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

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Date of decision: 10th March, 2015

+ W.P.(C) 4547/2013

M/S AGGARWAL TRADERS

..... Petitioner

Through: Mr. Nirmal Mishra, Advocate.

versus

GOVT. OF NCT OF DELHI & ANOTHER

..... Respondents

Through: Mr. Mahesh Ranjan, Advocate for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE V.P.VAISH

VED PRAKASH VAISH, J. (ORAL)

1. The petitioner impugns award dated 02.11.2012 passed by learned Presiding Officer, Labour Court, Karkardooma Courts, Delhi in LIR/D No.157/2010 whereby learned Labour Court decided all the issues in favour of respondent No.2/ workman and granted reinstatement with full back wages and continuity of service and all consequential benefits.

2. Briefly stating the facts of the case are that respondent No.2/ workman filed statement of claim under Section 10(4A) of Industrial Disputes Act, 1947 (hereinafter referred to as 'ID Act') against the petitioner/ Management on the grounds, *inter alia*, that he was working with the petitioner as Machineman w.e.f. 08.05.2002. He was drawing salary of

Rs.5,850/- per month. The petitioner terminated his services w.e.f. 10.05.2010 on the basis of a false allegation which was answered by respondent No.2 on 12.05.2010. When he went to take his salary on 13.05.2010 his services were terminated by petitioner giving a letter dated 11.05.2010 to him. Respondent No.2 sent legal demand notice dated 17.05.2010 which was not replied by the petitioner. The petitioner/ Management filed written statement and alleged that the respondent No.2 was a habitual absentee. On 06.05.2010 the petitioner issued a show-cause notice to the respondent No.2 and sought a reply from him regarding his act of absence insubordination and other misconducts but no reply was given by respondent No.2 and he deliberately avoided letters. Thereby on 11.05.2010 the petitioner terminated respondent No.2 from his services.

3. In the industrial dispute the learned Labour Court framed issues on 15.03.2011. On 03.10.2012 learned Labour Court proceeded ex-parte against the petitioner and finally the impugned award dated 02.11.2012 was passed.

4. Feeling aggrieved by the said award dated 02.11.2012 the petitioner has filed the said petition.

5. Learned counsel for the petitioner urges that the petitioner has already filed written statement and the issues were framed. After framing of issues, the case was adjourned to 12.05.2011 for evidence of workman and again it was adjourned to 02.08.2011. The workman did not adduce any evidence and again case was adjourned for evidence of the workman. He also submits that on 02.08.2011 learned Labour Court directed the authorised representative of the workman to file the affidavit of evidence on the next

date of hearing or a no dispute award would be passed and the case was adjourned to 23.12.2011. Again on 23.12.2011, a proxy of AR on behalf of workman was present and informed the counsel for petitioner that the workman did not lead evidence. Learned counsel for the petitioner also submits that the petitioner was under the impression that no dispute award would be passed.

6. Learned counsel for the petitioner further submits that petitioner management was appearing in other matters filed by the co-workmen and the petitioner did not keep track of the present case and, therefore, could not appear after 23.12.2011 which led to the passing of ex-parte order. The Labour Court did not even bother to issue court notice on the application moved by respondent No.2 on 11.04.2012 for issuing directions to the management for filing record pertaining to employment of respondent No.2.

7. During the course of arguments, Mr. Mahesh Ranjan appearing for respondent No.2/ workman submits that he has no objection, if the petition is allowed and the impugned award dated 02.11.2012 is set aside subject to payment of cost.

8. I have carefully considered the submissions made by learned counsel for the parties.

9. Admittedly, the petitioner had filed written statement to the claim filed by the respondent No.2 and issues were framed on 15.03.2011. The petitioner did not appear and was proceeded ex-parte on 03.10.2012. Thereafter, the impugned award was passed on 02.11.2012. The interest of justice requires that one opportunity should be given to the petitioner to

cross-examine the witnesses of respondent No.2 and to adduce its evidence.

10. Having considered the facts and circumstances of the case and the submissions made by learned counsel for respondent, the petition is allowed and the impugned award dated 02.11.2012 passed by learned Presiding Officer, Labour Court, Karkardooma Courts, Delhi is set aside subject to payment of Rs.5,000/- (Rupees Five thousand) as cost to be paid to respondent No.2. However, it is made clear that only one effective opportunity will be given to the petitioner to cross-examine the witnesses of respondent No.2. Learned Labour Court is directed to pass a fresh award, after affording an opportunity to both the parties, expeditiously and preferably within a period of three months from the date of appearance fixed by this Court before the Labour Court.

11. Both the parties are directed to appear before the concerned Labour Court on 23.03.2015 at 10:00 a.m.

12. With the aforesaid observations, the petition stands disposed of.

(VED PRAKASH VAISH)
JUDGE

MARCH 10, 2015
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