

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

+ **WP(C) No.2050/2008**

% **Date of decision : 20.03.2008**

Laxmikant Yadav Petitioner
Through: Mr.Yatendera Sharma, Advocate.

Versus

The Manager, Shakti Mangnet Pvt. Ltd. & Anr. Respondents
Through: Nemo.

CORAM :-

HON'BLE MR. JUSTICE ANIL KUMAR

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

ANIL KUMAR, J.

CM No.3936/2008

Allowed, subject to just exceptions.

WP(C) No.2050/2008

1. The petitioner has impugned the award dated 4th December, 2002 dismissing the claim of the petitioner/workman on the ground of

abandonment of the proceedings by the workman with effect from 2nd December, 2002.

2. The petitioner/workman alleged that he was employed with the management since July 1986 as a general worker with the last drawn salary of Rs.1800/- per month. He pleaded that he was not rendered normal legal facilities and on demand being raised, his salary was withheld and his services were terminated on 30th July, 1996 without any charge sheet. The petitioner issued a demand notice dated 31st July, 1996 but the same was not replied. The petitioner raised conciliation proceedings and thereafter the reference in the following terms was made by the appropriate Government:

“Whether the services of Sh.Laxmi Kant Yadav have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this?”

3. The respondent/management was served after the claim was filed by the workman, however, no one had appeared and therefore an ex-parte award was passed against the respondent. The respondent/management thereafter filed an application dated 27th May, 2000 seeking setting aside of the award dated 10th December, 1999. On behalf of the workman, his authorized representative appeared and filed a reply. The Labour Court after considering the application of the respondent/management for setting aside the ex parte award and the

reply filed on behalf of the petitioner/workman set aside the award dated 10th December, 1999.

4. After the ex parte award was set aside, the management was again proceeded ex parte in the proceedings before the Labor Court on 3rd September, 2002 as no one had appeared on behalf of management and the case was adjourned to 2nd December, 2002. After the management was proceeded ex parte on 3rd September, 2002, an application was filed on behalf of management on 9th September, 2002 for setting aside the ex parte award which application was fixed for 2nd December, 2002. Since no one appeared on 2nd December, 2002 on behalf of the petitioner, it was held that the petitioner is not interested in agitating his claim and, therefore, it was held that the petitioner is not entitled for any relief and consequently the award dated 4th December, 2002 was passed.

5. From 4th December, 2002, no steps were taken by the petitioner/workman till 2007 when a notice dated 5th February, 2007 was given for implementation of award dated 10th December, 1999 which had already been set aside on 4th May, 2002. Thereafter an application for setting aside the award dated 4th December, 2002 was filed which was withdrawn by the petitioner on 31st May, 2007 and thereafter the present petition has been filed on 5th March, 2008.

6. The award dated 4th December, 2004 was passed as no one had appeared on behalf of petitioner and it was held that the petitioner is not interested in agitating his claim. The petitioner in the writ petition has not given any cogent or sufficient reasons for not taking any steps from 4th December, 2002 till February, 2007 when the alleged notice was given on behalf of petitioner for implementation of the award dated 10th December, 1999 which had already been set aside by order dated 4th May, 2002.

7. The petitioner has contended that he was totally ignorant about setting aside of the award dated 10th December, 1999 and he used to contact his authorized representative from time to time. The petitioner has contended that he remained unemployed.

8. It is unbelievable that for almost five years the petitioner did not come to know that no proceedings were pending in the Court despite the fact that the petitioner remained unemployed. In the circumstances not taking any steps in the proceedings and merely relying on the alleged statement of the authorized representative will not constitute sufficient cause.

9. The petitioner had filed an application under Order IX Rule 13 in May 2007 which was withdrawn on 31st May, 2007. The writ petition, thereafter, has been filed almost after nine months and no cogent

reason or explanation has been given by the petitioner for filing the writ petition after about nine months.

10. When an application was filed by the management for setting aside the award dated 10th December, 1999, a reply was filed on behalf of the petitioner. The averment of the petitioner that he had not filed the reply also seems to be a bald allegation without any further particulars. In case the reply was not filed by the petitioner to the application of the management for setting aside the ex parte award dated 10th December, 1999, and the reply was fabricated by the authorized representative, the petitioner ought to have taken some steps against his authorized representative. From the writ petition and the averments made therein, it is apparent that there are no averments and pleas regarding any action being taken by the petitioner against his authorized representative for allegedly filing a reply without consent of the petitioner and misleading him. In any case, it is unbelievable that the petitioner shall not ascertain the stage of proceedings and will not appear in the court for almost six years. In the circumstances, the petitioner has not been able to make out sufficient cause for his non-appearance on 2nd December, 2002 which led to passing of an award dated 4th October, 2002 dismissing the claim of the petitioner and not taking any steps thereafter for such a long time.

11. While exercising its powers of judicial review under Article 226 of the Constitution of India this Court is not to re-appreciate the evidence. It is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the Court does not interfere with factual findings of the lower courts and restrain itself from re-appreciating evidence while exercising powers of judicial review. The objective of judicial review is to ascertain that a person received a fair treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. The findings and inferences of the Labor Court are based on evidence and documents on record and there does not appear to be any manifest errors in them. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court.

12. The petitioner in the facts and circumstances, is not entitled for invocation of jurisdiction of this Court under Article 226 of the Constitution of India and the writ petition is, therefore, without any merit and it is dismissed.

March 20, 2008
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ANIL KUMAR J.