

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

+ **W.P.(C) NO.4705/2006**

% **Date of Decision : 26.02.2009**

M/S NAV BHARAT ELECTRONICS Petitioner

Through Mr.Vikram Nandrajog, Advocate

Versus

SH. SHANKER LAL & ANR. Respondents

Through Nemo

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. This is a writ petition challenging the ex parte award dated 15th March, 2005 in ID No.422/1998 titled as **M/s Nav Bharat Electronics Vs. Its Workmen Sh. Shankar Lal and Tek Chand.**
 2. By the impugned award, the learned Labour Court had held the termination of the services of the respondent/workmen as illegal and unjustified and directed their reinstatement from the date of their termination with payment of 50% back wages.
 3. Briefly stated the facts leading to the filing of the present writ petition are that a reference was made by the Secretary (Labour) Government of NCT of Delhi on 7th April, 1999 in the following terms:-

“Whether S/Sh. Shankar Lal and Tek Chand have abandoned their jobs or their services 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. Pursuant to this reference, both the claimants filed their joint statement of claim wherein, it was averred that Sh. Shankar Lal was working as a ‘Drillman’ with the petitioner /Management on monthly salary of Rs.1,841/- w.e.f. 10th March, 1982 and Sh.Tek Chand was employed with the petitioner /Management as a ‘Fitter’ w.e.f. 6th January, 1985 at a monthly salary of Rs.1,677/- each. It was urged that during the course of their employment, the respondent/workmen did not give any cause for complaint to the petitioner/Management and since the petitioner/Management was not providing facilities, such as issuance of appointment letter, identity card, leave book, ESI, bonus, periodical increments, etc. they raised their voice for getting such benefits. The petitioner /Management feeling aggrieved on account of these demands made by the respondent/workmen dispense with their services w.e.f. 20th December, 1996 without giving them any notice/charge sheet or disclosing any reason whatsoever. The claimants/respondents sent a joint demand notice to the petitioner/management to which the petitioner /Management did not sent reply resulting in filing of a claim before the Conciliation Officer where also the petitioner /Management did not participate effectively. This entire exercise resulted in reference by the Secretary (Labour) to the learned Labour Court.

5. The petitioner /Management was issued notice on 11th May, 1999 by the learned Labour Court on receipt of the statement of claim. However, it is stated in the award that the said notice was refused. Accordingly, on the same date, the petitioner /Management is purported to have been proceeded ex parte.

6. The respondents/workmen filed their respective affidavits. Sh.Shankar Lal was examined as WW1 and he has proved his affidavit as Ex.WW1/A and documents Ex.WW1/1 to WW1/16. So far as Sh.Tek Chand is concerned, he did not enter into the witness box. Therefore, Sh.Tek Chand did not prove his statement of claim. After analyzing the affidavits filed by one of the respondents/workmen and hearing the arguments, the learned Labour Court came to the conclusion that Sh. Shankar Lal had served the petitioner /Management for more than 240 day, accordingly, his termination of service by the petitioner /Management without giving him a notice or paying him any retrenchment compensation was held to be illegal and unjustified. The learned Labour Court on this reasoning directed the grant of benefit of reinstatement with 50% back wages to Sh.Shankar Lal after holding the termination of service of Sh.Shankar Lal as illegal and unjustified w.e.f. 20th December, 1996.

7. Feeling aggrieved by the aforesaid ex parte order, the present writ petition has been preferred by the petitioner /management. The petitioner /Management in the petition has stated that the industry of the petitioner /Management was closed on account of the orders having been passed by the Supreme Court because it was considered to be an

'H' category industry operating in Delhi. While closing the factory, it was stated that a settlement had been arrived at with the employees and there was no question of any industrial dispute arising on account of the settlement having been arrived at. It was averred that as a matter of fact, the respondent Sh.Shankar Lal himself had abandoned his service for good in the month of May, 1996 and in any case, the business was closed since 1998. With regard to the non-appearance of the petitioner /Management before the learned Labour Court, it was denied that they ever refused the service of summons by them. On the contrary, it was contended that they were never served and therefore, this constituted 'sufficient cause' which prevented them to contest the claim of the respondents.

8. I have heard the learned counsel for the petitioner. The respondents/workmen have neither appeared in persons nor was there any representative on their behalf. Even a perusal of the earlier order sheets show that although the respondent/workmen was served on 19th March, 2008, yet there was no appearance on his behalf despite the matter having been adjourned from time to time. Consequently, this Court did not have the advantage of either hearing the respondent/workmen or his counsel.

9. I have considered submissions of the learned counsel for the petitioner. The main contention of the learned counsel for the petitioner is that on one date itself, the report of refusal has been made a basis for setting the petitioner /Management as ex parte. It is urged that the learned Labour Court ought to have taken steps to ensure that the

petitioner /Management is served by other means as well, as are prescribed in accordance with law.

10. 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.]”

11 A perusal of the aforesaid Rule show 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. Once it is shown that a notice/summon has been sent to the party by certificate of posting, a presumption of fact can be withdrawn that the notice has been duly delivered on to him and he be proceeded ex parte in case he does not appear. Alternatively, the onus is put on the party concerned to still prove that he has not been served.

12. In the instant case, the only mention in the ex parte award is that on 11th May, 1999, a notice was received back with the report of refusal. Accordingly, the petitioner /Management was proceeded ex parte award. Neither the record shows any statement of the Process server was recorded nor any steps were taken by the learned Labour Court to have the notice sent by certificate of posting which is one of the duties

cast in terms of the aforesaid Rule 18 in the event of refusal. In the absence of having sent the notice, as stated herein above, I am of the opinion that it cannot be treated to be a valid service on the petitioner /Management much less the petitioner could have been proceeded ex parte.

13. I am of the view that as the petitioner was not validly served, therefore, there was sufficient cause for the non-appearing of the petitioner before the learned Labour Court to contest the matter. Even otherwise, non-appearance on account of the service has resulted in denying principles of natural justice to the petitioner /Management which would warrant to setting aside the ex parte award against the petitioner.

14. Needless to say that much time has been lost in the entire process and therefore, the respondent/workmen are entitled to cost for setting aside the ex parte award. The ex parte award is set aside subject to costs of Rs.10,000/- to be paid by the petitioner before the learned Labour Court where the parties would appear on 16th March, 2009 at 2.00 p.m.

FEBRUARY 26, 2009
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V.K. SHALI, J.