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

Date of Decision: 17th August, 2021

+ **W.P.(C) 7642/2019 & CM APPLs. 31816/2019, 11919/2021**

M/S SHEEL BIOTECH LTD

..... Petitioner

Through: Mr. Vaibhav Kalra & Mr. Varun
Kalra, Advocates.

versus

RAM BAHADUR YADAV

..... Respondent

Through: Mr. Jatin Mongia & Mr. Akshit
Mohan, Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present petition challenges the impugned award dated 27th November, 2018 by which the Respondent has been reinstated along with full back wages and continuity of service.
3. The brief facts are that the Respondent was appointed as a Digital Marketing Manager on 9th June, 2016 with the Petitioner-Management. His services were terminated on 26th December, 2016, though it is the claim of the Management that the Respondent left on his own. Be that as it may, immediately after termination a complaint was filed by the Respondent with the Deputy Labour Commissioner and conciliation proceedings were commenced. The Management appeared in the conciliation proceedings and filed a reply. However, conciliation failed. The Respondent then filed a complaint before the Labour Court, in which summons were issued to the Management. However, for various reasons, the Management did not enter appearance. The explanation given by the Management is that there was

construction and renovation going on in its office/premises and hence, the summons were not noticed in time. This led to the passing of the impugned *ex-parte* award dated 27th November, 2018.

4. Mr. Vaibhav Kalra, Id. counsel appearing for the Management submits that even though the Management did not appear before the Labour Court, the Court had a duty to see as to whether even the basic precondition of employment of one year, which is required to be satisfied under Section 25B of the Industrial Disputes Act, 1947 has been satisfied or not. He submits that, admittedly, the Respondent has worked only between 16th May, 2016 to 27th December, 2016, which is also noticed by the Labour Court. Thus, the mandatory condition of 240 days had not been satisfied for the Respondent to have invoked the provisions of the Industrial Disputes Act, 1947. Id. counsel submits that on this very ground, the impugned award is liable to be set aside.

5. Further, it is argued that the excuse being given by the Respondent that there was a resignation and a three months' notice period, which would have to be counted as part of the period of employment, is also a false plea, which is clear from the fact that this plea was not raised, either in the demand letter or in the claim petition which was filed before the Labour Court.

6. On the other hand, Mr. Jatin Mongia, Id. Counsel appearing for the Respondent submits that the Management has deliberately not appeared before the Labour Court. The plea of the Management that the summons were not received and construction was going on is a sham plea and the same is not liable to be accepted inasmuch as in similar petitions of this very Management, an identical plea has been raised. The timing of the plea is also

not genuine. Ld. counsel further submits that after the impugned award was passed on 27th November, 2018, the Management chose to challenge the same on 16th July, 2019 and 50% of the awarded amount was deposited only in December, 2019. During this entire period from 2016 to 2021, the Respondent was employed only for a period of eight months between August, 2019 to March, 2020. In any event, it is submitted that apart from the awarded amount and the reinstatement, the Respondent is also entitled to amounts under Section 17B of the Industrial Disputes Act, 1947, which is not affected by the merits of the matter. He further submits that the Respondent would like to bring an end to this litigation as the dispute has been going on since 2016 and he does not have the financial strength to fight the Management.

7. This Court has considered the merits of the application under Section 17B of the Industrial Disputes Act, 1947, as also the impugned award. Insofar as the impugned award is concerned, there is no doubt that the Management has remained *ex-parte* and it is not even the case of the Management that notice was not issued to them. The Management had also participated in the conciliation proceedings. There was no justifiable reason for the Management to not appear before the Labour Court.

8. Insofar as the non-employment for a period of 240 days is concerned, the plea of the Management could not be placed before the Labour Court as it remained *ex-parte*. The relevant paragraphs of the impugned award are extracted hereinbelow:

*“2. As per the workman he was employed with the management **since 16.05.2016** on the post of Manager at a monthly salary of Rs. 25000/-.*

*3. It is claimed that the management was not providing the facilities like appointment letter, weekly and yearly leave, overtime, bonus and other allowances and when the same were demanded, the management **terminated him on 27.12.2016** without any notice.”*

9. The above extract of the impugned award shows that the Respondent was admittedly appointed on 16th May, 2016 and terminated on 26th December, 2016 and this was noticed by the labour court. The issue of whether the 240 days precondition under Section 25B was satisfied or not ought to have been considered by the Labour Court. There is no discussion whatsoever in the impugned award on this issue.

10. Insofar as the relief that is to be granted *qua* the application under Section 17B of the Industrial Disputes Act, 1947 is concerned, it is noticed that the Management has been completely callous in challenging the impugned award after a period of almost nine months. Even the deposit of 50% of the awarded amount has only been made in December, 2019. Further, this writ petition has been pending since July, 2019. As this is an application under Section 17B, the merits of the case cannot be gone into.

11. It is the settled legal position that reinstatement need not be granted in every case. In the overall facts and circumstances, in order to bring an end to the dispute between the parties, this Court is of the opinion that a lump sum compensation could be paid to the Respondent, instead of reinstatement.

12. The Management has also been negligent in not appearing before the Labour Court and also in filing the present writ petition after a period of one year from the date of the impugned award. Under the overall facts and circumstances of this case, taking into account the rights of the Respondent under Section 17B of the Industrial Disputes Act, 1947 as also the negligence of the Management in this case, this Court is of the opinion that the amount which is lying deposited in this Court, along with the interest accrued thereon, can be released to the Respondent as lump-sum compensation.

13. Mr. Jatin Mongia, Id. counsel submits that this arrangement is acceptable to the Respondent.

14. Accordingly, the present writ petition is disposed of with the direction that the amount which is lying deposited in this Court, along with the interest accrued thereon (after deducting TDS on the interest component as per the applicable rules) be released to the Respondent as lump-sum compensation within a period of two weeks. All pending applications are also disposed of.

15. The impugned award dated 27th November, 2018 stands modified in the above terms, with the relief of lump sum compensation instead of reinstatement with full backwages and continuity of service.

16. In view of the fact that both parties have agreed to the writ petition being disposed of in the above terms, the merits of the issues are not gone into.

17. The Registry is directed to release the said amount to the Respondent directly into his bank account, details of which shall be placed by Mr.

Mongia, ld. counsel for the Respondent, before the Cash Branch.

18. List before the Registrar on 15th September, 2021 for reporting compliance.

19. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRATHIBA M. SINGH
JUDGE

AUGUST 17, 2021

Rahul/C

(Corrected and released on 21st August, 2021)