

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

+ **Writ Petition (Civil) No.1478/2008**

% Date of Decision : February 25, 2008

M/s Ranutrol Industries Limited Petitioner

Through : Mr. Gulshan Chawla,
Advocate

Versus

Mr. Navched Singh & Anr. Respondents

Through : NEMO

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

SUDERSHAN KUMAR MISRA, J (Oral)

1. The present Writ Petition has been preferred by the petitioner for quashing the impugned award dated 27.10.2005, passed by the Presiding Officer, Labour Court-IX Delhi in ID No.850/2004 whereby, after closing the evidence of the petitioner vide order dated 12.01.2004, the Labour Court granted reinstatement to respondent No.1 with full back wages @ Rs.1078/- per month. The said order dated 12.01.2004, as well as the terms of reference dated 5.05.1994 passed by the appropriate Government, and the notice dated 15.11.2006 issued by the Labour court for implementation of the award dated 27.10.2005, have also been challenged by the petitioner.
2. A reference was sent by Secretary (Labour) Government of NCT, Delhi on 5.05.1994, vide reference No.F.24(4845)/93-Lab./19301-06

pertaining to an Industrial Dispute between the petitioner/management and respondent No.1, Sh. Navched Singh and Sh. Vijay Ram in the following terms:-

“Whether the services of S/Sh. Vijay Ram and Navched Singh have been terminated illegally and / or unjustifiably by the Management, and if so, to what relief are they entitled and what directions are necessary in this respect?”.

3. In their statement of claim, the workmen submitted that they were working with the management as helpers at Rs.1,078/- per month respectively, and that their services were terminated w.e.f. 22.03.1993, without any reason or notice. The management contested the claim. According to it, Vijay Ram was a temporary worker, whose service was terminated after the expiry of the period of his employment under the terms of his contract; while Shri Navched Singh's employment was terminated because management had lost confidence in him after a departmental enquiry conducted by an independent person, in accordance with the Principles of natural justice found that he had participated in an illegal and unjustified strike. A Rejoinder was filed by the workmen denying all allegations made in the written statement. On the pleadings, following issues were framed:-

1. Whether the workman was appointed for a fixed period?
2. Whether the proper inquiry has not been held?
3. As per the terms of reference.
4. Relief.

4. On 12.01.2004, the Labour Court closed the evidence of the management because it failed to produce any evidence even though

many adjournments were granted for this purpose. After that, the management stopped appearing altogether. Since Vijay Ram did not produce any evidence to support his case, no relief was granted to him. On the other hand, vide order dated 27.10.2005, termination of Navched Singh, respondent No.1 herein, was declared illegal; the Labour Court directed his reinstatement along with continuity in service and full back wages on the ground that while he had discharged the onus of proof placed upon him by proving his affidavit filed by way of evidence, the management failed to rebut the same and produced no evidence to the contrary.

5. Learned counsel appearing for the petitioner states that the Labour Court has not addressed issue no.2 framed by it, to the effect that proper enquiry has not been held. According to him, in the light of this issue, the onus of proving the lack of proper enquiry lay upon the workman and that there is nothing in the impugned award to show that this aspect of the matter has been considered by the labour Court. For this proposition, he has relied upon the decision of Supreme Court in ***Indian Oil Corporation Vs. Ashok Kumar Arora (1997) 3 SCC 72***. In that case, the respondent was dismissed by the Disciplinary Authority for cheating the Corporation. The High Court however, setting aside the order of dismissal, directed reinstatement with back wages. The Supreme Court observed that the High Court was wrong in interfering with the punishment awarded by the Disciplinary Authority. As to the contention of the respondent that he was denied a reasonable opportunity by the Enquiry Officer the Court held it to be devoid of merits as the respondent was unable to illustrate in what manner he was denied a reasonable opportunity. This authority does not in any way substantiate the claim of the

petitioner. A reading of the impugned award clearly shows that the workman had made a categorical statement that his service had been terminated without any enquiry and in violation of the provisions of the Industrial Disputes Act and that no notice or notice pay or retrenchment compensation had been given to him. As stated in the Latin maxim “***Ei Incumbit probatio qui dicit, non qui negat***”, the onus of proof lies upon him who affirms, and not upon him who denies the existence of any fact. It is the management who averred that the requisite enquiry had, in fact, been held. Therefore, it was for the management to prove that fact. In this context, the examination of paragraphs 5 and 7 of the impugned award shows that the labour court has duly noted the fact that despite a number of opportunities being granted to the management, it has failed to produce any evidence of a fair and valid enquiry and / or that any enquiry at all has been held against the workman. At the same time, it has also been noted that the workman denied in his cross examination that any enquiry has been held against him. It is, therefore, obvious that this issue has been decided correctly.

