

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

Date of Decision: 28.09.2015

+W.P.(C) 5271/2013

M/S FAIRDEAL INDUSTRIES

..... Petitioner

Through: Mr K.C. Dubey, Adv.
versus

SUNIL KUMAR MISHRA

..... Respondent

Through: Mr Sanjeev Kumar, Adv.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J. (ORAL)

1. This writ petition under Articles 226 and 227 of the Constitution of India moved by petitioner challenges the award dated 07.07.2012 passed by the learned Presiding Officer, Labour Court, Karkardooma Courts, Delhi in DID No.253/2010.
2. The respondent – workman filed a claim petition against the petitioner – management inter alia on the allegation that he worked with the petitioner – management since 1998 as an operator and was getting Rs.18,500/- per month. However, in the month of March, 2008 he was threatened to resign from service by force and was asked not to report for duty with effect from 01.04.2008. The workman requested the petitioner – management to allow him to join duties, but his services were illegally terminated on 31.03.2008 without giving any charge-sheet and without holding any enquiry. The petitioner – management also did not pay any wages from 01.02.2008 to 31.03.2008 amounting to Rs.37,000/- and PF amounting to Rs.58,000/- approximately. A demand notice dated 20.02.2009 was also served upon the management but the management failed to fulfil the demands of the workman. As such he claimed reinstatement in service with full back-wages.
3. The claim of the workman was contested by the management inter alia on the allegations that the workman was never terminated by the management and he himself resigned from the management in February, 2008 and did not join duties. It was not

denied by the management that the workman was in the employment of the management on the post of operator since 1998 but it was denied that his salary was Rs.18,500/- per month. It is alleged that the last drawn wages of the workman was Rs.5400/- per month. The management is ready to pay the legal dues to the workman amounting to Rs.36,273/. No notice of demand was served upon the management. All of a sudden, a legal notice dated 20.02.2009 was received levelling baseless allegations.

4. Both the parties adduced their respective evidence. By the impugned award dated 07.07.2012, the Labour Court directed reinstatement of the workman at the same post with continuity of service. He was also awarded 25% of back-wages, which were to be paid within three (3) months failing which the workman was entitled to recover the compensation amount with interest @ 9% per annum from the date of the award. This award has been challenged by the petitioner – management.

5. The basic grievance of the petitioner – management is that the salary of the workman was Rs.5400/- per month and not Rs.18,500/- per month as alleged by the workman for which he had not placed on record any document. The workman initiated recovery proceedings of his dues against the management @ Rs.18,500/- per month. During the course of arguments, learned counsel for the respondent – workman also submits that although 25% back-wages have been awarded in favour of the workman and, therefore, the workman has initiated execution proceedings for recovery of this amount @ Rs.18,500/- per month which is refuted by the management. A perusal of the impugned award goes to show that the Labour Court has not gone into the aspect as to what was the exact salary of the workman as there is no finding in this regard. Even while awarding 25% of the back-wages, it does not spell out as to on what rate the workman is entitled to get 25% of back-wages. Under the circumstances, since the controversy regarding the exact salary of the workman still remains as such the matter is required to be remanded back to the learned Labour Court for giving a specific finding on this aspect.

6. Learned counsel for the petitioner further submits that in the written statement itself the management had taken the plea that the workman had not adopted due process as enshrined under Industrial Disputes Act, 1947 by approaching the Labour Commissioner or Labour Inspector against illegal termination by the management and

straightway approached the Labour Court. No notice of demand was served upon the management, as such, the claim of the workman was not maintainable. Even no issue in regard to this aspect of the matter was framed by the Labour Court.

7. During the course of arguments, learned counsel for the petitioner – management submits that earlier an offer was given to the respondent – workman to join the management as operator on which he was appointed, however, the workman had declined the offer. It is further submitted by counsel for the petitioner – management that without prejudice to rights and contentions of the petitioner – management, the management is ready to take back the workman on duty as operator at a salary of prevailing rate of minimum wages for unskilled workmen which is Rs.10,010/-. However, the workman, who is present in person in the Court today, submits that he is not ready to join the management on the wages as offered by counsel for the petitioner – management as his salary was Rs.18,500/- per month.

8. Keeping in view all the facts and circumstances, the award dated 07.07.2012 is set aside and the matter is remanded back to the concerned Labour Court for framing a specific issue in regard to maintainability of the claim of the workman and specific finding be also given regarding the exact salary of the workman. The parties be afforded opportunity to lead evidence. It is impressed upon the Labour Court to decide the matter afresh as expeditiously as possible.

LCR be sent back forthwith alongwith a copy of this order.

The parties are directed to appear before the concerned Labour Court on 19.10.2015.

The petition stands disposed of accordingly.

(SUNITA GUPTA)
JUDGE

SEPTEMBER 28 2015/rd