

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

+ **Writ Petition (Civil) No.4734/2006**

Reserved on : 20.3.2009
Date of Decision : 26.03.2009

UCO BANK

..... Petitioner
Through: Mr.Praveen Marahatta, Advocate

Versus

DARSHNA DEVI & ORS.

..... Respondents
Through : Ms. Manjusha Wadhwa,
Advocate for respondent no.1.

**CORAM :
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 ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J.

1. The petitioner has challenged the award dated 27th May, 2005 passed by the Central Government, Industrial Tribunal cum Labour Court-II in LCA No.1/2002 titled as **Smt. Darshana Devi W/o Sh. Des Raj Vs. The Manager, UCO Bank.**

2. By virtue of the aforesaid award, the learned Tribunal has allowed the application of the respondent /workman filed under Section 33(C)(2) of the Industrial Disputes Act, 1947 (hereinafter

referred to as Act) and directed the petitioner/Management to make the payment of Rs.64,473.45.

3. Briefly stated the facts of the case are that the respondent /workman was that she was working as a part time Sweeper with the petitioner/Bank from March, 1994 till the filing of the application under Section 33 (C)(2) of the Act in place of one Smt. Krishna. It is stated by her that though she was a part time Sweeperess and used to sweep all the floors however, she was not given the benefit of a Head Office Circular No. HOCL: PAS:1/90 dated 1.1.1990, by virtue of which the part time Sweeper in addition to the consolidated remuneration of Rs.200/- per month entitled to the additional amount on the following scales:

<u>"FLOOR AREA</u>	<u>REMUNERATIONS PER MONTH</u>
Less than 850 Sq. ft.	Rs.200/- consolidated wages per month
850 Sq. ft. to 2000 Sq. ft.	1/3 rd of Scale of Wages
2001 Sq. ft. to 3000 Sq. ft.	½ if Scale of Wages
3001 Sq. ft. to 4000 Sq. ft.	3/4 th Scale of Wages
4001 Sq. ft. to 6000 Sq. ft.	Full Scale of Wages"

4. It was alleged by the respondent /workman that though the Circular had come into operation on 1st January, 1990 but she was ignorant about the same till 1994. She was not paid according to the new Circular. As against this, apart from Rs.200/-, the respondent /workman was also entitled to 1/3rd scale of wages in 1994 on the strength of this circular. The details

of the amount which were being given to the respondent /workman are that she was being given only Rs.200/- from March, 1994 till 1996 and @ Rs.550/- per month from January, 1997, December 1998 and @ Rs.650/- per month from January, 1999 to December, 2001. While as the aforesaid lump sum amount being an amount in terms of the Circular was not paid to her which necessitated the filing of the present writ petition.

5. The petitioner /Management filed its written statement and took almost all pleas which were available to them. The plea of the petitioner was that the respondent was an independent service provider since March, 1994 and she was being paid wages @ Rs.10/- per month, which was the initial amount. The said amount of Rs.10/- was further increased to Rs.33/- and she would complete her job within 45 minutes. It was also alleged by the petitioner /Management that the respondent used to sweep approximately 1500 sq. ft. and she sweeps only ground floor and that there was no evidence brought on record by the respondent that she was either engaged on regular basis or even on part time basis with the respondent /Bank which would entitle her to benefit claim.

6. The petitioner /Management after filing the writ petition remained absent and were proceeded ex parte. The respondent /workman in support of her case has examined herself as a sole

witness. The cross examination of this witness, namely the respondent/workman was closed after giving various opportunities to the petitioner /Management. The same was also reopened at the request of the petitioner/Management and the witness was cross examined.

7. After hearing the arguments, the learned Tribunal allowed the application under Section 33(C)(2) of the Act so far as the respondent/workman is concerned and directed the payment of Rs.64,473.47 to the respondent /workman.

8. The petitioner has filed the present writ petition and has challenged the aforesaid impugned award on the ground that the Tribunal did not follow the principle of natural justice as a consequence of which they could not adduce their evidence nor was any reasonable opportunity given to them. On merit of the case, it was contended that the Labour Court has gone by assumptions and presumptions while as the fact ought to have been proved specifically by the petitioner that she was entitled to the benefits in terms of the Circular. It was also contended that the onus had been wrongly put on the petitioner.

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

10. The first contention which has been raised by the learned counsel for the petitioner is that since there is a violation of

principle of natural justice inasmuch as the petitioner have been proceeded ex parte on account of their absence and the petitioner was also not permitted to adduce the evidence in support of their written statement.

