

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

+ **W.P. (C) No. 3395/2010 & CM 6821/2010 (stay)**

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Reserved on: 14th August, 2012

Decided on: 7th September, 2012

SHAM LATA SURI

..... Petitioner

Through: Mr. Ajit Upadhyay, Adv.

versus

ASS. LABOUR COMMISSIONER & ANR.

..... Respondents

Through: Ms. Raavi Birbal, Amicus Curiae for
Respondent No.2.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition the Petitioner seeks setting aside of the award dated 10th November, 2009 passed by the Labour Court directing the management/ Petitioner to reinstate the workman back on duty along with back wages within 30 days from the date of publication of award and remanding the matter back for fresh trial of the matter thereby giving full opportunity to the Petitioner to contest her case before the Labour Court.

2. Learned counsel for the Petitioner contends that the Petitioner has a very good case on merit which, however, could not be brought or established before the Labour Court due to negligent conduct of her representatives/ advocates. Petitioner and her husband engaged Mr. D.P. Rana, Advocate and were in touch with him regarding the status of the matter. They used to accept the information supplied by Mr. Rana to be true. They also give money to Mr. Rana as and when demanded for payment of costs awarded by the learned Labour Court. The said counsel, however, neither deposited the costs nor pursued the matter diligently. In fact, on becoming suspicious

about their counsel, when the Petitioner enquired from the learned Court, she came to know that the matter was never represented by Mr. Rana rather was represented by some other advocate Mr. P.P. Singh before the Labour Court. The Petitioner thereafter engaged another advocate however the second counsel was also negligent in his duties. Learned counsel further contends that the Petitioner is an aged lady and has been befooled by her representatives/ counsels and deserves sympathy from this Court and justice too demands that the Petitioner should not be made to suffer losses for the wrong done on the part of the counsels/ advocates. Also, Respondent No.2 has not placed on record any cogent evidence to establish the relationship of employer and employee between the Petitioner and Respondent before the Labour Court and thus, he failed to discharge the onus in this regard. The present award in favour of Respondent No. 2 is in a nature of a bounty which has accrued due to laxity on the part of the Petitioner's counsel, thus the same be set aside.

3. On the other hand, learned counsel for Respondent No.2 contends that the Petitioner cannot put the blame on her counsels. Even if it is believed that the first counsel engaged by her did not represent her case properly, however, when she engaged the new counsel it was her duty to have watch the proceedings, which she failed to do. Even after restoration of right to cross-examine, ample opportunities were granted to the counsel for the Petitioner, however, he did not utilize the same and sought several adjournments on one pretext or another to delay the proceedings. Further, the Petitioner herself had in her pleadings before the Labour Court admitted that the Respondent was employed in her shop to assist her and her husband (deceased). The learned counsel also contends that the award is not in the

nature of bounty, rather Respondent No.2 had to contest for his rights in the Court for 5 years and only then the award was passed in his favour. Lastly, the present petition has been filed to delay the relief awarded by the Labour Court. The Labour Court passed the award after properly scrutinizing the material evidence/documents produced. Further no complaint has been made to the Bar Council about the negligence of the counsels and now Respondent No.2 cannot be made to suffer because of laxity of the Petitioner.

4. I have heard learned counsel for the parties and perused the record.

5. Briefly the case of the Petitioner is she was running a small shop of artificial jewellery in the name of 'Silver King' in Palika Bazar, Connaught Place, New Delhi. Respondent No.2 was working as a common sales man for about 10 shops in Palika Bazar in the year 1994 and used to get commission for bringing customers for all shop including that of Petitioner. He also used to look after the affairs of the deceased husband of the Petitioner. In due course, he gained faith of Petitioner's husband and was successful in obtaining a loan of Rs. 1,58,000/- which amount he failed to return despite repeated reminders and disappeared thereafter. In the year 2004 he resurfaced and raised an industrial dispute which was referred to the learned Labour Court under the terms of reference:

“Whether the services of Shri Dhirender Singh Negi S/o Shri Balbir Singh Negi have been terminated illegally and/or unjustifiably by the management and if so to what sum of money as monetary relief along with consequential benefits in terms of existing laws/ Government notification and to what other relief is he entitled and what directions are necessary in this respect?”

The learned Labour Court after perusing the material/evidence on record, passed the award dated 10th November, 2009 in favour of Repondent No.2 which is impugned in the present petition.

6. This Court in *Ishraul Haque Ansari V. MCD & Ors. 140(2007) DLT 133* has observed:-

“14. While it is not denied that the workman should not suffer for the non-appearance of his counsel, it can also not be overlooked that while recalling the order for setting aside an ex-parte award, the conduct of both, the Petitioner as also his counsel, has to be seen. Merely because the Petitioner engaged a counsel to conduct his matter is not a sufficient ground for him to sit back complacently without following up his case diligently. To simply blame the counsel and claim that it was only on account of his negligence that the Petitioner could not prosecute his matter properly, is not a sufficient ground to seek any relief, as claimed in the present petition. A party is expected to pursue the case diligently once it has been filed in the Court.”

