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

Date of decision: 3rd August, 2021

+ **W.P.(C) 7644/2019 & CM APPLs. 31819/2019, 12324/2021**

M/S SHEEL BIOTECH LTD

..... Petitioner

Through: Mr. Vaibhav Kalra, Advocate.

versus

RAM MOHAN NAG

..... Respondent

Through: Mr. Abhishek Singh, Mr. J. Amal Anand, Mr. Elvin Joshy and Ms. Divya Kumra, Advocates along with Respondent in person.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. The present petition has been filed by the Petitioner – Management (*hereinafter, 'Management'*) challenging the impugned award dated 17th November, 2018 by which the Respondent-Workman (*hereinafter, 'Workman'*) has been reinstated with full back wages along with continuity of service and all other consequential benefits. The operative portion of the award reads as under:

“8. As already discussed above, the management though proceeded ex parte has also not come forward to cross examine the claimant w.r.t. his deposition and accordingly, the said deposition remained uncontroverted and unrebutted and accepted as such on its face value.

9. Hence, the court has come to the conclusion that the services of the claimant were terminated without following the procedure of law.

10. In these circumstances, the claimant is held entitled to

the relief of reinstatement with full backwages along with continuity of services and all other consequential benefits.”

3. The Workman was appointed as a Data Entry Operator vide appointment letter dated 24th September, 2012 on a monthly salary of Rs.10,000/-. It is the case of the Management that the Workman was promoted on 4th May, 2016 with a salary of Rs.18,000/- p.m. w.e.f. 1st April, 2016. However, certain disputes arose between the parties, leading to a reference dated 2nd August, 2017. The question which was framed in the reference was as under:

“Whether Sh. Ram Mohan Nag S/o Sh. Manglu Nag age-36 years (Mobile No.- 9015589864) is absconding from the duty; and if not, his services have been terminated illegally and/or unjustifiably by the management; and if so, to what relief is he entitled and what directions are necessary in this respect?”

4. The said reference was sent to the Labour Court. In the Labour Court, notice was issued to the Management on 5th February, 2018 and on the next date, being 24th April, 2018, the matter was again adjourned to 2nd August, 2018. However, on both these dates, the Management did not enter appearance. The evidence of the Workman was then taken on record and the impugned award dated 17th November, 2018 was passed. The workman was not cross examined. An application was moved by the Management under Order IX Rule 13 CPC seeing the setting aside of the impugned award. In the said application, it was directed on 8th March, 2019 that the entire awarded amount be deposited, after which notice would be issued in the matter. However, the Management failed to deposit the same and finally, due to non-compliance of the order of deposit, the application under Order IX Rule 13

CPC was dismissed.

5. The present writ petition has, thereafter, been filed before this Court wherein notice was issued on 17th July, 2019. Vide order dated 24th October, 2019, the Court directed deposit of 50% of the awarded amount with the Id. Registrar General of this Court. The said amount of Rs.1,80,000/- stands deposited with the Id. Registrar General.

6. Mr. Vaibhav Kalra, Id. counsel appearing for the Management submits that the Management did not appear initially when notice was issued as there was construction/renovation going on in the offices of the Management. It was only on 10th December, 2018 that the summons was traced and by then, the impugned award had been passed. He further submits that the Workman is a person who has made complaints against the Management with several authorities and he has been harassing the Management in some way or the other.

7. It is submitted that the Workman himself has a company which he has incorporated, called M/s Niram Infracom Developers Pvt. Ltd. The date of incorporation of the said company is May, 2016 i.e., the time when the Workman was working with the Management. Mr. Kalra, Id. Counsel submits that the Workman is duly occupied and employed and hence, the Management ought to be given an opportunity to lead its defence as it has a very good case on merits. He, further, submits that the impugned award does not have any discussion on merits at all. The Labour Court has blindly accepted the case of the Workman in an award which is just three pages long. He submits that while passing an award, the Labour Court ought to have considered the merits of the matter, inasmuch as if the Workman was offered promotion and he was enjoying a promotional post, the Labour Court itself would not have

jurisdiction to decide the matter.

8. On the other hand, Mr. Abhishek Singh, Id. counsel appearing for the Workman through the DHCLSC submits that the Management has deliberately avoided appearing before the Labour Court. Even the statements made by the Management in their various pleadings are contradictory. It is submitted that the Management is nothing but a fence sitter whose bona fides are in severe doubt. He submits that the Management had an opportunity to defend themselves before the Labour Court in order dated 8th March, 2019, when deposit was directed. However, the Management chose not to avail the opportunity. It was only when show cause notice was given by the Labour Commissioner for non-compliance was the present writ petition filed. According to the Workman, this is a fit case for upholding the impugned award.

