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

+ **W.P.(C) 6969/2016**

CHETAN EXPORTS & ANR

..... Petitioners

Through: Mr. Yogesh Anand with Mr. Prateek
Kumar and Ms. Sonam Anand, Advocates.

versus

VEENA SHARMA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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09.08.2016

CM APPL. 28603/2016 & CM APPL. 28604/2016 in W.P.(C) 6969/2016

Allowed, subject to all just exceptions.

W.P.(C) 6969/2016 & CM APPL. 28602/2016 (stay)

1. This writ petition under Article 226 & 227 of the Constitution of India impugns (i) the Award dated 07.10.2013 passed by the Presiding Officer, CGIT, Labour Court, Karkardooma, Delhi in Industrial Dispute (I.D.) No. 19/07 as well as (ii) office order dated 16.06.2016 issued by the Deputy Labour Commissioner (South) pursuant to the Award dated 07.10.2013 seeking recovery of an amount of Rs. 4,19,175/- and Rs. 16,675/- from the petitioner nos.1 and 2 through their partners Sh. Shiv Sharan.
2. The impugned award dated 07.10.2013 directed the payment of an amount of Rs.3,50,000/- in lieu of reinstatement. Vide the award dated

07.10.2013, both the Petitioners herein were also directed to pay exemplary cost of Rs.22,000/- and unpaid costs of Rs.2,000/- and Rs.5,000/- imposed on them on 30.08.2012 and 30.10.2012 respectively totalling to Rs.29,000/- to the workman within one month from the date of publication of the award failing which, the same was to be paid alongwith interest @9% p.a. till the realization.

3. The respondent's case before the Labour Court was that she had been working with the petitioner since June, 1991 as a Checker (Repair) at a last drawn salary of Rs.3,500/- per month. However, her services were terminated on 23.10.2006 without any notice, notice pay, retrenchment compensation or payment. It is the petitioner's contention that her salary for the months of September and October, 2006 was not paid to her. She submitted that she worked for the two managements engaged in the same kind of business, i.e., the petitioner as well as M/s. Saran Exclusif which functioned from the same office and the same premises. The employees of one management worked for the other management as per the directions of the said management. Although the two entities were registered separately under ESIC and EPF, they were managed interchangeably by their partners, who were common to both the entities. It was contended that both the managements did not maintain the workmen/employees records properly; they did not issue letters of appointment to the petitioner and did not accord any benefits such as annual leaves, casual leaves, minimum wages, overtime, bonus, salary slip etc. to the employees as per the established norms. Whenever the workmen sought these rights, there were only assurances that the same would be given in due course.

4. The respondent-workman along with other similarly affected female

employees in the two managements became members of the Shahdara General Shramik Union (Regd.) on 03.11.2006 and lodged a complaint with the Office of the Deputy Labour Commissioner through the said Union. They also made a complaint to the Conciliation Officer, Labour Office, Employment Exchange, Pusa Road, New Delhi through their counsel regarding non-payment of earned wages, the termination of their employment and other issues. The management did not reinstate the workmen. The Union also sent demand notices to the management on 03.11.2006, but to no avail. Subsequently, on a joint complaint dated 23.10.2006, Government Labour Inspectors met the proprietor of the management viz. Mr. Shiv Sharan on 06.11.2006, where he stated that payment of earned wages to all workmen will be made on 07.11.2006 in the factory itself, but refused to reinstate the same workmen. This statement was recorded by the Labour Inspectors and it was signed by Mr. Shiv Sharan. However, only the earned wages for October 2006, and that too less than the minimum wages, were paid to and accepted by the workman, albeit under protest, which was noted by the Labour Inspector, Mr. Haridas, in his proceedings on 08.11.2006.

