã, Ã, Ã, Regd A.D.

No. BBDM-II/DFC/DR/89/3081Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Dated: 10.8.89

Shri Lakhmi Chand S/o Shri Maha Singh, Driver B. No. 4999 Id. No. 12672 has not been attending to his duties w.e.f. 19-4-89. The period of his

absence has been regularised as under :-

Ã, 19-4-89 to 20-4-89 :Ã, S.L.

Ã, 21-4-89 to 8-5-89Ã, :Ã, E.L.

9-5-89 to 8-8-89Ã, Ã, Ã, Ã, Ã, Ã, :Ã, Extra ordinary leaveÃ, without pay.

Since his absence beyond 8.8.89 (AN) cannot be regularised under clause 14(10)(b) of the DRTA (Conditions of appointment and service)

Regulations, 1952, Shri Lakhmi Chand, Driver B. No. 4999 is hereby declared as deemed to have resigned his appointment from the services of this

Corporation w.e.f. 9-8-89 under clause 14 (10)(c) of the above said Regulation.

He is required to deposit all the DTC Articles in his possession within 24 hours of the receipt of this memo. Non-deposit of the DTC Articles by him in

accordance with the office order No 21 dated 27-1-54 will render him liable to pay a penalty of â‚¹ 2/Ã¢â‚¬" per day for the days he keeps any of the DTC

Articles in his possession after the specified period of 24 hours.

Sd/-Ã, 10/8/99

Depot Manager

BBMD-IIÃ¢â‚¬â€‹

(vi) The respondent appealed, against the said order, dated 10th of August, 1989, on 6th June, 1991, stating that he had remained incarcerated, in jail,

from 24th April, 1989 to 21st February, 1981 and that, prior to 24th April, 1989, he had no information about his involvement in any criminal case,

which was why he did not convey any such information to the petitioner either.

(vii) The appeal was rejected by the competent authority, on the ground that the respondent had resorted to a misstatement, that he was in bed due to

illness, during the period for which he was actually incarcerated.

(viii) The workman raised an industrial dispute, which was referred to the Labour Court.

(ix) The Labour Court, vide its Award dated 6th July, 2004, upheld the decision, of the petitioner, to treat the respondent as having been deemed to

have resigned from its services w.e.f. 9th August, 1989, in view of Regulation 14(10)(c) of the Regulations.

(x) The respondent assailed the said Award before this Court, by way of WP (C) 20298/2005. The contention advanced, on behalf of the present

respondent, in that writ petition before this Ã, Court, was precisely that which was advanced before me by Mr. Rajiv Agarwal, who appears for the

workman in these proceedings, i.e., that Regulation 14(10)(c) of the Regulations had been struck down, by this Court, in D.T.C. v. Om Kumar, 95

(2002) DLT 425 and that, therefore, the Award, dated 6thJuly, 2004, of the Labour Court, was liable to be set aside. As the workman, i.e. the present

respondent, had crossed the age of superannuation, it was conceded, on his behalf, that he could not be reinstated; nevertheless, full back wages were

prayed for, along with interest.Ã,

(xi) This Court, vide its judgement dated 23rd August, 2012, after noting the facts and the contentions advanced before it, upheld the submission, on

behalf of the workman, that Regulation14(10(c) had been struck down, by this Court, in Om Kumar (supra) and that, therefore, the Award, dated 6th

July, 2004, had to be set aside. Having done so, however, this Court remanded the matter back to the Labour Court Ã¢â‚¬Å“to decide the reference in

accordance with law after affording a reasonable opportunity of hearing to the partiesÃ¢â‚¬â€‹.Ã,

3.The impugned Award, passed in these de novo proceedings was, as already noted hereinabove, in the workmanÃ¢â‚¬â„¢s favour. The Labour Court

observed that Regulation 14(10)(c) of the DRTA Regulations was unconstitutional and that, being alive to this fact, Circular, dated 6th February, 1991,

was issued by the DTC, in which the decision, not to invoke Regulation 14(10)(c) in cases of unauthorised absence or leave without permission or

sanction, was communicated, opining that disciplinary action should, instead, be taken against the employees. The Labour Court noted the fact that the

petitioner had not chosen to take any action, against the workman, for concealment of facts, or unauthorised absence or abandonment of service. The

only case, pleaded by the petitioner before the Labour Court was of Regulation 14(10)(c). The petitioner did not seek to lead any evidence to prove

abandonment of service or commission of misconduct by the respondent. Nowhere, in fact, was abandonment of service even alleged. The only case

set up by the DTC was of deemed resignation. The communications, on which the petitioner sought to rely, it was held, did not establish abandonment

of service, by the respondent.Ã, Reliance was also placed, by the Labour Court on G. T. Lad v. M/sChemicals and Fibres of India Ltd, AIR 1979 SC

582, which defined Ã¢â‚¬Å“abandonmentÃ¢â‚¬, and D. K. Yadav v. J. M. A. Industries Ltd, JT 1993 (3) SC 617,which held that any finding of

Ã¢â‚¬Å“abandonmentÃ¢â‚¬ had to be preceded by an enquiry, as abandonment was of a specie of misconduct. The onus to prove Ã¢â‚¬Å“abandonmentÃ¢â‚¬, it was

also noted, was on the petitioner, which had not been discharged.

