

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

+ **W.P.(C.) No. 8139/2008**

% **Date of Decision: 25<sup>th</sup> August, 2009**

# SHRI INDER DEV SINGH

..... PETITIONER

! Through: Ms. Sanjay Ghose, Advocate.

VERSUS

\$ M/S ASIATIC ENGG. PVT. LTD.

.....RESPONDENT

^ Through: Mr. J.S. Bakshi, Advocate.

**CORAM:**

**Hon'ble MR. JUSTICE S.N. AGGARWAL**

1. Whether reporters of Local paper may be allowed to see the judgment? **NO**
2. To be referred to the reporter or not? **NO**
3. Whether the judgment should be reported in the Digest? **NO**

**S.N.AGGARWAL, J (ORAL)**

The petitioner in this writ petition is aggrieved by a 'no dispute award' passed by the Industrial Adjudicator against him vide award dated 17.05.2006 in ID No.951/1996.

2 The petitioner was employed as a technician with the respondent on 02.01.1990. He was terminated from the service of the respondent w.e.f. 20.04.1995. The petitioner aggrieved by his termination had raised an industrial dispute which was referred by the appropriate Government for adjudication to the Labour Court.

3 The petitioner has filed his statement of claim before the Court which was replied to by the respondent management. The claim of the petitioner was denied by the respondent management. After the

pleadings were completed, the case was set down for evidence of the workman. It so happened on 11.05.2006 when the case was fixed for evidence of the workman (the petitioner herein), no witness of the workman was present and for that reason, his evidence was closed vide order dated 11.05.2006 though his representative was present before the Court on that day and had requested for a date. After the evidence of the workman was closed by the Labour Court vide its order dated 11.05.2006, the impugned award dated 17.05.2006 was passed by the court below describing it as 'no dispute award'.

4 The petitioner thereafter filed an application before the Labour Court for setting aside of order dated 11.05.2006 and also the impugned award dated 17.05.2006 but the said application of the petitioner was dismissed by the court below vide its order dated 13.03.2008. Aggrieved therefrom, the petitioner has filed the present writ petition seeking one opportunity to produce his evidence to prove that his termination by the respondent was illegal.

5 Mr. J.S. Bakshi learned counsel appearing on behalf of the respondent has opposed the prayer made by the petitioner in the present writ petition for permission to produce evidence to prove his alleged illegal termination. The contention of Mr. Bakshi is that the petitioner was negligent in not producing his evidence before the court below despite several opportunities given to him for the purpose and no indulgence should be shown by this Court in the matter. Mr. Bakshi further contends that the application filed by the petitioner for setting aside of order dated 11.05.2006 and the award dated 17.05.2006 was belatedly filed and for that reason also, the petitioner is not entitled to any indulgence by this Court.

6 I have given my anxious consideration to the above arguments

advanced by Mr. Bakshi in opposition to the present writ petition. It shall be relevant to refer to the averments of the petitioner made by him in his application filed for setting aside of order dated 11.05.2006 and the impugned award dated 17.05.2006 and the same are extracted below:-

1. *The above-mentioned case was pending before the Hon'ble court, in which workman did not appear before the Hon'ble court after September 2005 and therefore Hon'ble Court passed the Award against the workman. The workman appeared before the Court on 2.9.2005 and filed his affidavit and got recorded his chief, after which the date of 28.10.2005 was given to the workman for Cross-examination, but on that date, Hon'ble Judge was on leave. Therefore, workman's representative Sh. Neeraj Chaudhary asked the workman that he will be informed at his village, through dak, as and when required, but no information was given to the workman by Sh. Neeraj Chaudhary, due to which workman could not appear before the Labour Court on any date after 28.10.2005.*

2. *Applicant/workman is unemployed and residing in village and he is dependent on his representative for Pairvi of Court case, but due to his negligence, workman could not receive the information, for which workman apologize and assures that in future, he will not return to his village till the evidence of workman is not closed. Therefore, an opportunity of evidence may be afforded to the workman.*

3. *There is no other reason of applicant/workman's not appearing before the Hon'ble Court. In case the order dated 11.5.2006 and award dated 17.5.2006 are not quashed, the workman would suffer irreparable loss and in case the Court case is restored, it will not cause any loss to the employers because applicant has already filed his affidavit in evidence and only the Cross-examination is remaining.*

7 From the above averments made by the petitioner in his application filed before the Labour Court, it seems that he is a rustic villager. He says that he appeared before the Court on 02.09.2005 and had filed his

affidavit in his evidence in chief on that day and thereafter the case was adjourned for 28.10.2005 for his cross-examination. The petitioner had appeared before the Labour Court on 28.10.2005 but somehow the Presiding Officer of the Labour Court was on leave on that day. The petitioner has stated that he was not informed by his authorized representative about the dates fixed by the Court after 28.10.2005.

8 After taking note of all the facts and circumstances of the case and the submissions made by learned counsel for the parties, I am of the considered opinion that ends of justice will be adequately met in case an opportunity is granted to the petitioner to produce his evidence before the Labour Court to prove his alleged illegal termination. This Court is of the opinion that the procedural aspects in a case should pave way for doing substantive justice between the parties. In the present case, the petitioner has pleaded illegal termination whereas the respondent has set up a defence of abandonment. There was no adjudication by the court below on merits of the rival contentions of the parties. It will be appropriate in case the rival contentions of both the parties are examined and decided by the court below on merits of the case.

9 For the foregoing reasons, the impugned award dated 17.05.2006 in ID No.951/1996 is hereby set aside. Needless to say that consequent to setting aside of the impugned award dated 17.05.2006, the order of the court below dated 13.03.2008 also stands set aside. The case is remanded back to the concerned court below/successor court for adjudication of the industrial dispute between the parties on merits after giving one opportunity to the workman for producing his evidence and also after giving opportunity to the management to produce its evidence as it may desire in the case. The court below may take into account the delay caused by the workman in disposal of the reference and modulate

the relief accordingly, if any, to be granted to the workman. The parties are directed to appear before the court below for further directions at 02:00 PM on 13.09.2009. The court below is directed to decide the dispute as expeditiously as possible preferably within six months to be reckoned from 13.09.2009.

10 In view of the above, this writ petition stands disposed of.

A copy of this order along with LCR be sent back to the concerned court below.

**AUGUST 25, 2009**  
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**S.N.AGGARWAL, J**