

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

+ **W.P.(C) NO.22206/2005**

% **Date of Decision : 13.03.2009**

SHRI KARTAR SINGH Petitioner
Through Mr.V.K.Kalra, Advocate

Versus

SHRI NARAYAN Respondent
Through Mr.J.N.Verma, 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? | NO |
| 2. | To be referred to the reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

V. K. SHALI, J.(Oral)

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1. I have heard the learned counsel for the parties and gone through the record.

2. By virtue of the present writ petition, the petitioner has challenged the ex parte award dated 20th September, 2004 by virtue of which the learned Labour Court has directed the reinstatement of the respondent/workman from 11th September, 1992 and payment of back wages @ 30% of the last drawn wages.

3. Briefly stated the facts leading to the filing of the present writ petition are that the Government of Delhi made a reference on 10th April, 1995 in the following terms to the learned Labour Court:-

“Whether the services of Shri Narayan
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 respect?”

4. After receiving the reference, notices were issued to both the parties. The respondent /workman through its Trade Union filed a statement of claim on 15th March, 1996 wherein it was alleged that he had been working with the petitioner /Management as a Driver w.e.f. 16th August, 1983 and his last drawn wages were @Rs.1,500/- per month. It was alleged by the respondent /workman that as unjustified deductions were being made from his wages for the period from 15th May, 1992 to 11th September, 1992, he protested to the same because of which the petitioner /Management became revengeful and terminated the services of the respondent/workman w.e.f. 11th September, 1992. The respondent /workman in the statement of claim gave a tabulation form of his statement of claim wherein the following amounts were claimed:-

“i)	Earned wages from 15.5.92 to 11.9.92, 4 months wages	Rs.6,000/-
ii)	Weekly off, 1983 to 9.11.92 total :	Rs.23,300/-
iii)	National holidays from 1983 to 1992	
	40 days	Rs.2,000/-
iv)	Unemployment wages 12.9.92 to 30.12.92	<u>Rs.22,190/-</u>
	Total:	<u>Rs.53,490/-</u> “

5. The learned Labour Court on the basis of a report of pasting of notice at the address of the petitioner /Management for appearance before the learned Labour Court on 21st January, 2000 proceeded ex

parte against the petitioner /Management on the ground that the petitioner /Management has been duly served.

6. The Labour Court proceeded to record the ex parte evidence on behalf of the respondent /workman who was examined as WW-1 and proved his affidavit Ex.WW1/A and the other connected documents like copy of demand notice, report of the labour inspection, copy of the compliant, etc. On the basis of unrebutted testimony of the respondent/workman, the learned Labour Court arrived at a finding that the services of the workman were terminated illegally and unjustifiably on 11th September, 1992 in violation of provision of Section 25 of the Industrial Disputes Act, 1947 and therefore, directed reinstatement of the respondent. However, as regards the question of payment of back wages, the learned Labour Court was of the opinion that as the respondent/workman himself was responsible for the delay in disposal of the matter, therefore, he was awarded only 30% back wages.

7. I have heard the learned counsel for the parties and perused the record. The learned counsel for the petitioner had very fairly conceded that although the respondent/workman was working as a Driver on the truck bearing No.DIG2452 but he denied that his services were illegally and unjustifiably terminated. On the contrary, it was contended that the truck had to be taken off the road on account of the judgment of the Supreme Court that it was more than 15 years old and a certificate of fitness was not granted by the Motor Licensing Officer. It has also come in evidence that in addition to the aforesaid, the services of the

respondent/workman was also at some point of time being utilized as a Driver of another truck bearing registration No.HRW2435 also but that is besides the point that the learned counsel in order to settle the matter had offered a sum of Rs.50,000/- without prejudice to the rights and contentions of his case on merits. The proposal though was acceptable to the learned counsel for the respondent but on account of obstinate conduct of the respondent/workman, he did not accept this proposal and desired that the Court may decide the matter on merit.

8. It was next urged by the learned counsel for the petitioner that this is an ex parte award and as a matter of fact the petitioner /Management was never served by the Labour Court and accordingly, they did not get a fair opportunity to participate in the proceedings before the learned Labour Court. They only learnt about the ex parte award having been passed on 20th September, 2004 and immediately thereafter they filed an application under Order IX Rule 13 read with Section 151 of the CPC before the Labour Court but as the Labour Court-XII had become functus officio, therefore, the said application was dismissed vide order dated 27th July, 2005. It is in this background that the present petition as been filed.

9. Rule 18 of the Industrial Disputes (Central) Rules, 1957, lays down the detailed procedure as to how the services of the parties is to be effected in respect of proceedings which are conducted before the Industrial Tribunal from the Labour Court. The relevant Rule reads as under:-

“[18. Service of summons or notice.—Subject to the provisions contained in rule 20, any notice, summons, process or order issued by a Board, Court, Labour Court, Tribunal, National Tribunal or an Arbitrator empowered to issue such notice, summons, process or order, may be served either personally or by registered post and in the event of refusal by the party concerned to accept the said notice, summons, process or order, the same shall be sent again under certificate of posting.]”

10. A perusal of the aforesaid Rule would show that the service is to be effected either by ordinary process or registered A/D and in the event of refusal by the party concerned, notices are to be sent by certificate of posting. There is no provision under the said Rule for effecting services by pasting which will be in the nature of substituted service. Even if it is assumed that the services by pasting is to be effected but that enjoins that the learned Labour Court must record some finding that steps have been taken to effect service in accordance with Rule 18 of the Industrial Disputes Act by trying to effect service by ordinary process and by registered A/D and then by certificate of posting and yet the service could not be effected on the party concerned. In the instant case from the impugned award, there is not even an iota of discussion as to whether such compliance thereof was ever done by the learned Labour Court. Only one sentence has been recorded that notice was served by pasting for 21st January, 2000 whereupon because of the absence of the petitioner/Management before the learned Labour Court, they were proceeded ex parte. This in my view, does not constitute a valid service in accordance with law and accordingly, the ex parte proceedings deserves to be set aside against

the petitioner /Management as it has deprived of right to participate in the proceedings before the learned Labour Court which has resulted in denial of principles of natural justice.

11. Even otherwise, a perusal of the statement of claim dated 8th May, 1995 filed by the respondent/workman would show that the total amount which was claimed by the respondent/workman was Rs.53,490/- under various heads and consequently, there was no prayer for reinstatement by the respondent/workman. It was so because the respondent/workman was himself aware that the truck of the petitioner /Management being more than 15 years old could not have plied in the city of Delhi. It is very curious to see that though there was no prayer by the respondent/workman in the statement of claim for reinstatement but the learned Labour Court went far ahead and grant the benefit of reinstatement. To that extent also, I feel that this award is not sustainable in the eyes of law.

12. For the reasons mentioned above, I set aside the ex parte award dated 20th September, 2004 passed by the learned Labour Court & remand the matter back to the learned Labour Court-XII to decide the same afresh after giving an opportunity to the petitioner /management to file its written statement to the statement of claim. Needless to say that any expression of opinion hereinbefore will not be treated as an expression on merits of the case and the learned Labour Court shall endeavour to decide the matter as expeditiously as possible.

13. So far as the amount of Rs.39,000/- along with interest is concerned, the same shall be refunded back to the petitioner

/Management. The petitioner /Management shall also pay cost of Rs.10,000/- for setting aside the ex parte proceedings to the respondent/workman before the learned Labour Court at the time of filing of the written statement.

14. With these directions, the writ petition stands disposed of. Parties are directed to appear before the learned Labour Court on 2nd April, 2009.

MARCH 13, 2009
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V.K. SHALI, J.