

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

+ **W.P.(C) NO. 9074/2006**

% **Dated: 20.01.2009**

M/S INDIA HOSIERY Petitioner

Through Mr. Nishit Kush, Advocate

Versus

GOVT. OF NCT OF DELHI & ANR. Respondent

Through Mr. Ramanath Jha, Advocate

HON'BLE MR. JUSTICE V.K. SHALI

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. The petitioner has filed the present writ petition challenging the ex-parte award dated 25th October, 2005 passed in new ID No. 126/2004 (ID No. 373/1997) titled Sh. Sadavriksh Tiwari Vs. M/s India Hosiery. By virtue of the aforesaid ex-parte award the learned Presiding Officer, Labour Court-XII, Karkardooma, Delhi directed the reinstatement of the petitioner with payment of 40% of back wages.

2. Briefly stated the facts leading to the filing of the present petition are that the respondent/workman alleged that he was working with the petitioner w.e.f. January 1993 and that he was drawing the wages of Rs. 2,000/- per month, though he never gave any chance for complaint to the petitioner yet his services were terminated on 14th December, 1995. It is

alleged by the respondent/workman that the termination of services had been occasioned as the respondent/workman had demanded a sum of Rs. 10,000/- which was deposited by him with the petitioner/management up till November, 1995 which the petitioner was postponing to pay for the one reasons or the other. The Government of NCT of Delhi made a reference on 17th March, 1999 as to whether, the services of the Sadavriksh Tiwari have been terminated illegally and unjustifiable by the petitioner/management and, if so, to what relief he is entitled and what directions are necessary to be issued to the petitioner/management in this regard.

3. In pursuance to the aforesaid reference a statement of claim dated 30th July, 1997 was filed by the petitioner/management before the Labour Court giving the details of his employment, last drawn wages and seeking reinstatement with full back wages. The petitioner/management is purported to have appeared in pursuance of the order having been served on 17th July, 2000. On the said date the counsel for the petitioner/management filed his power of attorney and sought time for filing the written statement. The matter was adjourned to 19th April, 2001. On the said date, none appeared on behalf of the petitioner/management as a result of which petitioner/management was proceeded ex-parte. The matter was adjourned to 20th September, 2001 for the purpose of recording of the ex-parte evidence of the respondent/workman. On the said date, the respondent/workman did not appear resulting in the adjournment of matter to 13th February 2002 and 4th September, 2002. Since the workman had also not appeared for

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the purpose of recording of his evidence, the judgment was reserved by the learned Labour Court for the purpose of passing the award, though the Ld. Labour Court could have on the same date either disposed of the matter on merit or dismissed it in default. The Ld. Labour Court in its wisdom though it fit to reserve the order.

4. It is alleged by the petitioner/management that after the judgment was reserved the respondent/workman who was permitted by the learned Presiding Officer, Labour Court passed an order on the application of the respondent/workman for recording of his evidence. This was done by the learned Labour Court without issuing notice to the petitioner/management and thereafter, it proceeded ahead to pass the impugned award directing the reinstatement of the respondent/workman with 40% of back wages.

5. The petitioner/management has taken the main plea for setting aside the ex-parte award. It was contended that once they were proceeded ex-parte, thereafter, the claimant himself had not appeared on three different dates for the purpose of recording of his evidence, the matter ought to have been dismissed in default or decided on merits with whatever evidence was on record. However, the learned counsel for the petitioner/management submitted that instead of dismissing the claim, the Labour Court proceeded ex-parte against the respondent/workman. This procedure which was followed by the learned Labour Court which was totally arbitrary, unreasonable and without any basis whatsoever.

6. It is urged that once the order had been reserved on the claim of the workman by the learned Labour Court the application of the respondent/workman for participation and getting his evidence recorded ought not to have been allowed without notice to the petitioner/Management. Since the petitioner/management was not able to file the reply to the application because of non-service of notice, therefore, it has been urged that the ex-parte award dated 25th October, 2005 against the petitioner/management be set aside and the matter be remanded back to the learned Labour Court for the purpose of decision afresh.

7. I have heard the learned counsel for the parties and perused the records. There is no denial to the fact that the respondent/workman himself had not appeared on three different dates after the petitioner/management was proceeded ex-parte. Once the order was reserved by the learned Labour Court, the learned Labour Court ought to have decided the matter on merits or dismissed the claim petition itself in default, rather than entertaining the application of the workman directing recording of his evidence without issuing the notice to the petitioner. The law regarding ex-parte is that if the party is proceeded ex-parte, it cannot put the clock back unless and until sufficient cause is shown by him, but certainly it has a right to participate in the future proceedings. In the instant case, the written statement of the petitioner/management was on record and once the judgment had been reserved and thereafter application of the respondent/workman allowed to examine his witnesses

the petitioner/management had a right to cross-examine the respondents/workman's witness which was denied to them. To that extent there was a denial of principle of natural justice to the petitioner/management. Further, non-issuance of the notice on the application to the petitioner/management and subsequently going ahead with the recording of the evidence was also 'sufficient cause' which prevented the petitioner from contesting the claim of the respondent/workman.

8. For the foregoing reasons, I feel that since the petitioner has been able to show 'sufficient cause' which prevented it from participating in the proceedings and moreover there was violation of principle of natural justice, accordingly, the ex-parte award which has been passed against the petitioner/management is set aside subject to the petitioner paying a sum of Rs. 15,000/- as costs to the respondent/workman within a period of one week from today. The learned Presiding Officer of the Labour Court is directed to give an opportunity to the petitioner/management for the purpose of filing the written statement and thereafter the labour Court shall proceed ahead to decide the matter afresh on merits as expeditiously as possible.

The interim order dated 24th May, 2006 has been passed earlier is vacated. Parties are directed to appear before the Labour Court-XII, Karkardooma, Delhi on 11th February, 2009. No order as to costs.

JANUARY 20, 2009
KP/RN

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