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

Date of Decision :- 21.10.2019

+ W.P.(C) 2620/2016

VINOD KUMAR AGGARWAL Petitioner
Through: Ms.Tanisha Setia, Adv.

Versus

POONAM MISHRA Respondent
Through: none.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. None appears for the respondent despite passover. In these circumstances, the petition is taken up for final hearing.
2. The present writ petition filed by one of the partners of the erstwhile M/s. G.S. Apparels (hereinafter referred to as 'the Employer') assails the Award dated 24.11.2014 passed by the learned Labour Court-XIX, Karkardooma Courts, Delhi in LIR No.876/11. Under the impugned Award the learned Labour Court has, after holding that the respondent's termination from service was in violation of Section 25F of the Industrial Disputes Act, 1947 ('the Act' for short), directed the Employer to pay her a lump sum compensation of Rs.40,000/-.
3. Claiming to have been appointed as a Thread Cutter with the Employer in January, 2007, the respondent/workman complaining of

having been illegally terminated, raised an industrial dispute on 26.03.2009 challenging her termination from service. Upon a reference being made, the respondent on 22.02.2010 filed her statement of claim before the Labour Court, in response where to the Employer, on 24.09.2010, filed its written statement. The primary stand taken by the Employer was that the respondent had not completed 240 days of service and, therefore, she could not be stated to be in continuous service in terms of Section 25B of the Act. It was further claimed that as the respondent had left the services of the Employer of her own accord, the industrial dispute itself was not maintainable. It appears that after filing the written statement, the Employer remained unrepresented before the learned Labour Court and, therefore, the Court by relying on the unrebutted testimony of the respondent, allowed her claim and directed the Employer to pay her a lump sum compensation of Rs.40,000/-.

4. Assailing this Award, the present petition has been filed by one of the partners of the Employer.
5. Learned counsel for the petitioner submits that the Employer, which was a partnership firm, itself stood dissolved on 31.08.2010 and the Award came to be passed against the said firm on 24.11.2014, on which date it already stood dissolved and the Award, therefore, was not sustainable. She submits that it is only because of the dissolution of the firm that the Employer remained unrepresented before the Labour Court leading to the ex-parte Award. She contends that even if the Employer remained unrepresented, the learned Labour Court could not have ignored the Employer's assertion that the workman

had not been in employment for more than 240 days and was, therefore, not entitled to any benefit under the Act. By placing reliance on the decision of the Supreme Court in ***C.N. Ramappa Gowda vs C.C. Chandergowda (dead) by LRs. & Anr.***, AIR 2012 SC 2528, she contends that even in the Employer's absence, the Labour Court could not have passed an Award in such a mechanical manner without determining as to whether the workman had discharged the onus to prove that she had worked for more than 240 days. She, therefore, prays that the writ petition be allowed.

6. I have considered the submissions of the learned counsel for the petitioner and with her assistance perused the record.
7. In the light of the admitted position that despite the respondent's categorical assertion, both in her claim statement and in her evidence, that she had worked with the Employer for more than 240 days, the Employer failed to produce the relevant records which were in its exclusive possession to rebut her assertion. In these circumstances, the trial Court was justified in drawing an adverse inference against the Employer and relying on the respondent's un rebutted testimony to hold that she had been able to establish that she had rendered her services to the Employer for more than 240 days. In exercise of my writ jurisdiction, I see no reason to interfere with this finding of fact by the Labour Court, which is based on an appreciation of the evidence led before it by the respondent.
8. The petitioner has sought to explain the absence of the Employer before the Labour Court by contending that the firm already stood dissolved on 31.08.2010. However, a perusal of the written statement

filed by the Employer on 24.09.2010 shows that no such plea was taken by it before the Labour Court. In these circumstances, this plea taken by the petitioner cannot be accepted at this stage. Even otherwise, notwithstanding the petitioner's assertion that the partnership firm stood dissolved, the onus of discharging the liabilities of the partnership firm rested on its partners. It was, therefore, incumbent upon the partners of the erstwhile firm, including the petitioner, to defend the proceedings pending before the Labour Court, which it failed to do. I, therefore, see no reason to interfere with the well-reasoned Award passed by the learned Labour Court

9. The petition, being meritless, is dismissed along with the pending applications.
10. In view of the writ petition being dismissed, the Registry is directed to release the amount deposited by the petitioner in favour of the respondent with the interest accrued thereon.

OCTOBER 21, 2019
gm

REKHA PALLI, J.