

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

+ **W.P.(C.) No. 4808/2008**

% **Date of Decision: 27th August, 2009**

SHRI SUNIL KUMAR RAJPUT

..... PETITIONER

! Through: Mr. Pankaj Gupta, Advocate.

VERSUS

\$ GOVT OF NCT OF DELHI & ORS.

.....RESPONDENTS

^ Through: Mr. Kapil Dua for respondent No. 4.
Mr. Arvind Sharma for respondent No. 5.

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)

The workman in this writ petition seeks to challenge two orders i.e. (i) order dated 18.01.2007 passed by the Labour Court dismissing his claim under Section 33 (C)(2) for earned wages for the period from March, 2005 till August, 2005 and (ii) order dated 07.01.2008 passed by the appropriate Government declining to refer the dispute raised by the workman for adjudication to the Labour Court.

2 Heard.

3 The petitioner was appointed as a senior Scanner Operator at a salary of Rs.13,000/- per month with respondent No. 3 company in 1989. The petitioner was allegedly terminated by respondent No. 3 company from its service w.e.f. 26.04.2006. Before termination of his services, the

management had not paid his salary from March, 2005 onwards. Since the petitioner was not paid his salary from March, 2005 till July, 2007, he filed an application under Section 33 (C)(2) of the Industrial Disputes Act, 1947 before the Labour Court and claimed an amount of Rs.65,000/- on account of earned wages for the period from March, 2005 to July, 2005. This application under Section 33 (C)(2) filed by the petitioner was dismissed by the Labour Court vide impugned award dated 18.01.2007 stating that the petitioner was not entitled to the amount claimed by him under Section 33 (C)(2) as there was no adjudication in the matter. The petitioner before filing of his application under Section 33 (C)(2) had filed a complaint before the Labour Officer stating that he was not paid salary from March, 2005 onwards and in response to notice of that complaint, Mr. Arun Sharma, one of the Directors of respondent No. 3 company (respondent No. 4 herein) had appeared before the Labour Officer and admitted the claim of the petitioner for salary up to 31.05.2005. Respondent No. 4 who appeared before the Labour Officer and made a statement admitting the claim of the petitioner for salary up to 31.05.2005 did not dispute the assertion of the petitioner that he was not paid his salary from March, 2005 or even the amount of his salary being Rs.13,000/- per month at that time. It seems that the Labour Court while dismissing the claim of the petitioner under Section 33 (C)(2) vide impugned award dated 18.01.2007 has ignored this vital admission of the management of respondent No. 3 company. The Labour Court could not have declined the admitted earned wages for the period from March, 2005 up to 31.05.2005 in view of admission about the same made by the management of respondent No. 3 company before the Labour Officer. At least the petitioner was entitled to salary of three months from March, 2005 to 31.05.2005 at the rate of Rs.13,000/- per month in view of

admission of respondent No. 4 before the Labour Officer (at page 12 of the paper book). The Labour Court also could not have dismissed the application of the petitioner under Section 33 (C)(2) even for the period after 31.05.2005 and in fact it should have decided whether the petitioner was paid salary by the management of respondent No. 3 company after 31.05.2005 till 31.07.2005, the claim made by the petitioner in his application under Section 33 (C)(2). This aspect was required to be considered and decided by the Labour Court while deciding the application of the petitioner under Section 33 (C)(2) and his claim even for the period from 01.06.2005 to 31.07.2005 could not have been rejected on the ground that the same requires adjudication as mentioned in the impugned award dated 18.01.2007.

4 For the foregoing reasons, I have no hesitation in holding that the impugned award dated 18.01.2007 passed by the Labour Court on the petitioner's application under Section 33 (C)(2) suffers from perversity and cannot be sustained in law. The said award is, therefore, set aside. The petitioner is held entitled to salary of Rs.39,000/- being salary for three months from 01.03.2005 up to 31.05.2005 as this is admitted by the management of respondent No. 3 before the Labour Officer on 31.05.2005. The management of respondent No. 3 is, therefore, directed to pay an amount of Rs.39,000/- to the petitioner within four weeks from today. The case is remanded back to the concerned Labour Court/successor court for deciding the claim of the petitioner under Section 33 (C)(2) for the salary for the period from 01.06.2005 till 31.07.2005 after giving an opportunity of hearing to both the parties as per law. The parties are directed to appear before the concerned Labour Court/successor court for directions at 02:00 PM on 11.09.2009. The concerned Labour Court is directed to decide the dispute between the

parties under Section 33 (C)(2) as expeditiously as possible preferably within six months to be reckoned from 11.09.2009.

5 Now coming to the second impugned order dated 07.01.2008 passed by the appropriate Government declining to refer the industrial dispute raised by the petitioner relating to his alleged termination from the service of respondent No. 3 w.e.f. 26.04.2006, it may be noted that the Government has declined to refer the dispute for adjudication to the Labour Court on the ground that the petitioner should make a claim under Section 33 (C)(2) because he admits the closure of respondent No. 3 company. It is not indicated in the impugned order dated 07.01.2008 by which the Government has declined to refer the dispute raised by the petitioner to the Labour Court for adjudication as to on which date respondent No. 3 company was closed. The petitioner had raised a dispute alleging his illegal termination from the service of respondent No. 3 w.e.f. 26.04.2006. The management of respondent No. 3 pleads closure of its establishment without indicating the date when it was closed down. Even if respondent No. 3 company was closed down as alleged by the said company, still the question for adjudication arises as to what relief the petitioner was entitled to on account of such closure. This question could have been decided only by the Labour Court/Industrial Tribunal. The Government could not have declined reference of the dispute raised by the petitioner on the ground that he should go and file a claim before the Labour Court under Section 33 (C)(2). Unless an adjudication takes place on the point that the petitioner's services were illegally terminated or his services were dispensed with on account of closure of establishment of respondent No. 3 company, no claim under Section 33 (C)(2) would lie. The impugned order dated 07.01.2008 passed by the Government declining to refer the dispute raised by the petitioner for

adjudication to the Industrial Adjudicator also suffers from perversity and cannot be sustained in law. The said order is, therefore, set aside. The appropriate Government is directed to reconsider the case of the petitioner for referring the dispute raised by him for adjudication to the Industrial Tribunal as per law. The parties are directed to appear before the authorities competent to refer the dispute at 10:30 AM on 08.09.2009.

6 This writ petition is allowed in terms referred hereinabove.

A copy of this order be sent to the concerned Labour Court for information and necessary compliance.

Order dasti.

AUGUST 26, 2009
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S.N.AGGARWAL, J