

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

Date of decision: 22nd March, 2011

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W.P.(C) 506/2000

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**THE MANAGEMENT OF MASTANA JOGI
PRESS**

.... Petitioner

Through: Mr. Kamran Malik, Advocate.

Versus

LABOUR COURT NO.III & ORS.

....Respondents

Through: Dinesh Bhatt, Advocate for R-2&3.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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. The writ petition impugns:-

- a. *the ex parte* award dated 7th September, 1998 of the Labour Court
holding the termination of services by the petitioner of its

workmen impleaded as respondents no.2&3 to be illegal and unjustified and directing the petitioner to reinstate them with continuity in service and 50% of the back wages, and,

- b. the order dated 16th August, 1999 of the Labour Court dismissing the application of the petitioner for setting aside of the *ex parte* award (supra).

2. Notice of the petition was issued and recovery pursuant to the award stayed subject to the petitioner depositing 50% of the awarded amount in this Court. It was further directed that out of the amounts so deposited, the respondents no.2&3 workmen will be entitled to withdraw half the amount without prejudice to the rights and contentions of the petitioner.

3. The record shows that pursuant to the aforesaid order, a sum of ₹39,551/- was deposited by the petitioner in this Court and out of which amount, a sum of ₹9,888/- was released to each of the respondent workmen leaving balance sum of ₹19,775/- lying in this Court.

4. Counter affidavits were filed on behalf of the respondent no.2 as well as the respondent no.3 workmen. The respondents no.2&3 workmen also filed an application under Section 17B of the Industrial Disputes Act, 1947 and which was allowed on 13th May, 2003. The order dated 10th December, 2003 records that payment of ₹44,268/- was received by the counsel for the respondents no.2&3 workmen from the petitioner. In the order dated 13th April, 2004 the contention of the counsel for the petitioner was that since considerable amount of time had elapsed between the alleged termination of services of the respondents no.2&3 workmen in the year 1986 and till then, it would not be appropriate to direct reinstatement of the respondents no.2&3 workmen and they can be compensated in terms of money. Rule was issued in the petition on 17th September, 2004. On 11th February, 2008, the counsel for the respondents no.2&3 workmen complained of non-compliance of the order under Section 17B of the Act. On 19th May, 2008, it was agreed between the parties that the respondents no.2&3 workmen will join duty with the petitioner on the next day, without prejudice to the respective rights and contentions; it was further agreed that the respondents no.2&3 workmen would be at liberty to withdraw the entire amount which

had already been deposited in this Court and the petitioner would also pay ₹50,000/- to each of the respondent workmen against the order under Section 17B of the Act. The respondents no.2&3 workmen were accordingly directed to join the Unit of the petitioner at Noida.

5. In the order dated 30th July, 2008, it is recorded that the petitioner had paid ₹50,000/- to each of the respondent workmen in terms of the order dated 19th May, 2008. The respondents no.2&3 workmen were again directed to join work with the petitioner. On the next date i.e. 17th December, 2008, the counsel for the respondents no.2&3 workmen informed that the respondents no.2&3 workmen were not inclined to join employment with the petitioner in terms of the earlier order (supra) for the reason of the petitioner having failed to pay the arrears of 17B wages. On 23rd September, 2009, it was observed that the respondents no.2&3 workmen are not entitled to wages in terms of order under Section 17B w.e.f. 19th May, 2008 when offer was given to them to join duty with the petitioner and they failed to join duty. The counsel for the respondents no.2&3 workmen again stated that the respondents no.2&3 workmen will join duty with the petitioner at Noida the

next day. However the respondents no.2&3 workmen failed to so join duty and this Court on 12th July, 2010 held that they were not entitled to 17B wages w.e.f. 19th May, 2008. This Court, from the conduct of the respondents no.2&3 workmen of not joining duty, also presumed that they are gainfully employed elsewhere and that the said fact shall be considered at the time of final decision of this petition.

6. The counsel for the petitioner and the counsel for the respondents no.2&3 workmen have been heard.

7. There exists on the file a computation filed by the respondents no.2&3 workmen showing a sum of ₹2,50,629/- as due to the respondent no.2 workman and a sum of ₹2,21,743/- as due to the respondent no.3 workman under Section 17B of the Act w.e.f. 16th August, 1999 i.e. the order when the application of the petitioner for setting aside of the *ex parte* award was dismissed and till 28th February, 2006.

