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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 23rd August, 2021
+ **W.P.(C) 7721/2007**
HAR KISHORE SHARMA Petitioner
Through: Mr. Narender Malawaliya, Advocate.

versus

THE MGMT. OF G.F.R. CO.P.LTD.
(IMPERIAL CABLE) Respondent
Through: Mr. Yash Tandon, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. This matter has been taken up today as 20th August, 2021 was declared a holiday on account of “*Muharram*”.

CM APPL. 12129/2021 (for delay)

3. This is an application for condonation of delay in filing. For the reasons stated in the application, delay is condoned. Application is disposed of.

CM APPL. 12128/2021 (for recall of the order dated 25th July, 2019) & 12130/2021 (for stay) in W.P.(C) 7721/2007

4. CM APPL. 12128/2021 has been filed by the Respondent/Management seeking recall of the *ex-parte* order dated 25th July, 2019 whereby the Award of the Ld. Labour Court dated 04th July 2007 was upheld by the Ld. Single Judge and the compensation awarded to the Petitioner was increased from Rs. 50,000/- to Rs. 4,00,000/-.

5. The brief background of the matter is that the Petitioner was engaged by the Respondent/Management in 1987 and his services were terminated in 1998. He accordingly rendered services for a period of 11 years. The said termination was challenged by the Workman before the Ld. Labour Court and vide the impugned award dated 4th July, 2007, the Labour Court instead of granting reinstatement, granted a lump sum compensation of Rs.50,000/-. The operative portion of the said award reads as under:

“Issue No.2:

The case of the workman is that his services were terminated illegally by the management. On the other hand, the case of the management is that the workman has abandoned his job. In issue No. 1 above it has been held that the workman has not abandoned his job.

The onus to prove this issue is upon the workman. To prove this issue, the workman has filed his affidavit Ex. WW 1/A wherein he has stated that his services were illegally and unlawfully terminated by the management on 30.4.98. Nothing could come out in the cross examination of the workman which could shake his credibility. So, under these circumstances. I am of the view that the workman has proved that his services were illegally terminated by the management on 30.4.98.

The issue is decided accordingly, in favour of the workman and against the management”

xxx xxx xxx

In view of the judgment referred above and the facts and circumstances of the present case, in my opinion, the compensation of Rs. 50,000/- (Rupees Fifty thousands only) if granted to the workman would met the ends of the justice. Accordingly, the workman is granted compensation of Rs. 50,000/- (Rupees Fifty Thousands only).”

6. The Award dated 04th July 2007 was not challenged by the Respondent/Management. However, the Workman challenged said award in the present petition. Notice was served in the writ petition initially on 24th October, 2007. However, on 14th July, 2008, no one had appeared on behalf of the Petitioner. The Petition was dismissed in default for non-prosecution.

7. After a substantial delay of almost 12 years, an application for restoration of the writ petition was filed by the Petitioner herein on 19th November 2018, in which notice was issued by the Id. Single Judge. The said application for restoration was heard on 15th July, 2019 and 25th July, 2019. On 15th July, 2019, the restoration was allowed and the matter was heard. On the said date, one Mr. Pradhuman Gautam, Advocate appeared on behalf of the Respondent-Management. Finally, on 25th July, 2019, in the absence of the Counsel for the Respondent, this Court upheld the Award dated 4th July 2007 passed by the Ld. Labour Court and also increased the compensation from Rs.50,000/- to Rs.4 lakhs. The relevant portion of the said order reads as under:

“xxx xxx xxx

6. This Court is satisfied that the compensation awarded by the Labour Court is inadequate. Considering the length of service of the petitioner and other relevant factors, the compensation awarded by the Labour Court is enhanced from Rs.50,000/- to Rs.4 lakhs.

7. The respondent is directed to pay the enhanced compensation amount within 30 days failing which the respondent shall be liable to pay interest @ 9% per annum.”

8. On the date when this order was passed, i.e., 25th July 2019, there was no appearance on behalf of the Respondent/Management. Thereafter, three applications came to be filed almost three years later seeking recall of the ex-parte order dated 25th July 2019 including condonation of delay, and for stay of the operation of the said order. According to the Respondent/Management, the reason for seeking the restoration is that the Mr. Pradhuman Gautam, Id. Counsel who had appeared on 15th July, 2019 was never authorized by the Respondent-Management. One Mr. Sumitra Singhal, Id. Counsel had been engaged by the Respondent/Management, and the Management was never informed of the order which was passed by the Court. Thus, they could not render proper assistance to the Court on the said date.

9. On merits, Mr. Tandon, Id. Counsel for the Respondent-Management also submits that the Workman had been served letters but he chose not to join. On the other hand, Mr. Narender Malawaliya, Id. Counsel for the Petitioner, submits that the Workman had undergone an amputation due to the injury suffered while he was in service. The said fact ought to be proved on merits. It was due to that fact that the Court had increased the compensation which was granted in the Workman's favour. He submits that the Workman is a senior citizen and deserves to be treated in a compassionate manner. The Respondent/Management has been callous in the manner in which it has defended the present matter.

10. Mr. Tandon, Id. Counsel also highlights the fact that even if the Workman had continued to work in the company, he would have been superannuated in 2001. Thus, the increase from Rs.50,000/- to Rs.4 lakhs is quite high.

11. Mr. Tandon, Id. Counsel for Respondent/Management further submits that the Company has already shut down with effect from 31st March, 2000, and the person who was running the Respondent/Management is himself 80 years of age, and is not conducting any business currently.

12. Mr. Malawaliya, Id. Counsel submits that the compensation should not be reduced because of the fact that the Workman has been awarded compensation of Rs.4 lakhs after the Court had duly considered the same.

13. The Respondent/Management had also challenged the order dated 25th July, 2019 before the Division Bench of this Court. After some hearing in the LPA being ***LPA 83/2021 titled The Management of G.F.R. Co. Pvt. Ltd. v. Har Kishore Sharma***, the Management had sought leave to withdraw the appeal with an application for setting aside of the impugned award. The operative portion of the said order dated 25th February 2021 reads as under:

“xxx xxx xxx

6. After some hearing, the counsel for the appellant Management withdraws this appeal with liberty to approach the Single Judge with an application for setting aside of the impugned order and for consideration of the writ petition on merits, after hearing the appellant.”

14. This Court has considered the submissions of the parties as also the Award dated 4th July 2007. In the said Award, the Labour Court has clearly come to the conclusion that the Workman was illegally terminated but compensation of only Rs.50,000/- was granted. The amount of compensation was enhanced after the writ petition was originally dismissed in default for non-prosecution, and was restored after a period of 12 years since the dismissal. The main counsel for the Respondent/Management does

not appear to have entered appearance in the matter though there is a record of appearance of the proxy counsel. Considering the fact that the Workman would also have been superannuated in 2001, this Court deems it appropriate to modify the award of compensation. Accordingly, it is directed that a sum of Rs. 2.5 lakhs along with the interest which has accrued on the amount of Rs.4 lakhs which is deposited, subject to the deduction of any TDS component, be released in favour of the Workman.

15. The bank account details of the Workman be filed on record within a period of one week.

16. List before the Registrar for ensuring that the amount is released to the Workman on 10th September, 2021. The remaining amount of Rs.1.5 lakhs shall be released in favour of the Respondent/Management.

17. All the applications are disposed of in these terms.

PRATHIBA M. SINGH
JUDGE

AUGUST 23, 2021

Rahul/A