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

% ***Date of decision: 4th September, 2024***

+ LPA 889/2024 and CM APPL. 51251/2024 CM APPL. 51252/2024
CM APPL. 51253/2024

DELHI TRANSPORT CORPORATIONAppellant
Through: Ms. Manisha Tyagi and Ms. Aastha
Kaushal, Advocates.

Versus

ASHOK KUMARRespondent
Through: Mr. Kamlesh Kumar Mishra,
Mr. Nikhil Pal and Ms. Manya
Mishra, Advocates with respondent in
person.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (oral)

1. The appellant has assailed the judgment and order dated 03.05.2024 passed by the learned Single Judge of this Court in W.P.(C) 245/2013 by filing the present appeal under Clause- X of Letters Patent Appeal under Delhi High Court Rules.
2. Notice.
3. Mr. Kamlesh Kumar Mishra, Advocate, has entered appearance and he accepts notice on behalf of the respondent.
4. With the consent of learned counsel representing both the sides, the present appeal is taken up for final hearing and disposal.



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5. The brief facts of the case, as mentioned in the present appeal, are that the respondent was working as a Conductor in the petitioner-Delhi Transport Corporation ('DTC') since 01.03.1980. A report dated 27.09.1984 was sent by R.C. Paridoshi, Traffic Superintendent stating that the respondent-workman did not abide by the procedure prescribed for the Conductor, which amounts to misconduct as per standing order paras 19(a), (h) and (m) of the Regulation of Delhi Road Transport Authority, 1950.

6. The appellant issued a charge-sheet dated 29.10.1984 against the respondent for the misconduct and an enquiry was initiated against him. As per report of the Enquiry officer dated 28.02.1996, the charges against the respondent stood proved.

7. The Depot Manager, being the Disciplinary Authority, issued show cause notice dated 28.02.1986 against the respondent to which he submitted his reply, however, finding his reply to be unsatisfactory, his services were terminated under Regulations 9 (b) of DRTA Conditions of Appointment and Service.

8. However, this Court, by its decisions in ***DTC Mazdoor Congress Vs. Union of India*** AIR 1991 SC 101 , struck down Rule 9(h) of DRTA and directed the management of the appellant to take back all the workmen, who were dismissed under the said Rule.

9. The appeal preferred by the appellant against this Court's decision in ***DTC Congress (supra)*** was dismissed by Hon'ble Supreme Court on 01.12.1990 and in compliance of the said order, the appellant took back all the workmen, who had participated in the strike, including the respondent, who was initially terminated under Rule 9 (b) of DRTA.



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10. Upon respondent's joining the services of DTC, the disciplinary proceedings initiated against him were revived by the appellant. According to the appellant, the inquiry was conducted in a fair manner and since all the charges were proved against the respondent, he was removed from service vide order dated 27.07.1993.

11. The appellant, to seek approval of respondent's termination from service, preferred OP No.424/1993 before the learned Labour Tribunal, which was dismissed vide order dated 13.08.1998 on the ground of double jeopardy. The appellant, thus, preferred Writ Petition No. 3169/1999 before this Court, which was allowed vide order dated 23.04.2010, thereby setting aside the order passed by the learned Tribunal, remanding it back for fresh consideration under the provisions of Section 33(2) in The Industrial Disputes Act, 1947.

12. The learned Labour Tribunal vide order dated 23.07.2012 dismissed OP No.424/1993 preferred by the appellant, against which the appellant filed W.P.(C) No. 245/2013 before this Court, which was dismissed by the Single Bench of this Court vide impugned order dated 03.05.2024.

13. Aggrieved against the order dated 03.05.2024, the present Letters Patent Appeal has been preferred by the appellant-DTC on the ground that the learned Single Judge did not consider the report of Enquiry Officer and that the evidence on record proved the charges levelled against the respondent.

14. During the course of hearing, learned counsel appearing on behalf of the appellant has submitted that the respondent was given full opportunity to participate in inquiry and he was cross examined by the witnesses of the



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management, to which he never raised any objection or complaint before the higher authority. It was submitted that the learned Single Bench did not consider that the respondent had committed 12 adverse irregularities during his tenure of 5 years and was a habitual offender. It was pointed out that on 08.05.2021, the respondent was without uniform and had misbehaved with passengers or checking staff on various occasions.

