

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

Reserved on: 06.05.2015

Decided on : 07.07.2015

+ **W.P.(C) 8497/2008**

SHRI SUBHASH CHAND

..... Petitioner

Through: Mr S.L. Kathpal, Advocate for
petitioner along with petitioner in person.

versus

M/S PARKASH ENTERPRISES AND THREE OTHERS

..... Respondents

Through: Mr Inderjit Singh, Adv for
respondents No.1 and 2

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

%

1. In the present case, the petitioner had raised an industrial dispute on the ground that his services have been illegally terminated by his Management. The said dispute was referred to for adjudication to the Presiding Officer, Labour Court and was registered as ID No.1158/2001. The petitioner had filed his claim and an *ex parte* award dated 14.03.2005 had been passed in favour of the petitioner, whereby it was ordered that the petitioner (*claimant*) was entitled to reinstatement with continuity in service and 5% of back wages last drawn by him for the intervening period, i.e.,

from the date of termination till publication of the award. The 5% of the back wages were awarded to the workman as the learned Labour Court found that the delay of the proceedings could be attributed to the petitioner and also that he had violated the mandate of law as per Rule 10B(1) of the I.D. Central Rules, 1957.

2. The petitioner, thereafter, filed an execution application for execution of the said award before the Deputy Labour Commissioner and the Labour Commissioner. He also furnished an affidavit dated 07.07.2008 before the Labour Commissioner during the pendency of execution application. The Labour Commissioner passed an order dated 26.09.2008, whereby it had ordered the recovery of a sum of ₹ 7643 from the respondent-employer of the petitioner. It was also observed that the new address of the Management had been supplied by the workman through his affidavit and the recovery be effected from there and the amount be recovered as land revenue under Section 33C(1) of Industrial Disputes Act, 1947 and on recovery of the amount the cheque/draft be made in the name of the workman and be sent for payment to his office. The petitioner has challenged the said order vide this writ petition before this Court.

3. It is submitted that despite the award in his favour, the petitioner

could not be reinstated since the respondent had reportedly closed/sold his factory, i.e., M/s Prakash Enterprises, C-273, Maya Puri Industrial Area Phase-I, New Delhi-110064, but they had started another factory in Kirti Nagar Industrial Area, New Delhi, wherein they were functioning under a different name and style as M/s RGH Exports 53A/1, Rama Road and this fact had been mentioned by him in his affidavit dated 07.07.2008, but the said affidavit was got misplaced and he had to submit the copy of the said affidavit along with the fresh application. It is submitted that the Management had been managing the recovery certificate, i.e., the impugned order and therefore the same be stayed. It is further submitted that the respondent be directed to reinstate him and the award be modified and the quantum of back wages be increased from 5% of last drawn wages to 100% of last drawn wages at current rate of minimum wages which has not been paid to this petitioner till date. It is also prayed that respondents be directed to release his withheld wages for the period 01.08.1999 till 08.09.1999 at the rate of minimum wages of Machineman and his withheld leave salary of Machineman's post for one year .i.e. for 1998 to 1999, at current minimum wages and also the bonus for the said period be also ordered to be released to him.

4. The claim is contested by the respondent. It is submitted by the respondent that they had come to know of the raising of the industrial dispute only when they received the copy of the execution of the award. The award was passed *ex parte* yet they have paid the entire decretal amount to the petitioner. It is further submitted that since the workman has already filed the execution petition for implementation of this award, the award cannot be challenged by him. It is further submitted that it was the petitioner who had abandoned his services when he had met with an accident. It is further submitted that he was working as a Helper and he had been paid the wages of the Helper. It is further submitted that respondent has already closed down its factory, therefore, the petitioner cannot be reinstated. From these facts, it is submitted that the petition is liable to be dismissed.

5. This Court, vide its order dated 21.11.2011, asked the respondents to file an affidavit in support of their contention that the award stood satisfied. Pursuant to this direction, the respondents had filed the affidavit in which they have further reiterated that the manufacturing unit/factory which was started by the respondent in the year 1986, wherein the respondent was working was closed down in the year 1996 and the petitioner was also aware of this fact. It is further submitted during the pendency of the execution

proceedings, they have cleared the awarded amount. It is further submitted that the petitioner has filed an application before the Labour Court, wherein it had stated that payment of 5% back wages was a clerical mistake and the Court vide its order dated 21.02.2008 in Miscellaneous No.9/2007 dismissed the application. On these facts, it is submitted that petition is liable to be dismissed.

6. I have heard the arguments and given due consideration to the rival contentions.

7. Admittedly, in the present case, the award dated 14.03.2015 had been published and in terms of Section 17 of the Industrial Disputes Act and had thus become enforceable. Admittedly, after the award became enforceable, the petitioner had filed an execution petition for execution of the award. It is the case of the respondent that in the execution petition, the respondent had made the payment of the back wages in terms of the award. The reinstatement of the petitioner could not be made due to the reason that the respondent had closed down its factory, wherein the petitioner was employed. This fact has himself been admitted by the petitioner in his affidavit dated 07.07.2008 submitted by him before the Labour Commissioner in the proceedings on his execution application. Since the

petitioner had claimed certain due amount, the Labour Commissioner had issued the Recovery Certificate in exercise of its powers under Section 33C(1) of the Industrial Disputes Act. The petitioner has failed to point out any illegality in the impugned order dated 26.09.2008. The appropriate authority has acted as per the provisions of law. I therefore found no reason to set aside an order passed on the application of the petitioner and in his favour. As far as the claim of the petitioner for reinstatement is concerned, the petitioner has himself stated in his affidavit dated 07.07.2008 that the respondent had closed down his factory. His contention is that respondent had started working in new name. These are finding of the facts and the petitioner is free to take up his issue of reinstatement before the appropriate authority which is bound to act under the relevant provisions of law.

8. The petitioner has also claimed wages at current minimum rate for the post of Machineman. Since the remedy under the relevant provisions of law is available to the petitioner, the petitioner is free to take its remedy under the relevant provisions of law. There is no requirement for this court to exercise its writ jurisdiction. Moreover, it is a mixed question of law and fact which can be adjudicated upon only by a Competent Court of jurisdiction under relevant provisions of law.

9. The present writ petition along with all the pending applications, is, therefore, dismissed, with no order as to costs.

**DEEPA SHARMA
(JUDGE)**

**JULY 07, 2015
BG**

