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

Date of Decision :- 20.11.2019

\+ W.P.(C) 10791/2016

CENTRAL COTTAGE INDUSTRIES CORPORATION OF INDIA LTD. ..... Petitioner

Through: Mr.Kumar Abhishek & Mr.Chetan Joshi, Advs.

versus

RADHEY SHYAM .... Respondent

Through: Mr.Syed Sajad Ali, Adv.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

C.M. No.11584/2017 (u/S 17B of the I.D. Act)

1. This is an application filed by the respondent under Section 17B of the Industrial Disputes Act, 1947.

2. It has been averred in the application that vide the impugned award, the petitioner was directed to reinstate the respondent, but despite the respondent's willingness, the petitioner is adamant in not reinstating the respondent. It has been further averred that despite his best efforts, the respondent has not been able to find any alternate employment and is, therefore, finding it very difficult to make his ends meet, since he has no source of income. Though a reply to the present application has been filed, there is no averment therein that

the respondent's plea that he is not gainfully employed, is incorrect.

3. In these circumstances, this Court has no other option but to accept the respondent's stand that he continues to remain unemployed and is, therefore, eligible to receive the benefits under Section 17B of the ID Act. The application, is therefore, entitled to succeed and is accordingly allowed. The petitioner is directed to pay to the respondent the last drawn wages from the date of passing of the award till today. The arrears in terms of this order will be paid to the respondent within a period of 8 weeks.

4. The application is accordingly disposed of.

W.P.(C) 10791/2016 & C.M. No.42258/2016 (for stay)

5. The present writ petition filed by the management assails the *ex parte* Award dated 29.07.2016 passed by the learned Labour Court-1, Karkardooma Courts Complex, Delhi in ID No.135/2015. Under the impugned Award, the petitioner has been directed to reinstate the respondent with full back wages including all consequential benefits.

6. The present writ petition has been filed primarily on the ground that the petitioner did not receive any notice from the Labour Court regarding pendency of an Industrial Dispute or regarding filing of the claim petition by the respondent and therefore was unable to present its defence before the Court.

7. Learned counsel for the petitioner submits that the petitioner had been diligently appearing before the Conciliation Officer and therefore there was no reason as to why the petitioner would not have

appeared before the Labour Court on receiving of any notice from it.

8. Pursuant to the directions of this Court, the record of the Labour Court has been received, perusal of which shows that upon receiving the reference, the Court passed the following orders on 03.06.2015:-

> *"Fresh reference has been received. Let it be registered. Notice to the parties may be issued for 10.08.2015 for filing of statement of claim".*

9. It is noted that on 10.08.2015, neither the claimant nor the management was present and the Court without examining as to whether the respondent had been served, simply adjourned the matter for 01.10.2015 for filing of claim statement. On 01.10.2015, the Court, after noticing that the claim statement had been filed, adjourned the matter for 24.11.2015 directing written statement to be filed. On the next date though, the Court directed issuance of fresh notice to the management for 12.01.2016. But on the said date, the Court, without even verifying whether any fresh notice had been issued or served on the petitioner, proceeded *ex parte* against the petitioner and listed the matter for ex-parte evidence of the respondent-claimant on 08.03.2016 and thereafter proceeded to pass the impugned Award on 29.07.2016.

10. Learned counsel for the petitioner submits that in view of the aforesaid facts it is evident that the petitioner was never served with any notice and on this ground alone, the Award is liable to be set aside.

11. Learned counsel for the respondent is not in a position to

dispute the aforesaid submissions and merely states that once the order passed by the Labour Court records that the petitioner had failed to appear before the Court there is no reason why this Court should interfere with the impugned Award. He therefore prays that the writ petition be dismissed.

12. Having heard the learned counsel for the parties and perused the record with their assistance, I am constrained to observe that the Labour Court has proceeded ex parte against the petitioner and passed the *ex parte* Award in a most mechanical manner without even examining whether the petitioner had ever been served. There is nothing on the record to show that the petitioner was ever served with notice of the claim petition and therefore, there is no reason to disbelieve the petitioner's averments that it was never served with any notice from the Labour Court.

13. In these circumstances, the Award cannot be sustained and is therefore liable to be set aside. While setting aside the impugned award, the matter is remanded back to the Labour Court for fresh adjudication.

14. In order to expedite the fresh adjudication of the industrial dispute, the parties are directed to appear before the Labour Court on 08.01.2020. The petitioner is granted four weeks time to file its reply to the claim petition. Rejoinder thereto, if any, be filed by the respondent/claimant within four weeks thereafter.

15. It is made clear that this Court has not expressed any opinion on the merits of the rival claims of the parties and it will be open for the Labour Court to examine the case on its own merits in accordance

with law.

16. The writ petition along with pending application is disposed of in the aforesaid terms.

REKHA PALLI, J.

NOVEMBER 20, 2019
'SDP'