

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

+ **W.P.(C) No. 8853/2009**

% **Date of Decision: 09 July, 2009**

M/s Laxmi Lamp Industries

..... PETITIONER

! Through: Mr. Ashwini K. Sakhuja, Advocate.

VERSUS

\$ Shri Puranmasi Yadav

.....RESPONDENT

^ Through: Nemo

CORAM:

Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper 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**

S.N.AGGARWAL, J (ORAL)

CM No. 6188/2009 in WPC No. 8853/2009

Exemption as prayed for is granted subject to all just exceptions.

WPC No. 8853/2009 and CM No. 6187/2009 (for stay)

This writ petition filed by the management (petitioner herein) is directed against an award dated 13.08.2007 passed by Ms. Sujata Kohli, Presiding Officer, Labour Court-II, Delhi, directing petitioner to pay compensation of Rs. 3 Lakhs to the workman (respondent herein) in lieu of his claim for reinstatement and back wages for illegal termination of his services by the management w.e.f. 23.03.1996.

2. The respondent had joined the service of the petitioner as Foreman in 1993 at a salary of Rs. 3,000/- per month. The workman raised an industrial dispute on or around January 1996 as he was not paid wages

for about 3 months at the time he raised the dispute. In conciliation proceedings that were taken by the Conciliation Officer on 22.03.1996, the management paid him his wages that were due to him on that day and also agreed to take him back on duty immediately as per the settlement document dated 22.03.1996 Ex. WW-1/18 proved before the Labour Court. The respondent went to resume duties with the petitioner establishment on 23.03.1996 and again on 24.03.1996. When he went to resume duties with the petitioner on 23.03.1996, he was not allowed to resume duties and was rather physically assaulted by the people of the management for which the workman lodged a complaint with the police and also sent a demand notice dated 01.04.1996 to the management stating all the facts including the incident of physical assault that took place on 23.03.1996 when he went to resume duty with the management in terms of settlement dated 22.03.1996.

3. As the workman was not permitted to resume duties by the management in terms of settlement dated 22.03.1996, the workman again raised an industrial dispute with regard to his illegal termination from service of the petitioner and the said dispute was referred by the appropriate Government to the Labour Court for adjudication. The Labour Court vide its impugned award after considering the entire evidence placed before it reached to a conclusion that the services of the respondent were illegally terminated by the management and that he was not permitted to resume duties by the management when he went to resume duties on 23.03.1996 and 24.03.1996 in terms of the settlement dated 22.03.1996. The Labour Court instead of granting reinstatement and back wages to the workman chose to award Rs. 3 Lakhs as compensation to the workman in lieu of his claim for reinstatement and back wages.

4. The management being aggrieved by the impugned award has filed the present writ petition seeking to set aside the said award. Mr. Sakhuja, learned counsel appearing on behalf of the petitioner, has raised three-fold arguments to attack the impugned award of the Court below and they are (i) the respondent is not a workman within the meaning of Section 2(s) of Industrial Disputes Act, 1947, (ii) he did not plead unemployment in his statement of claim, and (iii) that the respondent did not join duties despite offer given to him before the Labour Court. Mr. Sakhuja, learned counsel appearing on behalf of the petitioner, also contends that the compensation of Rs. 3 Lakhs awarded to the workman by the Court below is also excessive and needs to be reduced by this Court.

5. I have given my anxious consideration to the arguments advanced on behalf of the petitioner but on giving my anxious consideration to the same, I have not been able to persuade myself to agree with any of his contentions.

6 The first contention of Mr. Sakhuja that the respondent was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 does not hold any water because the Court below in the impugned award has given cogent reasons for arriving at a conclusion that the respondent employed with the petitioner was a workman within the meaning of Section 2(s) of Industrial Disputes Act, 1947. The Court below while arriving at the said conclusion has taken into account the nature of duties performed by the respondent before his alleged termination. The findings of the Court below on this aspect of the matter cannot be faulted with.

7. The second contention of the petitioner that the impugned award is liable to be set aside because the respondent has not pleaded in the

statement of claim that he remained unemployed after termination of his services by the petitioner management. This plea is of no consequence. There is ample material discussed in the impugned award to show that the services of the respondent were illegally terminated by the petitioner. The Court below has taken into account the incident of physical assault with the workman by the management of 23.03.1996 which is completely documented in the impugned award and particularly what has been detailed out by the respondent in the demand notice dated 01.04.1996. The petitioner did not produce any satisfactory evidence before the Labour Court to rebut the stand against illegal termination taken by the respondent. The last contention of the petitioner that the impugned award is liable to be set aside for failure of the respondent to resume duties despite offer given to him before the Labour Court appears to be mis-placed because the petitioner did not stand by its offer given by it before the Labour Inspector on 22.03.1996 at the time of settlement contained in settlement document Ex. WW-1/18. It seems that the offer given by the petitioner to the respondent to resume duties was only a make-belief and that it was never sincere in its said offer. Had there been any bona fide in the said offer of the petitioner, then the incident of violence i.e. physical assault by the management with the workman would not have taken place on 23.03.1996 when he went to report for duties in terms of settlement dated 22.03.1996.

8 I also do not find any merit in the argument of Mr. Sakhuja that the compensation of Rs. 3 lakhs awarded by the Court below in favour of the respondent is excessive. The Court below while awarding compensation of Rs. 3 Lakhs to the workman in lieu of his claim for reinstatement and back wages has duly taken into account the fact that the respondent might have got some job after his termination to keep his body and soul

together. The services of the respondent were illegally terminated about 11 years back when the award of compensation came in his favour. The respondent because of his illegal termination from the service of the petitioner was entitled to have full back wages and also for future wages. Had it been granted, the amount that would have become due to him would have been much more than what has been awarded to him in the impugned award. Under the circumstances, the compensation of Rs. 3 Lakhs awarded by the Court below to the respondent, by no stretch of imagination, can be said to be excessive.

9 In view of the above, I do not find any merit in this writ petition which fails and is hereby dismissed in limine. Stay application is also dismissed.

JULY 08, 2009
'bsr'

S.N.AGGARWAL, J