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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 21.02.2019

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W.P.(C) No.4935/2008

HOLIDAY CLUB

..... Petitioner

Through

Mr.Rajeev Sharma, Adv. with
Ms.Radhalakshmi R., Adv.

versus

GAJRAJ SINGH

..... Respondent

Through

Mr.R.K. Sharma, Adv. with
respondent in person.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

CM No.27183/2017 (Under Section 17-B of the Industrial Disputes Act)

1. This is an application filed by the respondent/workman praying for a direction to the petitioner/management to pay him his last drawn wages from the date of the impugned Award.

2. Before dealing with the rival contentions of the parties, it may be appropriate to note that the writ petition filed on 11th July, 2008, impugns the Award dated 28th June, 2003 passed by the learned Labour Court, Karkardooma Courts at Delhi, whereunder the petitioner has been directed to reinstate the respondent/workman along with 60% of his last drawn wages w.e.f 3rd October, 1988. The record shows that the respondent has been duly represented before this Court from 8th September, 2008 but the present application seeking benefit under Section 17-B of the

Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”) came to be filed only on 17th July, 2017.

3. Upon notice being issued in the application, the petitioner has filed a reply stating that the respondent is gainfully employed and is a man of means. The petitioner has further stated that the respondent has not produced any records or even a bank statement to show that he was not gainfully employed for the last twenty years. The record also shows that this Court had already taken up the present application for hearing on 31st October, 2018 and had directed the respondent to file a better affidavit, after noticing that there was something to be said about how he was sustaining himself for the last fifteen years.

4. Pursuant to the said order, the respondent/applicant has filed an affidavit setting out therein that he has given different floors of his property on lease in lieu of a lump sum amount instead of monthly rent, and he had also raised some loan by pledging his gold. Based on this, the learned counsel for the applicant states that the respondent’s affidavit clearly shows that he has no regular employment and was only letting out a small portion of his property in order to sustain himself and his family. By placing reliance on the said averments, learned counsel for the respondent/applicant states that once there is nothing put on record by the petitioner to dispute the respondent’s averments that he was unemployed, the respondent is entitled to be granted his last drawn wages from the date of the passing of the impugned Award.

5. On the other hand, Mr.Sharma, learned counsel for the petitioner vehemently opposes the application. He contends that the respondent has moved the present application only after a lapse of fifteen years, which in itself shows that he was gainfully employed

elsewhere during the said period. He also draws my attention to the documents filed by the respondent in support of the additional affidavit filed by him pursuant to the directions of this Court, to contend that it is evident that the respondent is a man of means and has other sources of income. He, therefore, prays that the present application be rejected.

6. I have carefully considered the submissions of the learned counsel for the parties and have also perused the contents of the pleadings qua the application, including the additional affidavit. In my view, the respondent/applicant has not at all been able to explain the reason for approaching this Court after a delay of more than 15 years and this obviously creates some doubt that the respondent was perhaps gainfully employed for those years and, therefore, did not want to file any application under Section 17-B of the Act. This fact gains significance in view of the admitted position that the respondent was duly represented before this Court from 2008 when the writ petition was filed.

7. However, in so far as the period after the filing of the application is concerned, the petitioner/non-applicant has only made bald denials to the contentions in the respondent's application and has not been able to rebut the averments therein that he is not gainfully employed and has no other source of livelihood. In these circumstances, I have no other option but to accept the averment of the respondent/applicant on oath that he is not gainfully employed and on this ground alone, the application is entitled to succeed. Be that as it may, on account of the respondent's delay in filing the present application before this Court, which creates some suspicion that he was perhaps gainfully employed elsewhere during that period, I am of the view that the

respondent is entitled to the benefit of his last drawn wages only from the date of the filing of the present application, i.e. 17th July, 2017.

8. Accordingly, the petitioner is directed to pay the last drawn wages of Rs.2,947/- per month to the respondent/workman from 17th July, 2017. The arrears of wages will be paid to the respondent within four weeks. Since the writ petition is also being decided today itself, no further orders are warranted for future payment of wages.

9. The application is allowed in the aforesaid terms.

WP (C) No. 4935/2008

1. By way of the present petition, the petitioner/management has impugned the ex-parte Award dated 28th June, 2003 passed by the learned Labour Court No.IX, Karkardooma Courts, Delhi in ID No.515/1999, directing the petitioner to reinstate the respondent/workman. So far as the respondent's prayer for backwages is concerned, the learned Labour Court has held that since the case had got delayed on account of the absence and negligence of the workman, he was entitled to only 60% of his last drawn wages w.e.f. 3rd October, 1998.