8. I shall first take up the challenge to the order dated 16th August, 1999 of the Labour Court refusing to set aside the *ex parte* award. It is not in dispute that the reference to the Labour Court was made on 2nd February, 1987; the petitioner appeared before the Labour Court first on 12th January, 1988 and took several adjournments for filing reply/written statement and was ultimately proceeded against *ex parte* on 3rd May, 1988; the matter was adjourned for *ex parte* evidence of the respondents no.2&3 workmen; at that stage an application for setting aside of the *ex parte* award was filed and which was allowed and again opportunity for filing the reply/written statement was granted; yet again adjournments for the said purpose were taken and the reply/written statement was filed only on 11th October, 1988; the matter was thereafter listed for evidence and the respondents no.2&3 workmen examined themselves and were cross examined by the petitioner. The petitioner however did not lead any evidence and was again proceeded against *ex parte* on 27th May, 1994 and which led to the *ex parte* award dated 7th September, 1998 (*supra*).

9. The Labour Court has held that the petitioner having once already been proceeded against *ex parte* owing to negligence of its authorized representative, ought to have been careful thereafter; that the petitioner was however found to have not bothered to even contact his authorized representative for a period of 10 years from 1988 to 1998; it was thus held that no case for setting aside of the *ex parte* award was made out.

10. The counsel for the petitioner has urged that since the default was of the petitioner's authorized representative, they ought not to be punished for the same and the *ex parte* award should be set aside and they should be granted an opportunity to prove their defence of the respondents no.2&3 workmen having left the employment of the petitioner of their own accord and after full and final settlement with the petitioner.

11. As far as the power of the Industrial Tribunal/Labour Court to set aside *ex parte* is concerned, there appears to be a conflict of judicial opinion.

In ***Grindlays Bank Ltd. v. Central Government Industrial Tribunal*** AIR 1981 SC 606 – it was observed that the Labour Court has the power to set

aside *ex parte* award at any time. The same view was reiterated in ***Satnam Verma v. Union of India*** AIR 1985 SC 294. Similarly in ***Anil Sood v. Presiding Officer, Labour Court II*** (2001) 10 SCC 534 - the Supreme Court held the Labour Court entitled to set aside *ex parte* award even after 30 days of publication of the award. However in ***Sangham Tape Company v. Hans Raj*** (2005) 9 SCC 331- it was held that the Labour Court has no power to set aside the *ex parte* award after 30 days of publication. Subsequently in ***Radhakrishna Mani Tripathi v. L.H. Patel*** (2009) 2 SCC 81, without reference to ***Sangham Tape Company*** (supra), on the basis of earlier judgments, it was held that the Labour Court is competent to entertain an application for setting aside of the *ex parte* award even after 30 days of publication. In the present case, the application for setting aside of the award appears to have been filed within 30 days of publication of the award. However the predominant legal opinion appears to be of the Labour Court being empowered to entertain the application even after 30 days of publication of the award.

12. I am however unable to cull out any error capable of interference in exercise of power of judicial review in the order dated 16th August, 1999 of the Labour Court dismissing the application for setting aside of the *ex parte* award. The Labour Court has given cogent reasons for dismissing the application. Neither in the writ petition nor in the oral submissions the counsel for the petitioner has been able to explain as to why inspite of the earlier default of the authorized representative, the petitioner was not diligent and as to why the petitioner did not bother to find the status of the case before the Labour Court for nearly 10 years.

13. Such negligence on the part of the petitioner especially in labour disputes where the parties are expected to appear themselves and representation through advocates is prohibited, cannot be appreciated. Moreover, the petitioner does not appear to have shown any haste before this Court also. In none of the orders passed in the present proceeding have I been able to find any offer made by the petitioner for remand of the petition to the Labour Court for decision afresh. The petitioner was rather content in having the operation of the award stayed as aforesaid and in not paying the

Section 17B wages also. Thus the writ petition in so far as challenges the order dated 16th August, 1999 of the Labour Court has no merit.

14. In so far as the challenge to the award of reinstatement with 50% of the back wages is concerned, the case of the respondents no.2&3 workmen was of having been employed with the petitioner as a Machine Man and Helper at the last drawn wages of ₹ 640/- and ₹ 414/- per month and of their services having been illegally terminated on 11th July, 1986.

15. The defence of the petitioner was of the respondents no.2&3 workmen having left the employment of their own accord on 23rd December, 1987 after full and final settlement of their accounts. In support of the said plea Standard Form, typed letters with blanks stated to be containing the signatures of the respondents no.2&3 workmen were produced.

