

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 1560 of 2019

[Smt. Narmadabai wd/o Premdas Dongare ..vs.. M/s. Karankumar Bhimsen Enterprises through its proprietor, Mahal, Nagpur and ors.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. D. A. Sonwane, Advocate for the petitioner
Mr. A. S. Shukla, Advocate for respondent no. 1
Mr. A. D. Mohgaonkar, Advocate for respondent nos. 2 and 3

CORAM : ANIL S. KILOR, J.

DATED : 8-8-2023

The order setting aside *exparte* award directing respondent no. 1 - employer to reinstate the petitioner along with full back wages is under challenge in this writ petition.

2. It is submitted that despite the service was made on the respondent no. 1, he chose not to appear in the matter before the Labour Court and accordingly Labour Court proceeded *exparte* against respondent no. 1 and passed the award.

3. It is submitted that the bailiff report and the Form IX which relates to notice to file written statement in a reference before the Labour Court show that the notices were served on one Mr. Mohit Usarbase. It is the case of the petitioner that the learned Labour Court, while setting aside the *exparte* award, has not considered the said fact in right perspective.

4. On the other hand, the learned counsel for respondent no. 1 has pointed out that no notice was served upon respondent no. 1 and the alleged service on

one Mohit Usarbarse cannot be said as notice served upon respondent no. 1 in absence of any evidence produced by the petitioner that he is a person who is related with respondent no. 1. It is submitted that on the contrary, the petitioner himself in reply stated the names of the brothers of the proprietor of respondent no. 1-firm and name of none of the brothers is Mohit. He therefore submit that the learned Labour Court has rightly observed that it is doubtful on whom the notice was served. It is further pointed out that bailiff report shows that notice was served upon respondent no. 1, however, the said bailiff was not examined by the petitioner to establish the said fact. It is, therefore, submitted that the impugned order is just and proper and needs no interference.

5. In the light of rival contentions, I have perused the record and the impugned order. Learned Labour Court while allowing the application and setting aside the *exparte* award has arrived at a conclusion that there is no sufficient evidence available on record to say that the notice was served upon respondent no. 1. The Labour Court has held that no negligence could be attributed to respondent no. 1 in not appearing in the matter. Accordingly, the application was allowed and a condition to pay Rs. 3,000/- was imposed.

6. After going through the reasons recorded by the Labour Court, I do not find any perversity or illegality committed by the Labour Court. However, considering the prejudice caused to the petitioner, the costs imposed i.e. Rs. 3,000/- (Rupees Three Thousand Only) is not just

and fair and, therefore, I am of the opinion that it should be modified to Rs. 10,000/- (Rupees Ten Thousand Only) and accordingly the petition is disposed of without interfering with the impugned order.

7. The costs shall be paid to the petitioner within four weeks from today.

[ANIL S. KILOR, J.]

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