4. It is the workmen's claim that 08.11.2006 was the first time they found out that the managements showed 20 persons to be employees of M/s Saran Exclusif and showed the remaining three persons as the employees of M/s Saran Exclusif . However, upon inspection, the Labour Inspector found the names of only four employees registered in the records of M/s. Saran Exclusif and only three names in the register of M/s. Chetan Exports. The managements failed to produce records of the other 16 employees and it was

subsequently ascertained that the records of payment of earned wages for the month of October 2006 of these 16 employees were obtained on plain paper by obtaining their signatures. The managements admitted that these 16 persons were employees of M/s Saran Exclusif (Management No.1). It is contended that the workman has never left or abandoned the job and was ready to work with the management, and nor has she received any full and final settlement regarding the same.

5. The workman had filed her evidence by way of an affidavit and was cross-examined. The Trial Court held that it was irrefutably established that she had been working with the management at least from 05.05.1992. The testimony of the workman through her affidavit and the testimony of the WW2 Mr. Nain Singh, Secretary of the Shramik Union has gone un-rebutted. Consequently, the Court concluded that the workman had taken prompt action on 03.11.2006 against the order illegally terminating her employment on 23.10.2006. It was also not in dispute that the present claim was filed on 17.02.2007 i.e. within less than four months from the date of alleged termination. Hence, prompt action had been taken by the workman which clearly shows that she was very much interested in continuing her employment. The Trial Court noted that interestingly, no suggestion was put to the workman in her cross-examination, that she was offered the job before the Conciliation Officer. The Trial Court was not persuaded to accept that a workman, who had worked for 14 years would suddenly, all by herself, stop coming to perform her duties and that too without any apparent reason. On the contrary, the management admittedly did not conduct any inquiry into her alleged absence and the employee took prompt action against the petitioners for the illegal termination of her services. Hence, the Labour

Court concluded that the workman was prevented from joining her duties.

6. Through two affidavits: one of November 2007 and another dated 30th May, 2008, the management represented that its manufacturing activities had closed down, however, no specific evidence was led in this regard. Apart from filing their affidavits in the examination-in-chief, the management did not lead any evidence to prove the same. Keeping in mind that seven years had passed since the alleged termination of employment of the workman, the Labour Court felt that it was a fit case where compensation in lieu of reinstatement would be appropriate. Accordingly, on the basis of last drawn salary of Rs.3,500/- per month, as claimed by the workman, along with her statement in the examination-in-chief that she was unemployed since the date of termination of her employment, the Court had directed payment of the aforesaid amounts.

7. The petitioner/management contends that the aforesaid Award was passed without appreciating the documents placed on record in evidence; the employer never terminated the services of the employee, instead the employee herself failed to resume her duties and that she was not entitled to any benefits like annual leave, casual leave, minimum wages etc. Furthermore, it contended that the impugned Award granting compensation was not justified since she was a gainfully employed elsewhere. Lastly, it was contended on behalf of the petitioner that the Labour Court arbitrarily denied the employer the opportunity to lead their evidence and ignored the witnesses of the petitioner who were present before the Court on many occasions.

8. The Court finds that the aforesaid contentions are without basis because the petitioner/management led no evidence to substantiate their

contention, although they were accorded ample opportunity to contest their case. While the management filed their affidavits in evidence, they chose not to present the deponents for cross examination. No evidence was led by the management. The Trial Court also noted that adjournments had been sought by the management to present their witnesses on 30.08.2012 and 30.10.2012 but it defaulted on both the occasions hence costs of Rs.2,000/- and Rs.5,000/-, respectively, were imposed on the management. The Court recorded that:

“During the arguments, it was contended by Ld.ARM that the leading of evidence by the managements was made subject to these costs and, at best, the evidence of the managements can be closed for non payment of these costs and, thus, the managements are not required to pay these costs. I do not find any merits in the contention. The costs were adjourned costs which have to be paid by the managements.”

9. The aforesaid recording of proceedings clearly shows that there was no denial of opportunity to the management to either lead their evidence or to present their case effectively. Indeed, the managements themselves chose not to participate in the proceedings. The Award dated 07.10.2013 has been impugned in this writ petition after almost three years (34 months) seeking setting aside the same at the stage of recovery of the awarded amount. The petition suffers from unexplained inordinate delay and laches. On merits also, no case is made out. Accordingly the petition is dismissed.

NAJMI WAZIRI, J

AUGUST 09, 2016/s/a