2. The admitted position which emerges from the record is that the respondent had joined the services of the petitioner on 11th July, 1996 and, based on the findings of a domestic inquiry, was dismissed from service on 3rd October, 1998, after being given due opportunity to make a representation against the findings of the inquiry officer in his report dated 17th August, 1998. Aggrieved by his termination, the respondent raised an industrial dispute that was referred to the learned Labour Court, which vide its impugned ex-

parte Award dated 28th June, 2003, directed the petitioner to reinstate the respondent/workman alongwith 60% of his last drawn wages w.e.f. 3rd October, 1998.

3. Pursuant to the impugned Award, the respondent issued a demand notice to the petitioner, on receipt whereof the petitioner moved an application for setting aside the Award. The learned Labour Court rejected the petitioner's aforesaid application, thus leading to the filing of the present petition.

4. Impugning the aforesaid Award, the learned counsel for the petitioner at the outset concedes that there has been some negligence on the part of one of the petitioner's employees, who failed to inform the management of the pendency of the proceedings before the learned Labour Court, on account of which the pp did not appear before the Court. He, however, submits that even while passing an ex-parte Award, it was incumbent upon the learned Labour Court to at least examine the inquiry report, based on which the respondent had been dismissed from service, before coming to the conclusion that the domestic inquiry held against him should be vitiated. He states that once a copy of the inquiry report was duly available with the respondent/workman, who had also submitted his representation against the same, it was imperative for the respondent to place the said report before the Court. By drawing my attention to the detailed inquiry report, he states that the inquiry was conducted strictly in accordance with the principles of natural justice, which is evident from the fact that the inquiry officer had given umpteen opportunities to the respondent to produce defence evidence. He further states that the respondent/workman had also cross-examined the prosecution witnesses at length and, therefore, the respondent's termination

could not be set aside by the Court without even considering the effect of the domestic inquiry.

5. On the other hand, Mr.R.P. Sharma, learned counsel for the respondent while supporting the impugned Award, states that the learned Labour Court could not be faulted for proceeding ex parte against the petitioner and for accepting the uncontroverted averments of the respondent/workman on oath, as the petitioner had despite service of notice, failed to appear before the Court. He states that the fact that the respondent/workman had written a letter to the inquiry officer much before the inquiry proceedings were finalized, pointing out that the inquiry proceedings were not being conducted in a fair manner in itself shows that his report could not be relied upon and was, therefore, rightly not considered by the Court. He, thus, contends that there is no reason for this Court to interfere with the impugned Award.

6. I have carefully considered the submissions of the learned counsel for the parties and perused the records. In my view, there can be no doubt that the petitioner has been utterly negligent in not appearing before the learned Labour Court despite due service of notice upon it and consequently, the learned Labour Court cannot be faulted for relying on the evidence led by the respondent/workman. The issue, however, is slightly different and the question would be whether once it is brought to the notice of the learned Labour Court that the concerned workman's termination is based on a domestic inquiry, is it incumbent upon the Labour Court to at least examine the inquiry report before holding that the termination is illegal? The answer has to be a categorical 'Yes'. In industrial dispute where termination based on a domestic inquiry, is challenged before the Labour Court, it is

incumbent on the Court to first examine the inquiry report and give a categorical finding in respect of the validity and legality of the inquiry before holding the same as illegal. The termination just cannot be set aside without any finding being given qua the inquiry report based on findings whereof, the termination order has been passed. In the facts of the present case, once it is an admitted position that the inquiry report was very much available with the respondent/workman, there is no reason as to why the same was not filed before the Court and there is absolutely no justification as to why the learned Labour Court did not direct the respondent/workman to file the same before it, prior to holding his termination to be illegal. The learned Labour Court which is performing an adjudicatory function, cannot simply act as a rubber stamp and is expected to at least examine the inquiry report before rendering a finding on the termination based on the said report. The impugned Award just does not deal with the inquiry report and can, therefore, not be sustained.

7. For the aforesaid reasons, the impugned Award deserves to be set aside and is, accordingly, quashed. The matter is remanded back to the learned Labour Court to take a fresh decision in accordance with law, after giving an opportunity to the petitioner to file its written statement. However, keeping in view the fact that the petitioner has been grossly negligent, even while remanding the matter back to the learned Labour Court for fresh adjudication, I am of the view that this is a fit case where the petitioner/management should be saddled with heavy costs. Therefore, the petitioner is directed to pay costs of Rs.1,00,000/- to the respondent along with the arrears of wages under Section 17B of the Industrial Disputes Act, within four weeks.

8. The writ petition is allowed in the aforesaid terms. The Registry is directed to forthwith refund back the amount deposited by the petitioner pursuant to order dated 22nd May, 2017, along with upto date accrued interest.

CM Nos.33980/2017 & 17983/2016

In view of the orders passed in the writ petition, these applications are rendered infructuous and are dismissed as such.

(REKHA PALLI)
JUDGE

FEBRUARY 21, 2019/aa..