

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

+ **W.P.(C) NO. 3929/2006**

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Date of Decision : 08.04.2009

M/s Bajrang Security Services Petitioner

Through Mr. Arvind Trivedi, Advocate

Versus

B. S. Chauhan & Anr. Respondent

Through Mr. Mahesh Srivastava, 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? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

V. K. SHALI, J. (Oral)

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1. The petitioner has challenged the ex-parte award dated 9th June 2004 passed by learned Labour Court No.V ID No. 58/2001 in the case titled **M/s Bajrang Security Service Vs. B. S. Chauhan**. By virtue of the aforesaid award the learned Labour Court has arrived at a finding of the fact that the respondent/workman was employed with the petitioner/management as a gunman and he was illegally and unjustifiably terminated w.e.f. 01.01.2000. It has been also stated in the impugned award that the petitioner is entitled to reinstatement with continuity of service, however, so far as the payment of back wages are concerned, only 75% of the back wages were awarded at the rate of

Rs.3018/- per month or the minimum wages fixed for that post by the appropriate government from time to time whichever is higher since the date of termination of his services.

2. The petitioner's case is that after cross-examining the respondent/workman on 17th May, 2004 the matter was adjourned to 31st May, 2004 on which date the petitioner/management was expected to lead evidence, but the petitioner the sole proprietor of the security agency met with an accident on account of slip of his two wheeler scooter on 29th May, 2004 itself. Therefore, he could not attend the Labour Court on 31st May, 2004 as he was advised complete bed rest by the doctor of District Hospital Ghaziabad for a period of two weeks. It is further alleged that after recovery from the injury the petitioner visited the learned Labour Court on 11th June, 2004 and on enquiry from the staff of the concerned learned Labour Court, the petitioner was directed to go to the Office of the Labour Commissioner and find out from there as to what had happened in the matter. The petitioner states that he visited the Office of Labour Commissioner and since he could not get any credible information except that it was informed to him that he will receive a copy of the award at his residence, accordingly, he did not chase the matter further. It is alleged that he received a recovery notice from the Implementation Cell in the second week of August 2005 regarding non implementation of the award which was passed on 9th June, 2004 ex-parte against the petitioner. In the impugned award the petitioner learnt for the first time that the matter had been decided against the petitioner in as much as the

respondent/workman had been given the benefit of reinstatement with continuity of service and payment of 75% of the back wages w.e.f. 01.01.2000. Accordingly, he engaged Mr. Arvind Trivedi and Mr. Sudhir Sinha, Advocates and had the judicial record inspected on 3rd September, 2005 and 4th September, 2005. It was only on inspection that the petitioner learnt that an ex-parte award has been passed against him. They filed an application for setting aside the ex-parte award as well as the ex-parte proceedings before the learned Labour Court on 21st September, 2005 which was dismissed on the ground that the learned Labour Court have become functus officio. Thereof the petitioner has filed the present writ petition praying for setting aside the ex-parte award.

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

4. The main contention which was been advanced by the learned counsel for the petitioner is to the effect that the petitioner had suffered an injury of his ankle because of accident of his scooter which confined him to bed for a period of two weeks. Therefore, he could not attend and produce his evidence before the learned Labour Court on 29th May, 2004. The petitioner has drawn the attention of this Court to the medical certificate which have been issued by the District (MMG) Hospital Ghaziabad wherein the petitioner has stated to have been issued a certificate that on account of sprain on right ankle he was advised bed rest for two weeks w.e.f. 29th May, 2004. The learned counsel contends that the petitioner was prevented from appearing in WP(C) No. 3929/2006

the learned Labour Court and on 11th June, 2004 when he appeared and did not get any cogent information, he approached the Office of the Labour Commissioner without any result. He took that the matter has been closed because the respondent/workman himself had abandoned the service.

5. I have carefully considered the submissions of the learned counsel of respective sides. There is no dispute that an ex-parte award till the time the same is not published can be set aside by the learned Labour Court itself provided the petitioner has not been served or is prevented by sufficient cause from contesting the matter. The principle would be the same if the award has been published except that the forum will change.

6. It is in this background the petitioner after having unsuccessfully made an attempt for setting aside the award before the learned Labour Court was constrained to file the present writ petition for setting aside the ex-parte award in this Court.

7. The question which arises for consideration is as to whether the facts which have been disclosed by the petitioner can be said to be constituting a sufficient cause which prevented the petitioner from appearing before the learned Labour Court and does this warrant the setting aside the said ex-parte award.