11. I do not agree with this submission of the counsel for the petitioner that the petitioner is right in praying for setting aside the Labour Court award and remanding the matter back. There is no denying of the fact that this is an ex parte award. For setting the ex parte award and remanding the matter back to the Industrial Tribunal, the petitioner has to make out a case that either they were not served or they were prevented by 'sufficient cause' from appearing before the Court below. No ground has been taken by the petitioner in the writ petition that they were either not served or that they were prevented by a sufficient cause from contesting the claim of the respondent /workman. In the absence of any such averment, the award cannot be set aside. On the contrary, the petitioner/Management was not only served but were appearing and contesting the claim and then abruptly stopped appearing. If they have done so, it was done by them at their own peril. No sufficient cause has been shown which prevented them from appearing.

12. The second submission which has been raised by the learned counsel for the petitioner that the evidence has admittedly

come on record from the petitioner's side. The learned counsel has urged that the Labour Court with regard to certain facts established with regard to sweeping of floor, gone by assumptions and presumptions. The case of the petitioner was that the respondent was working only on day-to-day casual basis and she used to sweep only the ground floor. On this, the learned Tribunal has assumed that the respondent /workman was sweeping the other floors also by simply raising a query as to who are the persons who was sweeping the upper floors. The learned counsel has also contended that the Labour Court has grossly erred by placing the onus to examine the witness on the petitioner and there is also illegality in the order inasmuch as the Tribunal observed that the witness namely the respondent/workman who had entered into the witness box was not cross examined.

13. I have carefully considered the submissions made by the learned counsel for the parties. The scope of interference under Section 226 is very limited. The Court can only interfere after there is violation of principles of natural justice or violation of some rules or regulations or the award is based on no evidence. This is not the case of the petitioner that the award is based on no evidence. The only grievance which the petitioner is raising with regard to appreciation of evidence. The learned Labour Tribunal was right by observing that in case the plea of the petitioner was

accepted that the respondent /workman was sweeping only the ground floor then as to who was sweeping the remaining floors as admittedly the onus with regard to the same was on the petitioner within whose special knowledge this fact was, which it failed to discharge. Since no witness has been brought by the petitioner in this regard, the learned Tribunal was right in drawing an inference against them with regard to the question of violation of principles of natural justice and non permitting of evidence to be adduced by the petitioner. The Court is of the view that there is no violation of principles of natural justice in the instant case. As a matter of fact, the reading of the award shows that the learned Tribunal has been more than indulgent in giving several opportunities to the petitioner for the purpose of cross examination. The conduct of the petitioner/Management has been such which raises a reasonable doubt that the entire effort of the petitioner was to delay the disposal of the proceedings so as to ensure that the respondent/workman has been is not able to get the benefit in terms of circular. This is not a case where the petitioner was not served or the petitioner after service was prevented by sufficient cause. The petitioner was served in the instant case and chose to file its written statement. Thereafter, the conduct of the petitioner /Management in appearing and

disappearing before the Labour Court led the Labour Court to observe as under:-

“It transpires from the perusal of the order sheet that the management has not been turning up for a long time. Notice on 3rd March, 2004 has been sent to the management and it has been received by the management still the management did not turn up. The applicant has filed affidavit. The management was not present on several dates to cross-examine the applicant. The management was not present on several dates to cross-examine the applicant. The management turned up on 22.09.2004 and moved an application for reopening the cross of the applicant. The cross of the applicant was reopened and the management was provided opportunity for the last time to cross-examine the applicant but the management did not turn up on then next date. After two dates the cross of the applicant was closed and the applicant was heard. The management did not turn up despite several opportunities given. However, the application is disposed of on the merits of the case.”

14. If the petitioner has absented after filing the written statement and choose not to cross examine the witness or adduce evidence, it has done so at its own peril. Learned Tribunal is not expected to give dates to the petitioner /Management endlessly so as to enable them to adduce their evidence. Therefore, this Court is of the view that the petitioner was given more than requisite number of opportunities not only to cross examine the respondent

which he actually did but also to adduce evidence which he has failed to do.

15. For the reasons mentioned above, this Court is of the view that there is violation of the principles of natural justice of Rule, regulation or there is no perversity or illegality in the award based by the Labour Court. Accordingly, the petition of the petitioner is without any merit and the same is dismissed.

16. The stay granted by the Court on 28th March, 2006 stands vacated and the petitioner is directed to make the payment of Rs.64,473.45 to the workman/respondent within one month from today. It is further stated that in case the payment is not made within one month from today, the same shall carry an interest @ 7% per annum till the time the same is actually paid. The petitioner is also directed to pay a costs of Rs.10,000/- to the respondent/Management.

V.K. SHALI, J.

March 26, 2009
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