

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

+ **W.P.(C) NO.8881/2005**

% **Reserved on : 16.2.2009**
Date of Decision : 20.03.2009

M/S RAJESH WIRE INDUSTRIES Petitioners

Through Mr.Subhash Mishra, Advocate

Versus

SHRI UMESH & ANR. Respondents

Through Mr.Upender Thakur, 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.

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1. This is a writ petition filed by the petitioner challenging the ex parte award dated 30th September, 2003 passed by the learned Labour Court-III, Karkardooma Courts, Delhi in ID No.257/1999 in case titled as ***The Management of M/s Rajesh Wire Industries Vs. Its Workmen C/o Rashtriya Udyog Mazdoor Union.***

2. By virtue of the aforesaid ex parte award, the learned Labour Court had held the termination of the services respondents/workmen with effect from 5th July, 1996 as illegal and unjustified and accordingly directed their reinstatement on the post of 'Helper' with full back wages @ Rs.1,677/- per month or at such rate as has been fixed by the

appropriate Government from time to time whichever is higher till the date of reinstatement.

3. Briefly stated the facts of the case are that it is not in dispute that Sh.Umesh and Sh.Chattar Ram were working with the petitioner /Management as workmen. Both these workers alleged that their services were illegally and unjustifiably terminated by the petitioner/Management w.e.f. 5th July, 1996 without giving them leave wages, bonus, over time, or other statutory benefits entitled to them under the Industrial Disputes Act, 1947. So much so, even the retrenchment compensation was not paid nor were they charge sheeted or any enquiry held against them. The respondents/ workmen are purported to have given a demand notice on 9th April, 1997 and since it did not yield any result consequently they approached Government of NCT of Delhi. The Secretary, Department of Labour GNCT of Delhi on 1st March, 1999 made a reference to the learned Labour Court in the following terms :-

“Whether the services of S/Shri Umesh & Chattar Ram 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?”

4. The workmen in pursuance to this reference, filed their statement of claim stating that they have rendered services as ‘helper’ for 8 and 12 years respectively and their last drawn salary were Rs.1,677/- each. It was alleged by them that despite they having been working honestly and sincerely their services were terminated without any rhyme and

reason on account of the fact that the workmen had annoyed the petitioner/Management by demanding various benefits like leave wages, bonus, over time etc. It is alleged that they remained unemployed from the date of their termination of services and claimed reinstatement with full back wages.

5. Notice was issued to the petitioner /Management. They filed their written statement to the statement of claim and admitted that Sh.Chattar Ram was in the employment of the petitioner/Management as a 'Watchman' and his salary was Rs.1,545/- per month. It was also stated by the petitioner/Management that both the workmen had left the employment with the petitioner/Management on 12th July, 1996 of their own free will and for this purpose, they had given a letter in writing in their own hand. In these letters dated 12.7.1996, the respondents admitted that they had received the wages upto the month of July, 1996. One Sh.Ram Bahadur Thapa was said to be a witness to this. The petitioner /Management after filing of the written statement did not appear and consequently they were proceeded ex parte on 8th February, 2001.

6. The respondents /workman filed their affidavits and documents to prove their claim. The affidavit of workmen Sh.Umesh and Sh.Chattar Ram was Ex.WW1/A and Ex.WW1/B, wherein they reiterated the averments made by them in their statement of claim about the factum of employment and the emoluments. Similarly, the other workman also proved his affidavit Ex.WW2/A and the other connected documents.

7. On the basis of analysis of these documents, the learned Labour Court came to the conclusion that there was no a abandonment of services by both the respondents/workmen as was alleged by the petitioner/Management and since the respondents/workmen had worked for more than 240 days continuously in a calendar year therefore, termination of services w.e.f. 5th July, 1996 without compliance of the provisions of Section 25(F) of the Industrial Disputes Act, 1947 was illegal and unjustified. Accordingly, the learned Labour Court directed the reinstatement of both the workmen. So far as the question of payment of wages is concerned, the learned Labour Court relying upon ***Hindustan Lever Ltd. Vs. Hindustan Liver Ltd. & Ors.*** 1999 LLR 209 came to the conclusion as the petitioner /Management has not established that the respondents/workmen were employed and rather the respondents have stated that they were unemployed from the date of their termination, prima facie they are entitled to the payment of full back wages @ Rs.1,677/- per month or at as such other rate fixed by the appropriate Government from time to time which was higher w.e.f. 5th July, 1996 till the date of their reinstatement. The aforesaid award was published. The petitioner in his petition has taken the plea that they learnt about this award for the first time only on 9th July, 2004 when certain office bearers of Union created chaos at the residence of the petitioner's firm partnership whereupon they learnt that an ex parte award is purported to have been passed against the petitioner /Management on 30th September, 2003. Further inquiries in the matter led them to discover the fact that this ex parte award was

passed on account of non-appearance of their authorized representatives one Sh.Rajneesh Vats. The petitioner /Management in the present petition has now assailed this ex parte award on the ground that they were misguided by their authorized representative Sh.Rajneesh Vats inasmuch as after handing over the case to him, he had not done his duty. He also did not keep the petitioner informed about the developments in the matter.