8. The ground which has been taken by the petitioner is that he had suffered from a sprain on the ankle, and therefore, on 29th May, 2004 that is just two days prior to the date fixed by the learned Labour Court for recording the management evidence. He has also produced a

photocopy of the certificate purported to have been issued by the District Hospital Ghaziabad. A certificate which has been issued by the Doctor is on a plain paper which has been purported to have been issued by District (MMH) Hospital Ghaziabad. It has been contended by the learned counsel for the petitioner that the said hospital is a government hospital. It is very rare to find that a doctor in a government hospital would issue a certificate in the nature, in which the one is purported to have been filed by the petitioner. Even otherwise the nature of injury is not such which could have prevented the petitioner in my view either appear on 31st May, 2004 or immediately thereafter as it was not a type of injury which would have prevented him physically to appear before the learned Labour Court concerned or to at least ensure that some representation is made before the Court on 31st May, 2004 and seek an adjournment. Assuming that the petitioner had suffered a sprain on his right ankle he could have travelled a three wheeler or taxi or taken the help of some of his friend or relative and gone to the learned Labour Court concerned or at least sent person to check the proceedings or have the record inspected thereafter in order to find out the outcome. On the contrary, the subsequent conduct even after expiry of two weeks of bed rest suggested by the doctor is such which further compound the suspicion that the certificate which is sought to be relied by the petitioner is a procured one. This is on account of the fact that the petitioner himself was conducting the matter and had effectively cross-examined the witnesses of the worker on 17th May, 2004.

9. On 11th June, 2004 when he appeared in Court , it was expected of such a vigilant client who has cross-examined the witness was not to go without inspecting the record of the case. On the contrary, the explanation given by him is that he was referred to the Office of the Labour Commissioner by the staff and thereafter he kept on going to the said office without any result and took it for granted that the matter has been closed. This seems to be totally unnatural on the part of the petitioner and therefore, there is a reasonable inference that can be drawn that he was conversant with the court proceedings. This seems to be a case where either the petitioner was grossly negligent or he took things for granted that nothing wrong can be brought to him even if he did not take steps to get the ex parte proceedings set aside. He assumed that he can get the entire clock back to the detriment of the respondent/workman.

10. Therefore, I feel that the explanation which has been given by the petitioner is not cogent convincing and believable and it can by no stretch of imagination be said that the petitioner was prevented by 'sufficient cause' from contesting the matter. Accordingly, the writ petition of the petitioner is without any merit so far as setting aside the ex-parte award is concerned.

11. The next question which arises for consideration is about the operation of the impugned award by virtue of which the learned Labour Court has directed the reinstatement and payment of 75% of the back wages @ Rs.3018/- to the respondent/gunman. There are catena of authorities that merely on account of fact that the learned Labour Court

comes to a finding that the termination of the workman is illegal and unjustified would not ipso facto result in grant of benefit of reinstatement and the entire back wages. The learned Labour Court in its discretion under Section 11A of the Industrial Disputes Act, 1947 has ample powers to decide on the basis of facts and circumstances of each case as to what relief should be granted to the workman. Reliance in this regard on **Talwara Co-operative Credit Service Society Ltd. Vs. Sushil Kumar** 2008 (9) SCC 486 wherein it has been held as under:

“Where order of termination is found to be illegal then ground of relief of reinstatement with full back wages is not automatic as the same is a discretionary relief and burden of proof as regards gainful employment after termination of service is on the workman and not on the employers.”

12. Keeping in view the aforesaid principle laid down by the Hon'ble Supreme Court, I feel that the order of the reinstatement which has been granted by the learned Labour Court was not justified as the petitioner is running a security agency and the respondent was employed as a gunman. The respondent/workman has been practically out of service as on date for a period of nine years, and therefore, to direct in such a contingency a person who has a license for a firearm to work with the petitioner can in a given situation be fatal to the either parties. Both the parties would be functioning with deficit of trust, therefore, instead of reinstatement, one time lump sum compensation would meet the complete the ends of justice. The petitioner has been directed in lieu of reinstatement and payment of 75% of the back wages

@ Rs.3018/- which is the last drawn wages or the minimum wages whichever is higher. If Rs.3000/- is taken as a base amount for a period of 9 years, the total wages would come to Rs.3,24,000/-. On the basis of the aforesaid formula, I feel that the interest of justice would be met in case the respondent/workman is granted a sum of Rs. 1,75,000/- equivalent to 50% of the amount as one time lump sum compensation to the respondent/workman. The aforesaid amount be paid to the respondent/workman within eight weeks from today failing which the petitioner shall also pay interest on the aforesaid amount at the rate of 6% per annum from the date of this order till the date of realization. With these observations the writ petition is disposed of.

APRIL 08, 2009
KP

V.K. SHALI, J.