16. The Labour Court, in the absence of any evidence led by the respondents no.2&3 workmen held that the petitioner in its reply had not explained the status of the respondents no.2&3 workmen from 11th July,

1986 since when they claimed to have been terminated and till December, 1987 when according to the petitioner they had left of their own accord; it was held that the reply of the petitioner was quiet as to whether during the said time the respondents no.2&3 workmen were performing duty with the petitioner or not; it was further held that no document showing any notice given to the respondents no.2&3 workmen to join duty between 11th July, 1986 and December, 1987 had also been produced; that while the respondent no.2 workman in his cross examination by the petitioner had denied the signatures on the alleged settlement, the respondent no.3 workman had admitted the signatures but denied the contents. The Labour Court from the cross examination of the respondents no.2&3 workmen held that the petitioner had been unable to make out any case of settlement and had itself failed to lead any evidence of such settlement.

17. I have, to satisfy the judicial conscience, perused the examination-in-chief of the respondents no.2&3 workmen and cross examination by the petitioner, copies of which have been filed. I am unable to, therefrom, hold the finding of fact reached by the Labour Court to be perverse. This Court in

exercise of power of judicial review will not interfere with an award of the Labour Court unless a case of perversity is made out. The petitioner inspite of sufficient opportunity has failed to prove its defence of full and final settlement. Though the documents of settlement relied upon are purported to bear the signatures of witnesses also but no suggestion whatsoever was given in the cross examination of the respondents no.2&3 workmen of the respondents no.2&3 workmen having signed the said documents in the presence of the said witnesses. No error is therefore found in the award also insofar as holding the petitioner to have illegally terminated the services of the respondents no.2&3 workmen.

18. However as far as the relief granted by the Labour Court of reinstatement with 50% of the back wages is concerned, in view of the subsequent events as hereinabove recorded, the same needs to be modified. The respondents no.2&3 workmen having failed to join work with the petitioner inspite of offer of the petitioner during the pendency of the proceedings before this Court, are now not found entitled to the relief of reinstatement. Of course, their counsel has contended that it was not suitable

to the respondents no.2&3 workmen, being residents of Delhi to join duty at Noida. However the said explanation is not found satisfactory. Noida is part of the National Capital Territory and lakhs of people commute to and from Noida daily. Rather Noida may be closer vis-à-vis distances within the city of Delhi. Moreover more than 25 years have passed since the respondents no.2&3 workmen have worked for the petitioner; for this reason also, the relief of reinstatement is found inappropriate.

19. The question still remains of the award with respect to 50% of the back wages and amounts due under Section 17B order and the compensation if any payable for the illegal termination found by the Labour Court.

20. As aforesaid, out of 50% of the award amount deposited in this Court, half has already been received by the respondents no.2&3 workmen. Though order as aforesaid for release of balance half also was made but the respondents no.2&3 workmen have not bothered to withdraw the same amount. They appear to be doing well for themselves and not in need of money. This litigation appears to being pursued by the Union.

21. Be that as it may, the sum of ₹19,775/- lying deposited in this Court be also released equally to the respondents no.2&3 workmen.

22. I do not find any error in the award for 50% of the back wages.

23. The petitioner has also not controverted the computation aforesaid filed by the respondents no.2&3 workmen of the amounts due under Section 17B. However since it has transpired that the respondents no.2&3 workmen are employed elsewhere and have thus not opted to re-join duty with the petitioner, need is felt to have a re-look on the 17B order also.

24. Considering all the aforesaid aspects and since no hard and fast rule in this regard applies and the Court has to be necessarily guided by the rule of thumb, it is deemed expedient to put a quietus to this matter by directing that the respondents no.2&3 workmen shall be entitled to:-

- (i) balance ₹19,775/- of the awarded amount;

(ii) lump sum compensation of ₹ 1.5 lacs each towards balance amount under 17B order and for illegal termination of their employment with the petitioner.

(iii) the said amounts be paid by the petitioner by Bank Draft/Pay Order in favour of the respondents no.2&3 workmen within 4 weeks of today, failing which the same shall also incur interest at 10% per annum besides other remedies of the respondents no.2&3 workmen.

25. The award of the Labour Court is modified to the aforesaid extent and the petition is disposed of in terms thereof. Though no litigation expenses are shown to have been paid but in the facts and circumstances aforesaid, no order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MARCH 22, 2011

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