

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

+ **W.P.(C) NO. 15899/2006**

% **Date of Decision : 01.04.2009**

MR. KISHAN LAL ARORA Petitioner

Through Mr. Gulshan Chawla, Advocate

Versus

SHRI HANUMAN Respondent

Through Mr. D. N. Vohra, 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? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

V. K. SHALI, J. (Oral)

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1. Rule. With the consent of the parties, the matter is disposed of on merits.

2. The petitioner has challenged the ex-parte award dated 30th October, 2002 passed by the learned Labour Court No. IV in ID No.110/1997. By virtue of which it has held the termination of the respondent/workman on 7th July, 1993 to be illegal and unjustifiable, and accordingly, directed his reinstatement with payment of full back wages.

3. I have heard the learned counsel for the parties and perused the record including the record of the learned Labour Court.

4. The main contention of the learned counsel for the petitioner is that they were not properly served, and accordingly, they did not come to know about the pendency of the matter before the learned Labour Court and thus were denied the principle of natural justice to contest the claim of the respondent/workman.

5. The learned counsel for the respondent has contended that the petitioner has not approached the learned Labour Court for setting aside the ex-parte award and has straight away chosen to file the present writ petition, and therefore, the same deserves to be dismissed.

6. Per contra, the learned counsel for the petitioner has contended that the petitioner/management learnt about the award only in the month of August 2006 when the respondent/workman approached the petitioner/management along with a copy of the award for the purpose of reinstatement. Even at that stage the copy of the award was not furnished but only shown whereupon the petitioner took the inspection and preferred to file the present writ petition.

7. I have perused the record of the learned Labour Court. I have also considered the submissions of the respective sides. No doubt, in the first instance the petitioner ought to have approached the learned Labour Court for the purpose of setting aside the ex-parte award but the legal position is very clear that, in case, the award has been published, the learned Labour Court is functus officio to set aside the ex-parte award. In the instant case, the averment has been made by the learned counsel for the petitioner in the petition that they learnt

about the factum of the ex-parte award having been passed only in August 2006 that is after a lapse of nearly four years from the date of passing of the ex-parte award. In such a contingency to approach the learned Labour Court would have been futile the exercise. Therefore, I feel that there is no substance in the submission of the learned counsel for the respondent that the present writ petition ought not to have entertained.

8. A perusal of the record of the learned Labour Court shows that the petitioner has proceeded ex-parte on 18th September, 2000 for which date notice was sent to the petitioner by the registered cover which is returned back with the report of the refusal by the postal authority.

9. Rule 18 of the Industrial Disputes (Central) Rules, 1957 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 shows that the services may be effected on the petitioner by ordinary process or registered A/D and in the event of refusal, an obligation is cast on the Labour Court to sent a notice or summon by certificate of posting. This is on account of the

fact that service on the party concerned is not considered to be an empty formality. The service has to be effective to enable the party to contest the matter which has been filed by the other side which is consistent with the basic principle of natural justice. In the absence of notice having been sent by UPC the service on the petitioner cannot be assumed to be a valid service in the light of the report of the refusal, therefore, this Court is of the view that the petitioner was not validly served in accordance with law, and accordingly, the ex-parte award passed against the petitioner deserves to be set aside.

11. The petitioner had filed an application under Section 17-B of the Industrial Disputes Act, 1947 which was disposed of vide order dated 12th November, 2008 with the direction that the respondent/workman shall resume his duties with the petitioner/management from 13th November, 2008. This direction was passed on account of the fact that the learned counsel for the petitioner on instructions had offered to take back the respondent into service. It was also directed that the question of payment of back wages will be left open to be decided at the stage of final decision of the writ petition.

12. However, despite the order having been passed on 12th November, 2008 directing the respondent/workman who resume the duty there have been rival allegations and counter allegations from both the sides that the respondent/workman did not report for duty while as the workman himself is saying that the petitioner/management did not

permit him to join despite his willingness as well as the effort to resume the duty on a number of occasions.

13. Without going into these rival contentions of the parties since the ex-parte award is being set aside. I feel, in the interest of justice would be met in case the setting aside of the ex-parte award is subject to the fact that the amount of Rs.30,000/- which has been deposited by the petitioner in compliance to the order dated 17th October, 2006 is directed to be released to the respondent/workman. I, accordingly, direct that the aforesaid amount of Rs. 30,000/- along with an interest which has accrued thereon be released to the respondent/workman as a cost for setting aside the ex-parte award. Both the parties shall appear before the learned Labour Court on 15th April, 2009 whereupon the learned Labour Court shall give an opportunity to the petitioner to file the response to the statement of claim and proceed in the matter to decide as expeditiously as possible. With these directions, the writ petition is disposed of.

No order as to costs.

APRIL 01, 2009
KP

V.K. SHALI, J.