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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + **W.P.(C) 13201/2019**

Date of Decision: **13.09.2023****IN THE MATTERS OF:**

M/S. PECON SOFTWARE LTD.,
 THROUGH ITS DIRECTOR/MANAGER
 PECON TOWER, PREMISE NO 4-315
 AA-ID, NEW TOWN, RAJARHAT (NORTH 24
 PNGS) PETITIONER
 KOLKATA, WEST BENGAL-700156

..... PETITIONER

Through:

Mr. Mohit Seth, Advocate.

Versus

MD. MAZHAR
 HOUSE NO: E 476, STREET NO. 14,
 SHASTRI PARK, NEW DELHI-110053

....RESPONDENT NO. 1

MD. TAUSEEF
 HOUSE NO. B-24, GALI NO 2, NEAR
 JAIN MANDIR, SHASTRI PARK, NEW
 DELHI-110053

....RESPONDENT NO. 2

NANTO BISWAS
 HOUSE NO. A 162/35 BULAND
 MASJID, DELHI- 110053

....RESPONDENT NO. 3

DEEPAK YADAV
 51, GANDHI SADAN, MANDIR MARG, NEW
 DELHI-110001

....RESPONDENT NO. 4

THE GENERAL IVIANAGER,
 MAHANAGAR TELECOM NIGAM LTD.



....RESPONDENT NO. 5

Through: None for R-1 to 4.
Mr.Sumit Chander and Mr.Gurdeep
Chauhan, Advocates for R-5.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioner, *vide* the instant writ petition seeks to challenge the impugned orders dated 06.03.2019 passed by the Regional Labour Commissioner (*hereinafter referred as to 'concerned authority'*), whereby, the claim of the respondents has been allowed with respect to difference of minimum wages. *Vide* order dated 06.09.2019, the review application filed by the petitioner has also been rejected.
2. A perusal of the impugned order dated 06.03.2019 would indicate that there were four applications filed under Section 20(2) of the Minimum Wages Act, 1948 (*hereinafter referred to as the 'Act of 1948'*) by the respective workman and the same were registered as Case No.30, 31, 32 and 92 of 2018.
3. The petitioner, *vide* the instant writ petition seeks to challenge the impugned award with respect to all four workmen.
4. It is to be noted that the petitioner was required to file four separate writ petitions. Since, the same has not been done, therefore, the challenge to the award passed with respect to three cases, cannot be considered in the instant writ petition and instead, the instant writ petition is treated to have been filed only with respect to Case No.30/2018 titled as '*Md. Mazhar vs.*



The General Manager, MTNL and Anr.'

5. Taking note of the facts of Case No.30/2018, this court proceeds to decide the instant writ petition.

6. Learned counsel appearing on behalf of the petitioner while challenging the impugned award dated 06.03.2019 submits that after receiving of the notice, the petitioner engaged Mr. Sandeep Kumar, Advocate as its counsel, however, the said counsel did not appear on subsequent dates of hearing; and accordingly, the impugned award has been passed *ex-parte* by the Concerned authority.

7. He places reliance on Form-IX of the Minimum Wages (Central) Rules, 1950 (*hereinafter referred to as the 'Rules of 1950'*) to contend that if the counsel engaged by the petitioner did not appear, the concerned authority was under an obligation to issue summons to the petitioner in Form-IX of the Rules of 1950.

8. He also submits that even if there was no contest by the petitioner, the concerned authority ought to have satisfied itself with respect to justification of the claim raised by the workman before the said authority. He then contends that there is no justification recorded by the concerned authority; and therefore, in the absence of sufficient material, the impugned award deserves to be set aside as according to him, the findings are perverse.

9. This court has directed for issuance of notice to the respondents. Despite service, there is no representation on behalf of respondent nos.1 to 4. Respondent no.5 is represented through its counsel.

10. I have heard the submissions made by learned counsel appearing on behalf of the petitioner and perused the record.



11. As far as the submission *qua* issuance of summons in Form-IX is concerned, a bare perusal of Section 20(2) and Section 21 of the Act of 1948 would indicate that a notice in Form-IX is required to be issued to the opponent to appear before the Authority when an application under Section 20(2) and Section 21 of the Act of 1948 is entertained.

12. It is not the case of the petitioner that no notice of an application was received by the petitioner which has been entertained by the concerned authority.

13. Admittedly, the notice was received and the counsel was duly engaged but the counsel of the petitioner did not appear. However, the concerned Authority was not under an obligation to re-summon the petitioner, if the appointed representative remain absent when the matter is called out.

14. It is settled law that if summons are duly served upon a party and on his non-appearance or remaining absent on subsequent dates, the court is not under an obligation to re-issue the summons for ensuring his presence, rather the court is justified to proceed *ex-parte* against such party. The same has been prescribed under Order 9 Rule 6 and 8 of the Code of Civil Procedure, 1908. The said provisions are reproduced herein below:

“Rule 6. Procedure when only plaintiff appears.—(1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then—

(a) When summons duly served.—if it is proved that the summons was duly served, the Court may make an order that the suit shall be heard ex parte.

