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

Date of Decision:- 08.01.2020

+ W.P.(C) 5180/2016, CM Nos.12772/2017, 18849/2017, 18851/2017, 24453/2017, 36008/2017, 42762/2017, 2107/2018, 8242/2018, 12492/2018, 8609/2019 and 12984/2019

NARESH KUMAR

..... Petitioner

Through: In person.

versus

PRESIDING OFFICER LABOUR COURT & ANR..... Respondent

Through: Mr. K. Ananthraman, Adv. for R2.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition filed by the workman assails the order dated 05.05.2016 passed by the Labour Court- XVI, Karkardooma Courts in ID No. 83/13 rejecting his application seeking recall of the 'No Dispute Award' passed on 29.01.2015.

2. The petitioner, joined at the post of clerk-cum-cashier at the respondent no.2 Bank in its Chuna Mandi, Paharganj, New Delhi Branch, on 21.04.1990. Aggrieved by his dismissal from service by the Bank on 29.05.2000, the petitioner raised an industrial dispute before

the Labour Court which came to be dismissed vide the No Dispute Award dated 29.01.2015. The learned Labour Court took into account that the petitioner had not appeared before it w.e.f. 24.07.2007 till 23.07.2011 and from 16.04.2014 till 21.01.2015, had failed to produce any evidence in support of his claim, before concluding that the petitioner claimant was not interested in pursuing his dispute against the management. It is the petitioner's claim that he only came to know of the No Dispute Award belatedly, i.e. on 20.07.2015, whereafter he moved an application seeking to set aside the No Dispute Award. However, the petitioner's recall application also came to be dismissed by the Labour Court on 05.05.2016, which order of dismissal has been impugned in the present petition.

3. During the course of arguments, the petitioner, who appears in person, submits that he is primarily aggrieved by the 'No Dispute Award' passed by the Labour Court on the presumption that the petitioner had wilfully not been appearing before the Court and was, therefore, not interested in pursuing his dispute against the Management. The petitioner concedes his absence before the Labour Court on some dates, but contends that the respondent as also the Labour Court were duly informed that he was, during this period, pursuing his remedies before this Court and the Hon'ble Supreme Court against some interim orders passed by the Labour Court. In furtherance of this submission, he avers that he had preferred WP(C) No. 8740/2011 before this Court in 2011, which petition came to be allowed vide order dated 10.07.2014, whereafter he was compelled to prefer another writ petition being WP(C) No. 6333/2014, which finally

came to be disposed of on 21.11.2014. He submits that he had, thereafter, preferred LPA No.707/2014 which came to be dismissed by this Court on 13.01.2015, compelling him to approach the Supreme Court by way of SLP Nos.11875-77/2015. It is only when these SLPs came to be dismissed on 27.04.2015, that he took steps to lead evidence before the Labour Court, but was shocked to learn that a 'No Dispute Award' had already been passed against him on 29.01.2015. Immediately thereafter, he preferred an application seeking recall of the 'No Dispute Award', which was passed in his absence without giving him adequate opportunity to lead evidence or make submissions. However, he submits that the Labour Court has rejected his application for recall without appreciating the factual position. He, therefore, prays that the writ petition be allowed by setting aside the impugned order dated 05.05.2016 as also the Award dated 29.01.2015 and the matter be remanded to the Labour Court for expeditious disposal after granting opportunity to lead evidence to both sides.

4. On the other hand, learned counsel for respondent no.2, while supporting the impugned order submits that the petitioner did not give any valid justification for his continued non-appearance before the Labour Court for such a long period. He, thus, contends that once the petitioner, despite repeated opportunities, had failed to duly appear or lead evidence to prove his claim, the Labour Court could not be faulted for passing the 'No Dispute Award' after coming to the conclusion that the petitioner was not interested in pursuing the matter. He submits that the petitioner's recall application merely made a reference to the pending proceedings before this Court without giving any explanation

as to why he could not appear before the Labour Court even on dates when his writ petition was not listed before this Court.

5. At this stage, it may be noted that in the present petition there are 12 applications filed by the petitioner which are currently pending, wherein the primary allegation levelled by him is that the respondents are relying on forged documents and, therefore, appropriate action should be taken against them.

6. I have heard the petitioner in person and learned counsel for respondent no.2 at length and perused the record with their assistance.

7. Having considered the rival submissions of the parties, although I find merit in the plea of the respondent no.2 that the petitioner was not as vigilant in pursuing his industrial dispute as he was expected to be, the fact remains that in the period during which the petitioner failed to appear before the Labour Court between 2011 to 27.04.2015, i.e., when the impugned award and the order dated 05.05.2016 were passed, he was appearing in person and pursuing his matters before this Court and the Supreme Court. It cannot, therefore, be said that the petitioner was not interested in pursuing his dispute before the Labour Court. In these circumstances, even though the petitioner's absence can, at best, be treated as negligence, it cannot be said that the same was deliberate.

8. Further, while determining the merit in the petitioner's prayer for remand of the dispute to the Labour Court, this Court must be mindful of the fact that the ID Act is a beneficent piece of legislation which has been set up to promote industrial peace, improve service conditions of industrial labour force and, by levelling the power

relationship between the employer-workmen, facilitate resolution of disputes arising between them. Therefore, the entire mechanism seeks to ensure that a workman is empowered to raise his claim, have the same adjudicated as per the principles of natural justice and, undauntedly, seek a fair redressal of his grievances. Thus, despite finding merit in the respondent No.2's plea that the petitioner was negligent in not appearing before the Labour Court on some dates, the petitioner's plea that it was not a case of his wilful non-appearance before the Labour Court cannot be ignored. I am, therefore, of the view that in the facts of the present case, depriving the petitioner of his right to prove his claim would be premature and inconsistent with the aim and object of this special social welfare legislation. In any event, since no evidence had been led by either of the parties before the Labour Court and the matter was still at the preliminary stages, it would be in the interest of justice, to grant the petitioner one more opportunity to have his claim adjudicated on merits. The impugned order and Award are, therefore, liable to be set aside so as to enable the petitioner to have his claim adjudicated on merits.

9. Accordingly, the writ petition is allowed by setting aside the order dated 05.05.2016 as also the award dated 29.01.2015. The matter is remanded to the Labour Court for fresh adjudication and, as prayed for, the petitioner is granted 12 weeks' time to file his evidence by way of affidavit of all his witnesses. The parties will appear before the Labour Court on 29.04.2020, on which date the petitioner will tender his affidavits of evidence in Court. The Labour Court will, thereafter, proceed to decide the dispute in accordance with law after granting

opportunity to the respondent no.2 to lead its evidence.

10. As the writ petition itself is being allowed, the pending applications do not survive and are rendered infructuous. It is, however, made clear that despite pleadings on this aspect, this Court has not examined the merits of the petitioner's claims in the industrial dispute raised by him. It will, therefore, be open to both sides to take all pleas before the Labour Court, as permissible under law, including the plea sought to be taken by the petitioner that the documents relied upon by the respondent no.2 are forged as also the plea sought to be taken by the respondent no.2 that the industrial dispute itself is not maintainable.

11. Keeping in view the fact that the matter has remained pending before this Court for a very long time, the learned Labour Court is requested to expeditiously deal with this matter, without granting any unnecessary adjournment to either of the parties.

12. The writ petition, along with pending applications, is disposed of in the aforesaid terms.

JANUARY 08, 2020

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REKHA PALLI, J.