9. Heard Id. Counsels for the parties. A perusal of the various orders and the explanation given by the Management shows that the Management does not dispute the fact that the summons was, in fact, received. In the application under Order IX Rule 13 CPC, the plea of the Management is that the summons was traced on 10th December, 2018. The relevant portion of the application reads as under:

“4. That This Hon'ble tribunal was please to issue summon to the management/Respondent vide order dated 05.02.2018 and same is returnable on 24.04.2018.

5. That during the month of March to May 2018 renovation in the office of the management/Respondent was going on and summon send to the management by the Hon'ble court was got misplaced during aforesaid renovation period.

6. That the same could not be traced by the management till 10th December 2018. It is submitted that when the Management/Respondent traced the summon and thereafter applied for certified Copy of proceeding/order of present case.”

10. Thus, summons is clearly served on the Management and the mere plea of construction/renovation cannot be accepted unequivocally. Moreover, the Labour Court also granted the Management sufficient opportunity in the application under Order IX Rule 13 CPC for deposit of the awarded amount. However, even that order was not complied with and the opportunity given to the Management was not availed of. To the extent that the Workman has argued before this Court that the bona fides of the Management may be in doubt, this Court is of the opinion that the Management could have easily appeared before the Labour Court and ensured that its defence on merits was put forth.

11. However, this Court also does not approve of the manner in which the impugned award dated 17th November, 2018 has been passed. The award has no discussion whatsoever on the merits of the Workman's claim. It appears that the Labour Court did not even see the fact that there was a clear admission on record by the Workman that a promotion was granted to him. Such basic facts ought to have been noticed by the Labour Court, even if the Management was being proceeded against *ex parte*. The impugned award is completely sketchy and bereft of any discussion on merits. The documents relating to the incorporation of the company, while he was in the course of employment with the Management is also a fact that deserves to be probed a bit further, especially due to the clear stipulation in the appointment letter in clause 7.

The said clause reads:

*“7. **OTHER WORK**: Your position is a whole time employment with the company and you shall devote yourself exclusively to the business of the company. You will not take up any work for remuneration (part time or otherwise) or work in advisory capacity or be interested directly or indirectly (except as shareholder or debenture holder) in any other trades or business during the employment with the company without written permission of the Management.”*

As per the said clause, the workman had to exclusively work for the Management. Mr. Abhishek, Id counsel for the workman submits that the said company has not conducted any business. However, these documents and facts surrounding the same will need to be looked into by the labour court. The same cannot be ignored especially because the incorporation of the company is not denied at this stage.

12. In the overall facts and circumstances of this case, this Court is of the opinion that the Management deserves an opportunity to file its defence and lead evidence before the Labour Court. Reinstatement, being of a permanent character and having long lasting effects on the Management, the Management should be given an opportunity to lead its defence before the Labour Court, however, subject to heavy costs.

13. In this Court, Rs.1,80,000/- has already been deposited by the Management and the same is kept in a fixed deposit. Considering the overall facts and circumstances, the Registry is directed to release a sum of Rs.1,00,000/- to the Workman directly along with the interest which has accrued on the entire deposit, after deduction of TDS on the interest component, as per rules. Out of the said amount, Rs.50,000/- would be

adjusted as costs, the remaining Rs.50,000/- would be a protem payment to the Workman, which would be subject to the final order that may be passed by the Labour Court.

14. The Management is now permitted to file its written statement on or before 31st August, 2021. Evidence shall be filed along with the written statement itself. An opportunity to cross-examine the Workman shall be given by the Labour Court to the Management on a specific date. On the said date, the Management shall also lead its evidence. Either way, the entire matter would be disposed of by the Labour Court on or before 15th October, 2021. The Management shall not be given any adjournments in this matter. After paying a sum of Rs.1,00,000/- and the interest amount to the Workman, the remaining amount would be refunded to the Management.

15. This Court has not examined the merits of the contentions of the parties. The Labour Court would decide the matter on its own merits, without being influenced by the observations in this order.

16. With these observations, the present petition, along with all pending applications, is disposed of.

PRATHIBA M. SINGH
JUDGE

AUGUST 3, 2021

dj/T

(corrected & uploaded on 10th August, 2021)