

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

+ W.P.(C)4012/2003

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Date of decision: 4th May, 2010

**HINDUSTAN VEGETABLE
OILS CORPORATION LTD.**

..... Petitioner

Through: Ms. Sonia Arora, Advocate

Versus

ASSISTANT LABOUR COMMISSIONER & ORS. Respondents

Through: Mr. N.S. Dalal, Advocate

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers 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 |

RAJIV SAHAI ENDLAW, J.

1. This petition has been preferred against the issuance of the warrant of arrest /attachment in enforcement of an award dated 15th December, 2000. This Court vide order dated 7th July, 2003 which has continued till now, stayed the warrant of arrest.

2. The respondent no.3 workman had raised a dispute with respect to the order dated 25th December, 1992 of the petitioner, of removal of the respondent no.3 workman from employment. The said dispute was referred for adjudication to the Labour Court. The Labour Court found the removal from employment of the respondent no.3 workman to be bad and illegal. The Labour Court thereafter proceeded to consider the question of back wages and reinstatement. The Labour Court has in the operative paragraph of the award held as under:

“ Keeping in view of the aforesaid discussions and circumstances of the case, I am of the opinion that workman Dharamvir was illegally terminated by the management and that workman is awarded with 50% of the back wages”

2. The aforesaid award has not been challenged by the petitioner and has thus attained finality. The counsel for the petitioner contends that the award is not for reinstatement and only for payment of 50% of the back wages from the date of removal from service i.e. 25th December, 1992 and till the date of award i.e. 15th December, 2000. It is contended that a sum of Rs.2,60,052.68p only is due under the award to the respondent no.3 and of which a sum of Rs.90,000/- has already been paid and the petitioner has been willing to pay and is still ready to pay the balance amount of Rs.1,70,052.68p. It is further contended that the Labour Commissioner in enforcement of the award has erroneously held a sum of Rs.7,73,802/- to be due under the award. It is contended that though the petitioner controverted the said claim of the respondent no.3 workman but without considering the objections of the petitioner, the warrant for arrest was issued.

3. Per contra, the counsel for the respondent no.3 workman has contended that the award is for the relief of reinstatement with 50% of the back wages. It is contended that the respondent no.3 workman, besides 50% of the back wages is also entitled to wages (as if reinstated) w.e.f. the date of the award onward.

4. The counsel for the petitioner in rejoinder draws attention to the application dated 24th May, 2002 filed by the respondent no.3 before the Labour Commissioner. In that application, the respondent no.3 workman has contended that in terms of the retrenchment compensation ordered by the Supreme Court, a sum of Rs.8,63,802.63p is due to him. It appears that the sum of Rs.7,73,802/- aforesaid claimed as due under the award is on this basis. In this context, it may be mentioned that the unit / undertaking of the petitioner company was shut down as a polluting unit pursuant to the orders of the Supreme Court. The Supreme Court, while so ordering shutting down of polluting units, had also passed orders with respect to the workmen working in

the said unit and the compensation payable to them. However, the said aspect has not been considered in the award being enforced by the respondent no.3 workman. The respondent no.3 workman appears to have claimed the retrenchment compensation as per formula prescribed by the Supreme Court on the premise that the award is of reinstatement and he is thus entitled to such compensation in lieu of reinstatement.

5. The counsel for the petitioner contends that there is no order of the Labour Court / Commissioner determining the amount which is due in enforcement of the award. The counsel for the respondent no.3 workman has also not been able to show any such order. Though this Court had requisitioned the records of the Labour Commissioner but the same have not been received till now. It is not deemed expedient to await further.

6. The warrant of arrest / attachment (supra) appears to have been issued on an application under Section 33C(1) being filed by the respondent no.3 workman. The said provision applies when a crystallized sum of money is due under the award. That is not the case here. The award is for 50% of the back wages and the parties are at issue whether it is for reinstatement also or not. If it is for reinstatement also, the question will arise whether the respondent no.3 workman is entitled to retrenchment compensation (in lieu of reinstatement) as per formula laid down by the Supreme Court and if so, in what amount. Infact, determination / computation is also to be made of the amount due as 50% of the back wages. This exercise is to be undertaken under Section 33C(2) of the I.D. Act. The parties are as such required to appear before the Labour Court, who shall proceed to determine all the aforesaid questions. It is not deemed expedient for this Court in writ jurisdiction to undertake the said exercise in first instance, particularly when there are no proper pleadings even on these aspects. The counsel for respondent no.3 workman has contended that the Labour Court cannot determine the said questions and the workman is to only approach the Labour Commissioner / Assistant Labour Commissioner in this regard. This contention is not correct. The Labour Commissioner / Assistant Labour Commissioner is to be approached under Section 33C(1)

when the amount is crystallized / computed / determined in the award itself and merely has to be recovered. However, when the money / benefit granted in the award is to be computed, it is the Labour Court which has to be approached. The Labour Court under Section 33C(2) is empowered to also interpret the award, as is required to be done in the present case.

7. This writ petition is thus disposed of with the following directions:

- (i) The petitioner shall pay to the respondent no.3 workman, the sum of Rs.1,70,052.68p due under the award according to the petitioner also. It is informed that the petitioner company is in liquidation before the Company Judge of this Court. The counsel for the petitioner states that an application shall be made before the Company Judge within two weeks of today for release of the said monies. The respondent no.3 workman shall also be entitled to make an independent application and / or participate in the said proceedings.
- (ii) The parties are directed to appear before the Labour Court concerned on 24th May, 2010. The Labour Court after giving opportunity to the parties shall determine the other amount, if any, due under the award aforesaid. The parties shall also be free to urge their other claims / defences qua the enforcement of the award and the relief due under the award including the claims if any of interest. Till then, no coercive steps to be taken in enforcement of the award.

The parties are left to bear their own costs. Copy of this order be given Dasti to counsel for the parties.

**RAJIV SAHAI ENDLAW
(JUDGE)**

4th May, 2010
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