15. It was brought to the notice of this Court that the respondent had already attained the age of superannuation on 31.05.2015. Reliance was placed upon decision of this Court in W.P.(C) No. 8615/2003 wherein in lieu of reinstatement, where the workmen had already superannuated, a lump-sum compensation was awarded to the workman. Accordingly, it was submitted that the respondent has already received amount of Rs.2,15,374/- under Rule 17(d) of the Industrial Disputes Act. Thus, setting aside of order dated 03.05.2024 passed by the learned Single Judge in W.P.(C) No.245/2013 is sought by the appellant.

16. To the contrary, the stand of the respondent before the learned Single Bench was that the inquiry conducted against him was sham and bogus as the officers conducted it with pre-determined mind and intent to remove him from service. The respondent pleaded before learned Tribunal that no corroborative evidence was taken from the passengers to prove charges levelled against him.

17. Having heard learned counsel for the parties and on perusal of the material placed on record, we find that at first time when the appellant approached the learned Tribunal seeking approval under Section 33 (2) (b) of the Industrial Disputes Act, confirming the termination of respondent's



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services, which was dismissed vide order dated 17.09.1998, against which the appellant-DTC preferred W.P.(C) 3226/1999 before the learned Single Bench of this Court, which was disposed of vide order dated with direction to the learned Tribunal to return findings on Section 33 (2)(b) on merits.

18. Upon remand, the learned Tribunal dealt with the issue *whether the inquiry conducted against the respondent was legal and valid* and vide order dated 24.04.2012, considered the issue *whether the management had complied with the requirements as per proviso to Section 33(2) (b) of the Industrial Disputes Act?* The learned Tribunal in the light of testimony of witnesses examined, held that enquiry was vitiated, however, compliance under Section 33 (2)(b) of the Act was made by the Management. Vide impugned order dated 23.07.2012 rejected the approval application filed by the Management of appellant.

19. On perusal of record of learned Tribunal, this Court finds that the learned Tribunal having held that compliance under Section 33 (2)(b) of the Act, has noted fact of the case that the respondent had not let any evidence to support his case that he was not remitted full month's wages and even during final arguments, he did not agitate non receipt of one month's full wages and thus, the learned Single Bench rightly did not find any fault with compliance under Section 33 (2)(b) of the Act at the hands of appellant.

20. Further, it is not in dispute that the respondent was on duty on the date and day of checking. With respect to the charge of conducting not whistling for stopping the bus at Delhi Gate, the checking staff did not say that there was some passenger who wanted to board or alight from the bus or there was any complaint in this regard. AW-1 also admitted that there was device



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on any of the buses by DTC to enable the Conductors to stop the bus. On the issue of instigation and misbehaviour, AW-1 in his cross-examination has admitted that no public person was made witness to the incident to corroborate such allegation.

21. With regard to the charge that the respondent was not having conductor leather bag, the learned Tribunal has also relied upon testimony of AW1 who has deposed that the DTC did not give the leather bag to the conductor. On the aspect of absence of uniform, the learned Tribunal duly noted that no entry has been made in the waybill regarding absence of uniform and the statement of Traffic Supervisor also did not allude to this aspect.

22. In the afore-noted view of the case, this Court is of the opinion that the impugned judgment dated 03.05.2024 passed by the learned Single Bench of this Court, upholding the orders dated 27.04. 2012 and 23.07. 2012 passed by the learned Tribunal, does not call for any interference by this Court.

23. However, this Court cannot ignore the fact that the respondent was issued charge sheet on 29.10.1984; the impugned judgment directing reinstatement of the respondent was passed in the year 2012; the appellant challenged the impugned judgment in the year 2013 and judgment by the learned Single Bench was passed in the year 2024; and thereby, much time has elapsed since then and so, reinstatement of respondent will not be possible and also that appellant cannot be directed to pay wages to the respondent for the period he has not worked. However, at the same time, respondent cannot be made to suffer for long time consumed in judicial



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process.

24. Thus, in the peculiar facts of the present case, this Court directs the appellant to treat the respondent reinstated in service from the date he was terminated from service i.e. 18.03.1986 and his pay, allowances and seniority be fixed as per his eligibility and he be paid 50% wages as due to him. This Court also directs the appellant to pay respondent Rs.2.5 lacs towards litigation expenses and compensation. The appellant is directed to comply with the directions of this Court within four weeks.

25. With directions as aforesaid, the present appeal and pending applications are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

SEPTEMBER 04, 2024

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