8. The petitioner is also purported to have filed on 12th July, 2004, an application under Order 9 Rule 13 of the CPC, 1908 for setting aside the ex parte award along with an application under Section 5 of the Limitation Act seeking condonation of delay in filing the said application. This application was dismissed by the learned Labour Court on 24th February, 2005 by observing that as the learned Labour Court had become functus officio on account of the award having been notified. Therefore, the same could not be set aside by him. The petitioner thereafter filed the present petition challenging the ex parte award.

9. The respondents have filed their counter affidavit and controverted the averments made by the petitioner in the challenge of this ex parte award on the ground that same need not be set aside because the petitioner /Management was aware of the proceedings and they ought to have acted with due care and caution in pursuing the matter with the authorized representative. They were negligent as a matter of fact in prosecuting the matter and therefore, there was no sufficient cause for setting aside the ex parte award against them.

10. I have heard the learned counsel for the parties and perused the record carefully. The short question which raises in the instant case is as to whether the ex parte award deserves to be set aside which has been passed against the petitioner /Management. The learned counsel for the petitioner /Management has vehemently urged that after having engaged the services of the authorized representative Sh.Rajneesh Vats, the petitioner /Management thought that he would represent their interest before the learned Labour Court without any default and therefore, they did not chase the matter in the Labour Court. However to their utter surprise the authorized representative had let them down being negligent in attending the matter. It is further stated that the moment they learnt about the ex parte award, they took all corrective steps for approaching the first Labour Court and then before this Court for setting aside the ex parte award. They relied upon the case titled as **UCO Bank Vs. Iyengar Consultancy Services Pvt. Ltd** 1994 Suppl. (2) SCC 399. It was urged that in this reported case the learned counsel for the petitioner in that case was negligent as a consequence of which the ex parte decree was passed which was set aside by the Supreme Court. It was observed that no party should be made to suffer on account of negligence of the counsel.

11. I have gone through the judgment which has been cited, and also carefully considered the submission made by the learned counsel. In the instant case, it is not in dispute that the petitioner /Management was served and they had after service filed their written statement to the statement of claim and contested the case of the

respondent/workman. Their duty did not come to an end by simply engaging an authorized representative to act on their behalf and to appear in the matter. It was primarily the duty of the petitioner /Management itself that even after engaging the authorized representative to conduct the matter. They ought to have followed up with the counsel about the outcome of the matter or checked from the learned Labour Court from time to time as to what is happening in the same. On the contrary, they simply slept over the matter after the alleged handing over the same to the authorized representative Sh.Rajneesh Vats. No doubt the authorized representative of the petitioner/ Management who had been engaged but the petitioner /Management cannot absolve itself of its responsibility. The judgment which has been relied upon by the petitioner/Management to the effect that a party should not be made to suffer on account of the negligence of the counsel is not applicable to the facts of the case because in the said reported case the petitioner before the Supreme Court had made a complaint against the counsel to the Bar Council of Delhi in not conducting the case properly which resulted in passing of an ex parte decree. Therefore, the making of a complaint by the bank to the professional body namely Bar Council of Delhi with whom the said counsel was enrolled as an Advocate, it had shown its bonafides of bringing a fact to its logical conclusion. As against this, in the instant case not even a letter has been written to Sh.Rajneesh Vats in order to find out as to why he did not appear. It has also not been mentioned whether the authorized representative namely Sh.Rajneesh Vats was a

Lawyer who was authorized to appear or whether he was an employee of the petitioner /Management and what action was taken against him, where had he gone, what were the duties, who got in touch with him, what was his place of residence, all these particulars are not furnished in the application which raise a serious doubt about the bonafides of this plea made by the counsel for the petitioner/Management. Therefore, simply by saying that the authorized representative was negligent in conducting the matter would not be sufficient to set aside the ex parte decree as it would not constitute 'sufficient cause' within the meaning of Section 5 of the Limitation Act. On the contrary, there was gross negligence on the part of the petitioner /Management in conducting the brief and accordingly, this plea of the petitioner /Management for setting aside the ex parte award is without any merit.

