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

+ **LPA 531/2018**

SHASHANK GUPTA

..... Appellant

Through: Mr. Atul T.N., Advocate.

versus

M/S MIRC ELECTRONICS LTD

..... Respondent

Through: Mr. Birendra Kumar, Advocate with
Mr. Ziya ul Rahman, Authorised
Representative for Respondent.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

26.02.2019

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1. There were three writ petitions that were filed before the learned Single Judge challenging the same impugned Award dated 3rd August 2013 of the Labour Court passed in the industrial dispute raised by the Appellant-Workman against the Respondent-Management.

2. The case of the Workman was that after 16 years of service, his services were abruptly terminated without any show cause notice or even an inquiry. The Labour Court while agreeing with the Workman that the termination of his services was illegal, declined the relief of reinstatement. In lieu thereof, the Labour Court directed that the Management will pay the Workman Rs. 5 lakhs as compensation.

3. While W.P. (C) 279/2014 was filed by the Management, W.P. (C) 2410/2015 was filed by the Workman in this Court. By the common

impugned judgment dated 20th December 2016, while dismissing the writ petition filed by the Management, the learned Single Judge disposed of the writ petition filed by the Workman by enhancing the compensation from Rs. 5 lakhs to Rs. 8 lakhs. Thereafter, the learned Single Judge directed as under:-

“8. The employer has already deposited Rs.5,75,000/- with the Registrar General of this Court in terms of the order dated 25 February, 2015 and the said amount is lying in fixed deposit. The balance award amount, after adjusting the maturity amount of the FDR, be deposited by the employer within a period of four weeks from today. In the event of failure of employer to deposit the said amount within four weeks, the employer be liable to pay interest @ 9% after the expiry of the three weeks. The employer shall approach the UCO Bank, Delhi High Court Branch to ascertain the balance in the FDR as on today.

9. Learned counsel for the employer submits that the employee has filed various cases against the employer which he should withdraw before release of the award amount to him. The employee present in Court along with his counsel agrees to withdraw all the cases within a period of two weeks of the deposit of the balance award amount by the employer with the Registrar General of this Court. The award amount shall be released to the employee after the withdrawal of all the cases.”

4. Learned counsel for the Appellant-Workman has urged that no concession was, in fact, made by the Workman agreeing to receive the aforementioned enhanced compensation in lieu of the Workman withdrawing all the cases instituted by him against the Management. He submits that after 16 years of service, the Appellant could not be expected to agree to a token increase of compensation amount from Rs. 5 lakhs to Rs. 8 lakhs. Learned counsel for the Appellant also referred to the decision dated 20th February 2019 passed

by the Supreme Court of India in CA Nos. 1799-1800 of 2019 (***Bharat Heavy Electricals Ltd. v. Mahendra Prasad Jakhmola***) where *inter alia* it was observed that concession made by the lawyer at the stage of arguments on a mixed question of fact and law cannot preclude the party from re-agitating the point in appeal.

5. Learned counsel for the Respondent, on the other hand, maintains that the impugned order was by way of consent and that even the Review Petition No. 100/2017 filed by the Workman before the learned Single Judge was dismissed by an order dated 9th May 2018. The Review Petition was simply dismissed by a single line: “The Review Petition is dismissed.”

6. The above submissions have been considered. While, the observations in ***Bharat Heavy Electricals Ltd. v. Mahendra Prasad Jakhmola*** (*supra*) were made in the context of the evidence led before the Labour Court, as far as the present case is concerned, para 9 of the impugned judgment dated 20th December 2016 of the learned Single Judge appears to suggest that the Appellant-Workman did agree that if the enhanced compensation amount was deposited in this Court by the Management, he would withdraw all the cases instituted by him against the Management.

7. There is, however, no clarity that the Workman, in fact, gave up all his claims against the Management including his claim for reinstatement or for a higher amount of compensation than that granted by the learned Single Judge. Ideally, if the order was passed by way of consent, the proper course to be adopted would be to record the statement on oath of the parties which would make it abundantly clear that the order is a consent order. Since such a course has not been adopted, it has given rise to an ambiguity whether in fact the Appellant-Workman did give a concession as contended by the

Management, or whether he did not give up all his claims as contended by him.

8. In that view of matter, the course that commends itself to this Court is to set aside the impugned judgment of the learned Single judge in toto and restore both W.P. (C) 279/2014 filed by the Management as well as W.P. (C) 2410/2015 filed by the Workman to the file of the learned Single Judge for a decision afresh on merits. The learned Single Judge will decide the petitions afresh uninfluenced by anything said on merits in the earlier judgment dated 20th December 2016 or in this order.

9. Needless to state, the order dated 9th May 2018 passed by the learned Single Judge in Review Petition 100/2017 is also hereby set aside.

10. It is directed that the restored writ petitions will now be listed before the Roster Bench of the learned Single Judge for directions on 2nd April 2019. The learned Single Judge is requested to dispose of both the writ petitions on merits within a period of six months thereafter.

11. The appeal is disposed of in the above terms.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 26, 2019

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