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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 06.09.2019

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W.P.(C) 6191/2016

DHANANJAY CHAUBEY

..... Petitioner

Through Mr.Dan Bahadur Yadav, Adv.

versus

M/S RELIABLE METAL INDIA AND ORS

..... Respondent

Through None.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition under Articles 226 & 227 of the Constitution of India assails the award dated 26.02.2015 passed by the learned Industrial Tribunal-Labour Court, POLC-XVII, Karkardooma Courts, Delhi in I.D.No.273/2014, whereunder the Labour Court upon finding that the address furnished by the petitioner/claimant was non-existent, had closed his right to file a claim and, accordingly, passed a 'No claim' award.

2. The petitioner who was working as an Accounts Assistant with the respondent no.1 since May, 2002, being aggrieved by his termination from service on 28.06.2012 approached the Conciliation Officer under the Industrial Disputes Act, 1947 with a claim petition seeking his reinstatement with backwages.

3. As the conciliation proceedings remained unsuccessful, the Government of NCT of Delhi vide its reference order dated 12.05.2014 referred the dispute to the Labour Court for

adjudication. The claims of two other similarly placed workmen were also simultaneously referred for adjudication to the Labour Court.

4. Upon receipt of the reference by the Labour Court repeated notices were issued to the petitioner at the address furnished in the claim statement filed by him before the Conciliation Officer. The petitioner could however not be served as it was found that he was not residing at the address furnished by him and consequently a 'No claim' award came to be passed by the Labour Court on 26.02.2015.

5. The petitioner upon learning that his claim has been rejected by the aforesaid award moved an application under Order IX rule 13 of the Civil Procedure Code before the Labour Court on 05.11.2015 seeking recall of the award dated 26.02.2015. However, since the award had by then already been published and become enforceable, the Labour Court did not entertain the petitioner's application and the same was dismissed vide order dated 07.01.2016 with liberty to the petitioner to approach the appropriate Court. In these circumstances, the present writ petition impugning the award came to be filed before this Court.

6. Learned counsel for the petitioner submits that the petitioner had never received any notice from the Labour Court and, therefore, he was unable to file any claim petition or appear before the Court leading to a presumption by the Labour Court that he was not interested in pursuing his claim. He submits that the petitioner is still residing at the same address as furnished by

him in his claim statement made before the Conciliation Officer. He submits that if the petitioner had received the notice there was no reason as to why he would not have appeared before the Labour Court as he had been pursuing his claim before the Conciliation Officer since 2012 itself. He, therefore, prays that the impugned award be set aside and the petitioner be granted one last opportunity to file his claim before the Labour Court.

7. Despite repeated opportunities no counter affidavit has been filed by the respondent and, in fact their right to file counter affidavit stands closed vide order dated 14.12.2018. Today, none appears for the respondents despite passover. In these circumstances, the petition is taken up for final hearing.

8. The record of the Labour Court had been requisitioned on the last date and having perused the same, I find that even though the Labour Court had taken great pains to issue notice to the petitioner/claimant at the address i.e. G-2014, Street No.3, Shastri Park, New Delhi 110053 as mentioned in his claim statement filed before the Conciliation Officer, but still the petitioner had remained unserved. It also transpires that upon finding that the petitioner was unserved by ordinary process, the Labour Court had directed the S.H.O, Police Station, Shastri Park, to serve him at the aforementioned address and it is only after the S.H.O had given a report stating therein that there was no house number G-2014 in Street No.3 and there were only 186 houses in G-block, that the Labour Court was constrained to pass a 'No claim' award against the petitioner.

9. The petitioner is present in Court and on a query by this Court, he states that his correct address is G-20/4, Street No.3, Shastri Park, New Delhi-110053 and not G-2014 as stated in his claim statement filed before the Conciliation Officer. It is thus evident that it is only because of the incorrect address furnished by him to the Conciliation Officer that notices issued by the Labour Court could not be served on him. At this stage, learned counsel for the petitioner submits that it was due to an inadvertent oversight on his part that the petitioner's address in the claim statement was wrongly typed as G-2014 instead of his correct address i.e. G-20/4 and he, therefore, prays that the petitioner should not be penalised for the inadvertent mistake on his part.

10. In the light of the aforesaid facts, even though no fault can be found with the action of the Labour Court in passing the 'No claim' award, the petitioner's plea that he did not receive any notice from the Labour Court appears to be correct. There is also merit in the petitioner's contention that if he had received any notice, there is no reason as to why he would not file his claim petition before the Labour Court.

11. In my view it will be a travesty of justice if the petitioner is made to suffer on account of the fault of his counsel, who had furnished the wrong address in the claim statement, leading to the passing of the impugned award. The petitioner who was terminated in 2012 is still desirous of adjudication of his dispute by the Court and, therefore, without commenting further on the counsel's lapse, I set aside the impugned award dated 26.02.2015

and remand the matter back to the concerned Industrial Tribunal, Karkardooma Court, Delhi which is now stated to be situated in the Rouse Avenue Complex, for a fresh adjudication on merits. The matter be listed before the concerned Industrial Tribunal on 24.10.2019 for further proceedings in accordance with law. The petitioner is granted four weeks time to file his claim statement before the concerned Industrial Tribunal.

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

SEPTEMBER 06, 2019

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REKHA PALLI, J