4. As the respondent was, admittedly, appointed by the DTC on 1st November, 1974, and brought on monthly rate on 1st August, 1975, and remained

in the employment of the DTC till 9th August, 1989, the Labour Court held that he had clearly completed 240 days of service with the DTC on the

date of his alleged termination, thereby attracting Section 25-F of the ID Act, the provisions of which admittedly had not been complied with, by the

DTC. The termination of the respondent, by the petitioner was, therefore, held to be illegal.

5. The Labour Court further found that the petitioner had not rebutted the respondentÃ¢â‚¬â„¢s contention that he had remained unemployed during the

period subsequent to his termination by the petitioner. Neither was there any allegation, by the petitioner, to the effect that the respondent had been

gainfully employed after his leaving the services of the petitioner. However, as he had reached the age of superannuation (55 years), the Labour Court

held that, instead of reinstatement, the workman be paid back wages with effect from the date of termination of his services, i.e. 9th August, 1989 till

the date when he would have reached superannuation on attaining the age of 55 years, i.e. 14th December, 2001. From this period, the period during

which the respondent had been in judicial custody, i.e. 24th April, 1989 to 21st February, 1991, was permitted to be deducted.

6. The petitioner seeks to sustain its challenge, to the impugned Award, dated 30th April, 2014, by placing reliance on an order, dated 25th April, 2006,

of the Supreme Court in DTC v. Prakash Chand (Civil Appeal 7110-7111 of 2004). Arguing for the petitioner, Mrs. Avnish Ahlawat submits that the

said order decided appeals, preferred by the petitioner, against workmen who were situated in circumstances similar to those in which the respondent

is presently situated, and the Supreme Court, in those cases, directed reinstatement of the workman, without any claim for back wages. The petitioner

also relies on Chander Pal v. CMD, DTC, MANU/DE/6527/2011 and DTC v Sardar Singh, AIR 2004 SC 4161. Mrs. Ahwalat submits that the Court

cannot be unmindful of the magnitude of the respondentÃ¢â‚¬â„¢s indiscretions, which included applying for leave on the ground of sickness when he was

actually incarcerated in a criminal proceeding. She submits that it would be a travesty of justice if such a workman were to be reinstated, or even paid

back wages.

7. Mr. Rajiv Agarwal, arguing per contra, submits that nothing survives for dispute, with the striking down of Regulation 14(10)(c) of the Regulations,

by this Court in Om Kumar (supra).Ã, He states, simply, that the order dated 10th August, 1999, deeming the respondent to have resigned from

service, having been issued under the said sub-Regulation, the evisceration of the sub-Regulation, by this Court, resulted, necessarily, in the extinction

of the order dated 10th August, 1999 as well. The inevitable sequitur, thereto, Mr. Aggarwal would submit, would be reinstatement of his client with

full back wages. Besides, he points out, by referring to the impugned Award, that no argument, for denial of back wages to his client, had been

advanced by the petitioner before the Labour Court. He also points out that, in fact, the Labour Court has not awarded full back wages to his client,

but has excluded the period during which he was under incarceration and has computed back wages, after excluding the said period, only till the

attainment, by the respondent, of the age of 55. He would submit that there is no justification, whatsoever, for this court to interfere with the

Award.Ã,

Analysis and conclusion

8. Om Kumar (supra), in my view, is the petitionerÃ¢â‚¬â„¢s Waterloo.

9. I may mention, here, that the contention, of Mr.Rajiv Agarwal, to the effect that Regulation 14(10)(c) of the Regulations was struck down by this

Court in Om Kumar (supra), does not appear to be entirely correct. In fact, para 11 of the report in Om Kumar (supra) reads as under:

Ã¢â‚¬Å“11. A distillation of the many judgments of the Hon'ble Supreme Court discloses that the consistent opinion has been its insistence that statutes

must conform with the acid test of rules of natural justice. The Apex Court has relentlessly struck down provisions in which the audi alteram partem

principle has been ignored. Where it has been argued that this principle may be read into the statutory provision the Court has accepted the plea and

thereby saved it from being struck down as unconstitutional. In those cases where the virus of the Statute has not been assailed it has nonetheless

looked for a compliance with the audi-alteram partem requirement, such as in the Aligarh Muslim University's case (supra) where it observed that

nothing new had been stated by the Petitioner in his writ petition apart from the reasons which had previously given by him to the University and had

been rejected by it. In the present case the statutory rule is not nullified by insisting that the DTC must enable the delinquent workman to be heard

before his services are terminated on the premise of 'deemed resignation'. On the Corporation issuing a notice to the workman he may furnish an

unacceptable defense or no Explanation at all. But it would atleast enable a workman who, by way of to take an illustration, may have suffered an

accident on his way to reporting back for duty, to furnish an Explanation which a responsible management would accept with alacrity. It would

empower the DTC to apply the Regulation after a due consideration of the cause shown by the workmen. Granting an opportunity to be heard does

not inexorably result in an Enquiry calling for being held.Ã¢â‚¬â€‹

(Emphasis supplied)

