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

Date of decision: 27.08.2019

+ W.P.(C) 8329/2019 & C.M. No. 34492/2019 (for exemption)

REENA PATHAK

..... Petitioner

Through: Mr.Ashok Kr. Verma & Mr.Abhay
Kumar, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Manish Mohan, CGSC with
Ms.Manisha Saroha, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition under Article 226/227 of the Constitution of India assails the award dated 30.11.2017 passed by the Central Government Industrial Tribunal, Dwarka Complex (hereinafter “the Tribunal”) in ID No.33/2017. The Tribunal has, on account of the petitioner’s failure to file any claim, passed the impugned award by holding that it was a case of no dispute.

2. The petitioner having joined the respondent No.2-school on 01.11.2006 as a sweeper on contractual basis continued in the said capacity till 01.11.2012. Claiming that her services had been illegally terminated, the petitioner raised an industrial dispute on which a reference to the Tribunal was made by the respondent no.1 on 10.08.2017 in the following terms:-

*“NO - L-14012/15/2017 - IR(DU)
Government of India// Bharat Sarkar
Ministry of Labour/Shram Mantralaya*

New Delhi, Dated : 10/08/2017

ORDER

NO.. L-14012/15/2017 (IR(DU)) : WHEREAS the Central Government is of the opinion that an industrial dispute exists between the employers in relation to the management of CPWD, Coordination Circle (Electrical) and their workmen in respect of the matters specified in the Schedule hereto annexed;

AND WHEREAS the Central Government considers it desirable to refer the said dispute for adjudication;

NOW THEREFORE , in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby refers the said dispute for adjudication to the Cent.Govt. Indus.Tribunal-cum-Labour Court No.2, New Delhi. The said Tribunal shall give its award within a period of three months.

The Schedule

“ Whether the termination of services of workwoman Ms. Reena Pathak and non payment of appropriate wages who worked as Safai karamchari from- 1/1/2006 till 31/10/2012 on renewal basis by the management of Asha School, C/o 505, Army Base workshop, Delhi Cantt is legal and justified. If not, what relief is she entitled to and from which date?”

3. Upon receiving the reference, the Tribunal vide its order dated

01.09.2017 directed issuance of notice to the parties for 13.10.2017. On the said date, none appeared for the petitioner/claimant and the Tribunal, therefore, adjourned the matter to 30.11.2017. On the said date the Tribunal, upon finding that neither had the petitioner/claimant filed any claim nor was anyone appearing on her behalf, passed the impugned award holding it to be a case of 'No Dispute/Claim'.

4. Aggrieved by the impugned award, which has been passed without any claim/dispute being decided, the petitioner/claimant has filed the present petition.

5. Learned counsel for the petitioner submits that after the dispute was referred to the Tribunal, the petitioner never received any notice whatsoever about the initiation of proceedings before the Tribunal, and therefore there was no occasion whatsoever for her to file any claim. He submits that the Tribunal had presumed, without any basis, that the petitioner stood served but had still failed to file any claim. Merely because the postal envelope had not been returned unserved, the Tribunal concluded that the petitioner had been duly served. He submits that the petitioner, having worked at the respondent-school for almost seven years, had approached the respondent no.1 for making a reference to the Industrial Tribunal qua her illegal termination and, therefore, there was no reason as to why she would not be interested in the adjudication of her dispute. He prays that the impugned award be set aside and that the petitioner be granted one opportunity to file her claim statement before the Tribunal which ought to be decided on merits.

6. Issue notice. Mr.Manish Mohan, accepts notice on behalf of

respondents and submits that in view of the limited issue raised in the petition, no counter affidavit is required to be filed. He, however, submits that the present petition is wholly misconceived and contends that the petitioner, having failed to file any claim petition before the Tribunal, has only herself to blame for the impugned award being passed on the premise that it was a case of No Dispute/Claim. He submits that the petitioner's plea that she never received any notice from the Tribunal is merely an afterthought as the record of the Tribunal clearly shows that notice through post was in fact issued to her. He, therefore, prays that the petition be dismissed.

7. I have considered the submissions of the learned counsel for the parties and perused the record.

8. I am of the view that there is nothing at all on the record to show that the postal notice issued to the petitioner was ever served on her. Upon receipt of the reference on 01.09.2017, the Tribunal had directed issuance of notice to the parties for 13.10.2017 and even though the petitioner was unrepresented on the said date, no further notice was directed to be issued to her by the Tribunal. The matter was simply adjourned to 30.11.2017 on which date, after the matter was called out several times, the impugned award came to be passed by holding that the petitioner was not interested in the adjudication of her claim on merits.

9. From a perusal of the impugned award, it is evident that even though there was nothing to show that the petitioner was duly served, the Tribunal had merely proceeded on the basis that once the postal article sent to the petitioner had not been returned unserved it had to

be presumed that due notice had been served on her, especially since it was not a case where the postal services were affected in any manner during the period when notice had been issued to her. In my view, this approach of the Tribunal was not at all in consonance with the scheme of the Industrial Disputes Act, 1947 which is a beneficial piece of legislation. The purpose and aim of this Act is not only to provide a permanent machinery for the settlement of industrial disputes but also aims to improve the service conditions of industrial labour force.

10. The provisions of the Code of Civil Procedure, 1908 are not strictly applicable to any proceedings under the Industrial Disputes Act even though the principles enshrined in the Code may be applied by the Tribunal on a case to case basis. The Tribunal has, in my view, while drawing a presumption against the petitioner, of having been served with due notice, seems to have strictly applied the provisions of Order V CPC while losing sight of the fact that it was dealing with a dispute raised by an aggrieved workman under a special act. In the present case, the workman was a sweeper who claims that no notice issued by the Tribunal was ever received by her. Merely because the solitary postal notice sent to the petitioner did not return unserved, the Tribunal could not have drawn any adverse inference against her on account of her non-appearance. Once the petitioner did not appear despite issuance of notice to her, the Tribunal ought to have made at least one more endeavour to ensure service of notice upon her, especially when an adverse inference was being drawn against her only because of non-return of the unserved notice. This approach of

the Tribunal is wholly unwarranted and, infact, defeats the very purpose for which the Act was enacted.

11. For the aforesaid reasons, the writ petition deserves to be allowed. The impugned award dated 30.11.2017 is set aside and the matter is remanded back to the Tribunal for fresh adjudication. The petitioner is granted four weeks' time from today to file her claim statement before the Tribunal. The parties will appear before the concerned Central Government Industrial Tribunal on 10.10.2019 for further proceedings.

12. The writ petition is disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

AUGUST 27, 2019
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