7. A perusal of the record show that on 19th September, 2006 an adjournment was sought on behalf of Sh. P.P. Singh, Authorized Representative of the Management on the ground that he had met with an accident and thus would not be able to appear before the Court. The matter was hence adjourned to 4th October, 2006 and on 4th October, 2006 the same was adjourned to 16th November, 2006. On 16th November, 2006 Mr. P.P. Singh appeared and submitted that he was bed ridden for quite sometime since he had met with an accident and thus could not prepare the written statement and sought an adjournment once again. The matter was adjourned to 3rd January, 2007 and thereafter to 22nd February, 2007 and finally to 7th March, 2007 for filing of the written statement. On 7th March, 2007 the

written statement on behalf of the Petitioner was filed and issues were framed. The workman filed his evidence by way of affidavit on 21st May, 2007 on which date the workman submitted that he had not brought the original documents with him and the matter was adjourned on his request to 14th September, 2007. Thereafter the matter was adjourned to 17th October, 2007, 13th December, 2007 and finally to 4th January, 2008 for management evidence. On 4th January, 2008 none appeared on behalf of the management and the learned Labour Court closed the right of the management to produce its evidence. It was also observed that on last date also none had appeared on behalf of the Petitioner/Management. Thereafter an application was moved on 28th February, 2008 for setting aside this order by the Management which was allowed on 18th March, 2008 subject to costs of Rs.2,000/- to be deposited by the management with the Prime Minister Relief Fund. The matter was adjourned to 5th August, 2008 for cross-examination of the workman by the management and for management evidence. On 5th August, 2008 the authorized representative of the management Mr. P.P. Singh deposed before the Labour Court that the proprietor of the management had died due to which cost could not be deposited and further that after his death no one contacted him regarding the matter. The Labour Court, therefore, once again closed the right of the management to adduce evidence and cross-examine the workman. Thereafter two applications were moved by the Petitioner, both, dated 23rd October, 2008 seeking setting aside of order dated 5th August, 2008, granting opportunity to cross-examine the workman and to withdraw the authority of authorized representative Shri D.P. Rana. Thereafter another application dated 3rd December, 2008 was moved by management/Petitioner for

cancellation of the authority of Shri P.P. Singh and to take necessary action against him for misrepresentation and committing fraud. All these applications were heard on 3rd December, 2008 wherein the Labour Court observed that inspection of records show that no authority exists in the name of Shri D.P. Rana hence the application seeking withdrawal of authority in his favour was of no consequence. Applications seeking right to cross-examine the workman and withdrawal of authority in favour of Shri P.P. Singh were allowed with the observation that the management has never kept track of this case which led to closure of workman evidence and management evidence. The applications were allowed subject to costs and the matter was posted for 3rd March, 2009. On the next date, an adjournment was sought on behalf of the management which was denied and the workman was discharged. The matter was posted for management evidence on 13th May, 2009 on which date the matter was again adjourned to 7th August, 2009 since advance copy of management's affidavit was not supplied to the workman. On 7th August, 2009 since no one appeared on behalf of the management, the learned labour court closed the right of the management to adduce evidence and posted the matter for final arguments on 14th October, 2009. On the next date, that is, 14th October, 2009 fresh authority letter was filed by the management which was allowed and matter was posted 26th October, 2009 when again no one appeared on behalf of the Petitioner and the matter was posted for orders on 10th November, 2009.

8. Learned counsel for the Petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Rafiq & Anr. Vs. Munshilal & Anr. (1981) 2 SCC 788* to contend that once the party client has entrusted complete confidence on his advocate and done everything in his power and

as expected out of him he should not be made to suffer because of the default and negligence of his advocate. In my opinion this judgment has no applicability to the facts and circumstances of the present case. The observations of Hon'ble Supreme Court in *Rafiq & Anr.*(supra) were given under the circumstances where the party has acted diligently and done everything in his power to effectively participate in the proceeding. However, the present is the case where the conduct of management reflects casual and negligent attitude in pursuing the matter.

9. In the light of above discussion, I do not find any merit in the present petition. Petition and application are dismissed. The amount of Rs.2 lakhs deposited by the Petitioner in terms of order dated 26th May, 2010 be released to Respondent No.2 along with interest, if any, accrued thereon. Ms. Raavi Birbal, who was appointed as Amicus Curiae for Respondent No.2, will be paid the fee by the Delhi High Court Legal Services Committee as per its terms and conditions.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 07, 2012
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