10. Vikramajit Sen, J. (as His Lordship then was) did not, therefore, strike down Regulation 14(10)(c) of the Regulations in Om Kumar (supra); he

merely read, into it, the requirement of compliance with the principles of natural justice, by affording an opportunity of hearing, to the workman

concerned, before dispensing of his services on the ground of Ã¢â‚¬Å“deemed resignationÃ¢â‚¬. It is clear, from a holistic reading of the judgement, the

invocation of Regulation 14(10)(c) has not held to be illegal per se, but that invocation of the said subRegulation, without complying with the principles

of natural justice, by affording a prior opportunity of hearing to the workman concerned, was held to vitiate the decision.

11. This fine distinction, however, does not alter the fatal course of these proceedings, insofar as the petitioner is concerned. Admittedly, no prior

hearing was extended, to the respondent-workman, before issuance of the order dated 10th August, 1999, whereby his services were disengaged on

the ground of Ã¢â‚¬Å“deemed resignationÃ¢â‚¬. That being so, as Mr. Rajiv Agarwal correctly submits, the consequence must follow. The only sequitur, to

the setting aside of an order deeming an employee to have resigned from service, would be that he would be deemed not to have resigned from

service, which would be equivalent to deeming him to be continuing in service. In such a case, the Court does not have the option of awarding lump-

sum compensation, as is awarded in cases where orders of retrenchment are found to have been passed in violation of Section 25-F of the Industrial

Disputes Act, 1947. Continuation in service, with all the benefits which would attend such continuation, is the only logical, necessary, and inevitable

corollary to the declaration, that the order of Ã¢â‚¬Å“deemed resignationÃ¢â‚¬â€‹, of the respondent, cannot sustain the scrutiny of law.Ã‚

12. I may empathise, or at least sympathise, with Mrs. AhlawatÃ¢â‚¬â„¢s consternation at the respondent being reinstated in service, despite his

incorrigibility (as she would argue); but, sitting where I am, I can do no more. The petitioner could, if it felt the respondent to be an employee not

worth retaining in its organisation, have proceeded against him, in accordance with law. The petitioner did not, however, choose to do so, preferring,

instead, the apparently easier route of issuing him a letter of Ã¢â‚¬Å“deemed resignationÃ¢â‚¬ under Regulation 14(10)(c). The courtesy of prior hearing, or

compliance, in any other manner, with the principles of natural justice was, however, not extended to the respondent; apparently because Regulation

14(10)(c) did not expressly incorporate the said principles. Having chosen to tread that path, however, the petitioner has to follow it to its bitter end,

and cannot seek to retrace its steps at this late stage. For this reason, all the outrage expressed, by Mrs.Ahlawat, at the respondent being reinstated in

service with back wages must, necessarily, fall on judicially deaf ears, plugged, as they are, by Om Kumar.

13. This is not a case in which disciplinary proceedings were initiated against the respondent, any chargesheet issued or any domestic enquiry

conducted. The order, dated 10th August, 1999, whereby the respondentÃ¢â‚¬â„¢s services were disengaged, deems him to have resigned his

appointment, w.e.f. 9th August, 1999,Ã¢â‚¬Å“under clause 14(10)(c)Ã¢â‚¬ of the Regulations. The disengagement, of the services of the respondent, was,

even before the Labour Court, sought to be justified only on the anvil of Regulation 14(10)(c), and on no other ground. That lone ground, however,

fails, and, consequently, so does the case of the petitioner.

14. None of the decisions, cited by Mrs. Ahlawat, can aid the case of her client. The order, dated 25th April, 2006, of the Supreme Court in DTC v.

Prakash Chand is clearly an order passed in personam, not laying down any universal legal principle. The contention, of Mrs. Ahlawat, that the

employees, in that case, were situated similarly to the present respondent, cannot be verified, as the decisions of this Court, against which appeals had

been preferred to the Supreme Court, are not before us, and no reference, thereto, has been made by Mrs.Ahlawat either.Ã‚ Chander Pal (supra)

specifically notes that, before the Supreme Court, a settlement had been arrived at, between the parties, wherein the workman had agreed to forgo

back wages. In fact, this judgement would seem to indicate that, had such a settlement not been arrived at, back wages may have been payable to the

workman. Sardar Singh (supra) has no applicability, whatsoever, to the present case, as no proceedings for habitual absence, or even unauthorised

absence, wherever initiated against the respondent.

15. The writ petition, therefore, fails and is dismissed. The respondent would be entitled to all benefits which would enure to him, as a consequence of

the impugned Award of the Labour Court.Ã, The petitioner is directed to disburse the said benefits to the respondent within 4 weeks of the date of

receipt of a certified copy of this judgment.

16. There shall be no order as to costs.