7. As regards the other objection of the petitioner with regard to the ground that the date of appearance before the Labour Court was never intimated to them by their previous advocate and a party cannot be made to suffer for non appearance of the advocate, learned counsel for the petitioner has drawn my attention to the decision of Supreme Court in ***Rafiq Vs. Munshilal reported as AIR 1981 SC 1400*** and in particular paragraph 7 thereof. That was a case where an appeal was dismissed for default of the appellant's counsel. It was also ordered that the costs should be recovered from the advocate who absented himself. I do not agree with the

contentions of the petitioner. Here, admittedly, the same counsel was also entrusted with several other matters by the petitioner, but while he attended only 4-5 of them, the others remained unattended along with the instant case, and the petitioner woke up only after the impugned award came to be passed. The management ought to have been vigilant enough to verify the progress of its cases. There is no explanation forthcoming as to what steps if any, were taken by the management once it realised that certain matters were going repeatedly unattended. If anything, it shows complete carelessness of the management towards the fate of this case. It is noteworthy that the petitioner has not bothered to demonstrate the method of interaction between itself and its counsel to appraise itself about the status of all its cases being handled by that counsel. It has also not placed any proof of its interaction with its counsel with regard to this case in particular. If the petitioner was seriously aggrieved of the way in which its counsel was conducting this case, it would have immediately proceeded to rectify matters either in writing or personally. The only information in this behalf is given in paragraph 2 of the writ petition wherein it is contended that after the award came to be passed, some enquiry was made from the previous advocate who was authorised to conduct the proceedings and that "the petitioner management did not get any satisfactory reply." There is nothing to show that the petitioner was alive to its responsibility with regard to the proceedings pending before the Labour Court. Nothing has been shown by the petitioner by way of contemporaneous interaction with their counsel demonstrating its anxiety to find out as to how the matter was proceeding before the Labour Court from one date to the next. It appears that the statement of claim was filed

before the Labour Court in the year 1994 and thereafter petitioner retained the counsel through whom a written statement was filed in November 1998. The impugned award came to be passed in 27.10.2005. It is thus obvious that these proceedings continued for a number of years. It is incomprehensible that a responsible petitioner would not systematically follow up the proceedings in such a case, more so, when the same counsel is admittedly pursuing a number of other cases also for the petitioner.

8. If the counsel was squarely to blame, what steps did the petitioner take in this behalf? Was any letter written to the counsel remonstrating his behavior? Did it even bother to withdraw the other matters entrusted with the same counsel? None of this is known. Consequently, the bald averment in this behalf carries no conviction. It is entirely possible that while he continued to do so in other cases where he was being properly instructed by the petitioner; counsel failed to appear before the Labour Court due to lack of necessary and material instructions in this case.

9. Learned counsel for the petitioner also urges that in fact the respondent arrayed before the Labour Court was M/s Ranu Troll Limited whereas the petitioner's correct nomenclature is Ranutrol Industries Limited and therefore, the reference is incomprehensible. The fact of the matter is that admittedly, the petitioner duly entered appearance and in response to the notice. It filed its written statement of defence also. It also admitted the fact that the workman in question was actually employed by the petitioner. Furthermore, no such defence has been taken in the written statement. Learned counsel for the petitioner relies on the decision of **Madan Pal Singh Vs. State of UP and others 2000 LLR 225 (SC)** in support of this

proposition. I do not think that this decision is of much assistance to the petitioner for the reason that the pertinent fact in that case was that the name of the workman was wrongly described in the reference order, and that during the evidence, the employer had taken a stand before the Labour Court that no such person named in the reference was ever employed by him; and that Labour Court proceeded to pass the award without waiting for correction by government as sought by the workman himself. According to the Supreme Court, in view of the fact that the name of the workman was not correctly mentioned in the reference, although there was no doubt about his identity, the Labour court itself could have sought correction of the reference from the State Government. In contrast, in the case at hand, this discrepancy in the name of description of the petitioner was never brought to the notice of the Labour court. The petitioner management took no objection to the manner it was described and has proceeded to defend itself on merits. The relationship of employer and employee was also not denied. In that view of the matter, this objection has no force and the decision of the Labour Court cannot be quashed on that ground.

10. Lastly, counsel for the petitioner has also sought to urge that since a specific plea was taken in its written statement that the management had lost confidence in the workman, learned Labour Court ought not to have ordered his reinstatement in such circumstances and the award of compensation was more appropriate. Although this plea was taken by the petitioner; no effort was made to prove it by way of evidence to enable the Labour Court to seriously countenance the same. Hence the fact that the Labour Court did not

notice this plea cannot be interfered with by this court in writ proceedings.

11. In this view of the matter, this is not a fit case for exercise of jurisdiction under Article 226 of the Constitution of India.

12. The petition is dismissed.

Sudershan Kumar Misra, J.

February 25, 2008
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