12. The other submission which has been made by the learned counsel is that the respondents/workmen had resigned voluntarily w.e.f. 12th July, 1996. However, the said document has not been proved before the learned Labour Court and therefore, this aspect goes into the merit of the main matter which cannot be looked into at this stage. Accordingly, this plea is also not helpful to the petitioner in any manner whatsoever.

13. For the reasons mentioned above, I feel that there is absolute no infirmity in the ex parte award which was passed by the learned Labour Court on 30th September, 2003 directing the reinstatement of the respondent /workman. The same cannot be set aside as the petitioner has not been able to show sufficient cause for his non-appearance.

14. Now the question arises as to whether as a consequence of holding the termination of services of the respondent/workman as illegal and unjustified was the reinstatement and the payment of back wages automatic and shall be granted the benefit to the respondent/workman or the facts of the case warrant grant of compensation in lump sum towards full and final settlement of the claim of the respondent/workman in lieu of reinstatement of back wages.

15. This Court is of the view that although the termination of services of the respondent/workman was rightly held to be as illegal and unjustified but keeping in view the facts of the present case, the Labour Court ought not to have granted reinstatement and the payment of full back wages. This is on account of the fact that there are number of factors which ought to be taken into consideration while directing reinstatement and it should not be automatic or ipso facto on account of holding that the termination is unjustified and illegal. The facts because of which the reinstatement ought not to have been ordered are the facts that the respondent/workman services were terminated in the year 1996 and since then more than 12 years have lapsed. The long gap of period between the termination and the reinstatement will only add ultimately to the unrest rather than industrial peace in the organization because there would be lack of trust between the employer and the employee.

16. The next question which would arise is what compensation if at all ought to be given in exercise of powers under Section 11A of the

Industrial Disputes Act to both the workmen. Before that, I would like to refer to the judgment of the Hon'ble Supreme Court in ***Talwara Cooperative Credit and Service Society Ltd. Vs. Sushil Kumar*** (2008) 9 SCC 486, wherein it has been held as under:-

“The Industrial Courts while exercising their power under Section 11-A of the Industrial Disputes Act, 1947 are required to strike a balance in a situation of this nature. For the said purpose, certain relevant factors, as for example, nature of service, the mode and manner of recruitment viz. whether the appointment had been made in accordance with the statutory rules so far as a public sector undertaking is concerned, etc., should be taken into consideration.”

17. A perusal of the aforesaid observations of the Supreme Court would clearly show that it is a fit case where the High Court in exercise of powers under Section 11(A) or 226 should grant one time relief some compensation in lieu of reinstatement and payment of back wages. Then the question arises what should be the quantum of compensation which should be paid. It has come in evidence of the respondent /workmen that their monthly salary was Rs.1,676/- per month at the time when their services were terminated. The petitioner /Management has also admitted the salary of one of the workman to be Rs.1,545/-. Without going into the minute details, even if we take the wages of each of the workmen as Rs.1,550/- per month from the date of termination to the date of award and then to the present date, it would mean that the petitioner are entitled to annually approximately Rs.1,8500/- per month and calculated roughly for a period of 13 years, this figure in

each of the case would be approximately Rs.2,23,200/- per employee. The learned Labour Court has also granted on interest @ 9% from the date of termination till the date of actual payment on the bank wages if not paid within three months.

18. Under these circumstances, this Court feels that compensation of Rs.2,00,000/-per workman would meet the ends of justice in case the compensation is given as a one-time lump sum compensation towards full and final settlement of claim of each of the workman in lieu of reinstatement and the back wages to be sufficient compensation to meet the ends of justice.

19. It is ordered accordingly that each of the workmen shall be paid a sum of Rs.2.00 lac in lieu of back wages and reinstatement towards full and final settlement towards all the claims which the respondents/workmen may have on account of the aforesaid industrial disputes. The aforesaid amount ought to be paid within a period of one month from today failing which said amount shall carry an interest of 9% from the date of pronouncement of this judgment.

20. It has been submitted during the course of arguments that the petitioner has deposited approximately a sum of Rs.1,60,000/-. Needless to say that the aforesaid amount ought to be deducted in the proportion of 50% each from the amount which is to be paid to both the respondents/workmen. The amount which has been deposited shall be released to the respondents/workmen in the proportion of 50% each which shall be deducted from the sum of Rs.2.00 lac and the balance of Rs.1,20,000/- (Rs.2,00,000 – Rs.80,000 = Rs.1,20,000/-) whereof shall

be paid by the petitioner/Management to the respondents/workmen within one month as stated hereinabove failing which it would carry an interest @ 9%.

21. With these observations, the writ petition of the petitioner is dismissed without any merit. Costs of Rs.20,000/- is also imposed on the petitioner to be paid to the respondents.

MARCH 20, 2009
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V.K. SHALI, J.