

* **HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 13th September, 2010

+ W.P.(C) 22474/2005

INDIAN HYDRAULIC INDUSTRIES PVT. LTD. Petitioner
Through: Mr. P.K. Malik with Mr. M.P.
Joshi, Advs.

versus

SHYAM LAL & ORS. Respondents
Through: None

**CORAM:-
HON'BLE MS. JUSTICE VEENA BIRBAL**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

Veena Birbal, J.

1. By way of present petition under Article 226 of the Constitution of India, petitioner has prayed for quashing of impugned ex parte award dated 14.08.2001 in I.D. No. 632/1999 as well as order dated 11.05.2005 by which learned Presiding Officer of Labour Court has dismissed the application of petitioner/management for setting aside of ex parte award.

2. The facts leading to the filing of present petition are as under:-

Respondent/workman had raised an industrial dispute about his alleged illegal termination which was referred by the Secretary (Labour) Government of NCT of Delhi to Labour Court vide reference no. F.24(2792)/99 Lab. /37193-97 dated 09.09.1999 to Smt. Deepa Sharma, Presiding Officer, Labour Court-V, Delhi for adjudication. On 21.09.1999, the said dispute was registered vide I.D. No. 632/1999 and notice was issued to the parties. Petitioner has alleged that he was not

served with any notice/summons in the said case for appearance on 21.03.2000 or for any other date. It is stated that on 21.03.2000, the Ld. Presiding Officer was on leave and the matter was adjourned to 26.04.2000 for further proceedings. On the said date, due to non-appearance, petitioner/management was proceeded ex parte. The ex parte evidence of the respondent/workman was recorded and on 14.08.2001, the impugned ex parte award was passed against the petitioner/management. It is alleged that petitioner had no knowledge of the entire proceedings. The said award was published on 15.06.2002. Thereafter, on 26.06.2002, respondent/workman made a claim vide letter dated 26.06.2002 of ₹ 1,33,640.04 paise and petitioner/management responded vide letter dated 27.07.2002 that the same was not maintainable. It is stated that prior to above reference, vide reference no. F.24(5866)/98-Lab./540-44 dated 06.01.1999, the Secretary (Labour) Government of NCT of Delhi had referred the dispute about alleged illegal termination of respondent for adjudication to the court of Sh. Mahavir Singhal, Presiding Officer, Labour Court-VI, Delhi wherein petitioner did not appear and no dispute award was passed in the matter on 26.11.1999. It is alleged that the petitioner was under the impression that the matter has already been disposed of. Thereafter, on enquiry it was revealed that impugned ex parte award is made in another reference. It is alleged that petitioner has concealed the fact of earlier reference and passing of 'no dispute' award therein from the Labour Court which passed the impugned ex parte award in the present case.

Aggrieved with the impugned ex parte award dated 14.08.2001, petitioner had earlier filed the petition for setting aside of ex parte award by filing W.P.(C) No. 2389/2004 wherein the following order was passed:-

“Learned counsel for the Petitioner says that his

client was not served in I.D. No. 632/99 and was, therefore, proceeded against ex parte. He further says that he could not move an application under Order 9 Rule 13 of the CPC since a recovery certificate had already been received by his client.

Learned counsel for the Petitioner says that he will move an application under Order 9 Rule 13 of the CPC within one month before the learned Labour Court to have the ex parte order and the ex parte Award passed in ID No. 632/00 set aside.

Learned counsel wants to withdraw this writ petition with liberty to move an application under Order 9 Rule 13 of the CPC. Leave and liberty granted.

Dismissed as withdrawn.

CM 2228/2004, CM 2229/2004 & CM 6395/2004 also stand disposed of."

It is stated that thereafter petitioner moved the Labour Court by moving an application for setting aside of impugned ex parte award dated 14.08.2001. However, the said application was dismissed by the Presiding Officer, Labour Court vide impugned order dated 11.05.2005 on the ground that the application was moved after 30 days of publication of the award as such the Labour Court had become functus officio and as such dismissed the application.

3. Aggrieved with the same, the present petition is filed.

4. Notice of the petition was sent to respondent. Initially, counsel for respondent no. 1 had appeared. However, at the time of arguments, no one appeared to assist the court on behalf of respondent no. 1. However, there is a counter affidavit of respondent no. 1 wherein it is stated that the petitioner had earlier filed writ petition being W.P.(C) No. 2389/2004.

5. Counsel for petitioner has contended that petitioner/management was never served in the matter before the Labour Court and an ex parte award has been passed without any notice being served on petitioner as such same is liable to be set aside.

It is further contended that the impugned award is obtained by

respondent no. 1 by concealing material fact that there was earlier reference also about the alleged illegal termination by appropriate Government which was registered vide I.D. No. 44/1999 before the Presiding Officer, Labour Court, Delhi wherein no dispute award was passed as such respondent is not entitled for any relief.

6. I have heard the submissions made.

7. Perusal of trial court record shows that the terms of reference made by Secretary (Labour) Government of NCT of Delhi about referring the dispute to the Labour Court was registered before the Labour Court on 21.09.1999 and notice was issued to both the parties for 21.03.2000. On the said date, learned Presiding Officer of the Labour Court was on leave and the reader of the court had adjourned the matter for further proceedings on 26.04.2000 and on the said date, it is noted that the petitioner/management is served for 21.03.2000. I have perused the service report also.

The summons have been sent through ordinary process. The signatures on the summons are not legible as to who had received the same on behalf of the management. Even the process server has not stated the name of the person whom he had been allegedly served i.e. whether it was served on the responsible officer of the company or not. Under these circumstances, the Labour Court ought not have accepted the alleged service report of the process server of having served petitioner/management for 21.03.2000. There is no clear service on the petitioner/management. The Ld. Presiding Officer ought to have issued fresh notice to respondent for the next date which has not been done in the present case. Rather, the court has taken the petitioner/management as having been served and proceeded ex parte against it on 26.04.2000. The impugned ex parte award dated 14.08.2001 has been passed without respondent having been served in the matter. Further, there is also a concealment of fact of earlier

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reference to the Labour Court wherein no dispute award has been passed in the matter. I, accordingly, set aside the impugned award dated 14.08.2001 as well as order dated 11.05.2005. Petitioner will be at liberty to raise maintainability of the second reference by taking a preliminary objection in the written statement and the Labour Court shall deal with the same in accordance with law.

The writ petition stands allowed.

Trial Court Record be sent back forthwith with copy of this order.

Parties to appear before the Labour Court on 20.09.2010.

VEENA BIRBAL, J

SEPTEMBER 13th, 2010
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