Rule 8. Procedure where defendant only appears.—Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court



shall pass a decree against the defendant upon such admission, and where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.”

15. It is, thus, seen in the instant case that the authority has rightly proceeded *ex-parte* against the petitioner on account of his non-appearance either in person or through his counsel, and hence, no fault can be found in the decision taken by the concerned authority.

16. The submission made by learned counsel appearing on behalf of the petitioner is that the concerned authority did not record any satisfaction with respect to the difference of the minimum wages payable to the workmen.

17. A perusal of the impugned order would clearly indicate that the concerned authority has observed that the claimants have claimed the difference of minimum wages for various months as has been indicated in the chart showcasing the details of the payments made by the petitioner to the respondent. The concerned authority has concluded that for the months of June 2016 to April 2017, the minimum wages were Rs.12,662/- and the actual wages paid was Rs.10,921/-; and accordingly, there was a difference of a sum of Rs.1,741/- in wages.

18. The concerned authority has also noted that the Mahanagar Telecom Nigam Ltd., i.e., MTNL had taken an unequivocal stand before the concerned Authority that they were not aware of the calculation as demonstrated before the said Authority.

19. It is, thus, seen that the impugned award cannot be said to be passed without application of mind or on non-existent material. The concerned Authority has also awarded compensation on account of suffering by the concerned workman.



20. The Hon'ble Supreme Court has observed in catena of judgements that the jurisdiction of High Court under article 226 and/or 227 of the Constitution of India, is not appellate but a supervisory jurisdiction and hence, it should not interfere with the orders passed by the labour courts and industrial tribunals if they are passed after exercising the discretion judicially. It has been observed that the High Court while exercising its jurisdiction under Articles 226 and/or 227, the interference by the court should be minimum just to ensure that the wheel of justice does not come to a halt.

21. However, there is not a complete bar on such interference by the court as a writ of certiorari can be issued only for correcting errors of jurisdiction committed by inferior courts or tribunals or if the decision so passed by the sub-ordinate authorities suffers from serious error of law apparent on the record of the case.

22. The Hon'ble Supreme Court in the case of ***Iswarlal Mohanlal Thakkar vs Paschim Gujarat Vij Company Ltd. & Anr.***¹ has discussed the scope of the High Court under Article 226/227 in interfering with the orders passed by the tribunals and courts inferior to it, has held as under: -

“15. We find the judgment and award of the Labour Court well-reasoned and based on facts and evidence on record. The High Court has erred in its exercise of power under Article 227 of the Constitution of India to annul the findings of the Labour Court in its award as it is well settled law that the High Court cannot exercise its power under Article 227 of the Constitution as an appellate court or reappreciate evidence and record its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court. The Labour Court in the present case has satisfactorily exercised its original jurisdiction and

¹ (2014) 6 SCC 434



properly appreciated the facts and legal evidence on record and given a well-reasoned order and answered the points of dispute in favour of the appellant. The High Court had no reason to interfere with the same as the award of the Labour Court was based on sound and cogent reasoning, which has served the ends of justice.

16. It is relevant to mention that in *Shalini Shyam Shetty v. Rajendra Shankar Patil* [(2010) 8 SCC 329], with regard to the limitations of the High Court to exercise its jurisdiction under Article 227, it was held in para 49 that:

“49. (m) ... **The power of interference under [Article 227] is to be kept to the minimum to ensure that the wheel of justice does not come to a halt** and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.”

It was also held that:

“49. (c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it.”

Thus, it is clear, that the High Court has to exercise its power under Article 227 of the Constitution judiciously and to further the ends of justice.”

23. The above position of law has been reiterated by the Hon’ble Supreme Court in the case of *Rengali Hydro Electric Project v. Giridhari Sahu*² wherein the court after relying upon catena of judgements has held as under: -

“20. An erroneous decision in respect of a matter which falls within the authority of the Tribunal would not entitle a writ applicant for a writ of certiorari. However, if the decision relates to anything collateral to the merit, an erroneous decision upon which, would affect its jurisdiction, a writ of certiorari would lie.

24. It is therefore, well settled that the decision of the subordinate authorities, having jurisdiction to determine the issue is not liable to be

² (2019) 10 SCC 695.



questioned in proceedings under Article 226/227 of the Constitution, however, a writ of certiorari could be issued only to correct an error of law.

25. A perusal of the impugned award dated 06.03.2019 indicates that a total sum of Rs.4,51,800/- has been awarded to four workmen. So far as the argument with respect to rejection of the subsequent review application on 06.09.2019 is concerned, it is to be noted that the same has been filed after 30 days from the date of the passing of the impugned order. Therefore, the same has rightly been rejected by the concerned Authority.

26. In view of the aforesaid, this court is not inclined to entertain the instant writ petition. The same is, therefore, dismissed.

PURUSHAINdra KUMAR KAURAV, J

SEPTEMBER 13, 2023

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