

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) NO. 11007/2005**
% **Date of Decision : 02.04.2009**

SRI SATHYA SAI VIDYA VIHAR Petitioner
Through Mr.S.Chakraborty, Advocate
Versus
SH RATI RAM Respondent
Through Mr. B.S. Chowdhary, Advocate

HON'BLE MR. JUSTICE V.K. SHALI

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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 |

V. K. SHALI, J. (Oral)

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1. The petitioner has challenged the ex-parte award dated 9th December, 2002 passed by the learned Labour Court No.IV in ID No. 100/1997 in the case titled M/s Sh. Satya Sai Vidya Vihar Vs. Sh. Rati Ram. Briefly stated the facts of the case are that appropriate Government had made a reference on 12th June, 1997 to the learned Labour Court in the following terms:

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

2. On the basis of this reference the notices are purported to have been issued to the respondent/workman as well as the petitioner. The respondent/workman appeared before the learned Labour Court and filed his statement of claim wherein he stated that he is working with the petitioner/management from August 1990 as a gardener and drawing a salary of Rs.1750/- per month. It is further alleged that his services were illegally terminated on 24th August, 1996 without issuing any notice or compliance with the Labour Laws.

3. The respondent is proceeded ex-parte on the ground that on 25th February, 1999 the management had refused to receive the notice. The contention of the learned counsel for the petitioner is that the management had never been served notice/summon actually, and therefore, they could not appear before the learned Labour Court for the purpose of contesting the matter on merit. It was contended that the management came to know about the ex-parte award dated 9th December, 2002 only on 11th June, 2003 whereupon they took appropriate steps of inspecting the record and file an application for setting aside the ex-parte award. However, the said application was also dismissed as the learned Labour Court is stated to have functus officio on account of publication of award and hence the petition.

4. I have heard the learned counsel for the parties and perused the record.

5. The petitioner has been proceeded ex-parte on 25th February, 1999 on the ground that the petitioner is purported to have refused the

service of notice, sent to it through registered cover. The service of a notice on a party is not an empty formality. The purpose is to give a fair opportunity to the party to contest the claim of the opposite side.

6. Rule 18 of the Industrial Disputes (Central) Rules, 1957 specifically laid down that the notice have to be served by ordinary process or registered cover and in the event of refusal or avoidance by a party the summons is to be sent under UPC. In the instant case, assuming that the report of the registered cover was correct that the petitioner has refused to accept the service of the registered envelop, the learned Labour Court was expected to have sent a summon/notice to the petitioner by UPC rather than summarily proceed ex-parte against them on the basis of so called report of refusal. Since this has not been done, therefore, I am of the view that the petitioner was not validly served which would enable them to know that the respondent/workman had filed a statement of claim against them and consequently they were deprived of an opportunity to contest the matter on merit. I, accordingly, hold that the petitioners not having been served validly in accordance with law could not be expected to know of the pendency of the matter and were thus prevented by 'sufficient cause' to contest the matter. The ex-parte award is, therefore, set aside with the direction to the parties to appear before the learned Labour Court on 1st May, 2009 whereupon the learned Labour Court shall give an opportunity to both the parties to complete the pleadings, and therefore, proceed to decide the matter in accordance with law.

7. The ex-parte award is set aside subject to the petitioner paying a sum of Rs.10,000/- by way of cost to the respondent/workman before the learned Labour Court. Accordingly, the writ petition is disposed of. Parties are directed to appear before the learned Labour Court-IV on 1st May, 2009.

CM No. 1938/2007 (17-B)

8. This is an application under Section 17-B of the Industrial Disputes Act, 1947. I have heard the learned counsel for the petitioner. The petitioner has contended that the services of the respondent/workman were illegally terminated on 24th August, 1996 which resulted in adjudication by the industrial adjudicator culminating in passing of the award on 2nd December, 2002. It is further stated that the last drawn wages of the petitioner were Rs.1750/- per month and since the petitioner had assailed this award by filing the writ petition on 8th July, 2005 the respondent is entitled to the grant of last drawn wages or the minimum wages whichever is higher as to the respondent has remained unemployed from the date of award till the filing of the application.

9. I have carefully considered this submission of the petitioner. There are two main considerations which make this Court dispose of the application without giving any benefit of Section 17-B to the petitioner. Firstly, that as the main matter itself has been decided and the ex-parte award against the petitioner has been set aside, therefore, I am of the view that it will not be appropriate to proceed decide the

application under Section 17B of the Industrial Disputes Act, 1947 which has remained pending since 2007. The second point which persuades the Court to dispose of the application is that the requirement of law is that the petitioner must file an affidavit stating therein that he is not employed in any establishment. In the instant case, it has been stated so, in the application, however, there is no specific averment in the supporting affidavit that he was not employed in any establishment.

10. It was contended by the learned counsel for the respondent/workman that the entire averments which are made by the petitioner in the petition having been reproduced in the affidavit and it was further observed in the affidavit that all the contents of the application be deemed to be a part and parcel of the affidavit.

11. I do not agree with this submission of the learned counsel for the respondent/workman that merely by saying that all the averments made in the application are part of the affidavit would satisfy the requirement of law. There has to be a specific averment that the petitioner is not employed in any establishment. The same being absent in the application, accordingly, the application under Section 17-B is totally bereft of requirements of law. Accordingly, the application is dismissed.

APRIL 02, 2009
KP

V.K. SHALI, J.