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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 12965/2019 & CM APPL 52858/2019

Date of Decision: **21.09.2023**

IN THE MATTER OF:

M/S ANOKHI FASHION
THROUGH ITS SOLE PROPRIETOR
MRS. GUNITA AHUJA
C/O S-38, GREATER KAILASH-2
NEW DELHI-110048 PETITIONER
Through: Mr. Rajiv Arora, Advocate

Versus

MD. LAL MOHAMMAD
S/O SH. ABDUL GANI
ALL INDIA GENERAL MAZDOOR TRADE UNION (REGD.)
170, BAL MUKUND KHAND,
GIRI NAGAR, KALKAJI, NEW DELHI-110019
..... RESPONDENT
Through: Mr. Sumit Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioner in the instant writ petition is aggrieved by the impugned *ex-parte* award dated 29.11.2018 and the subsequent order dated

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28.05.2019, whereby conditional order for recalling the order dated 29.11.2018 was passed. The petitioner also challenges the order dated 24.07.2019, whereby, its application under Order IX Rule 13 of the Code of Civil Procedure (hereinafter 'CPC') has been dismissed.

2. The facts of the case would show that the respondent-workman filed an application for making a reference to the Deputy Labour Commissioner who, in turn, *vide* reference order dated 14.12.2010 made the reference to the court of Additional District and Sessions Judge-Karkardooma Courts, Shahdara, for adjudicating following issue:-

“(a) Whether Md. Lal Mohammad S/o Sh Abdul Gani absented from his duties unauthorisedly or 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.”?

3. After the reference was taken up for consideration, the respondent-workman filed his statement of claim. According to respondent-workman, he was employed with the management since 08.01.2003 for the post of an Embroidery Man at a monthly salary of Rs.6,200/-.

4. The respondent-workman further stated that since he was not being provided the necessary facilities as per various labour laws, despite repeated requests, the management then, being annoyed with the petitioner, terminated his services w.e.f. 12.11.2007 without any notice. The management was served with the notice and since no one appeared on behalf of the management, the concerned court proceeded *ex-parte* against the management *vide* order dated 29.11.2018.



5. After considering the evidence and material available on record, the court below answered the reference in favour of the respondent-workman and directed for reinstatement with full back wages and continuity of service.

6. After the management was served with the demand notice, an appropriate application for recall of the order was filed, which was considered *vide* order dated 28.05.2019.

7. *Vide* order dated 28.05.2019, the concerned court directed for recall of the order, subject to deposit of 75% of the awarded amount by virtue of demand draft. The management thereafter moved another application pointing out various difficulties, as to why the onerous condition of deposition of 75% amount cannot be complied with and has undertaken that instead, the management is ready to furnish collateral security in the form of property papers or to furnish a Bank Guarantee allowing the management to maintain adequate liquidity in their account. It appears that the said application was also dismissed *vide* order dated 24.07.2019 and, therefore, the petitioner is before this court. The order dated 24.07.2019 reads as under:-

“Present: - None for the applicant / management.

The matter is fixed today for the purpose of consideration of the application moved on behalf of the applicant for modification of order dated 28.05.2019 whereby on an application under Order 9 Rule 13 CPC moved on behalf of the applicant for setting aside order dated 05.12.2018 an order was passed directing the applicant / management to deposit 75% of the award amount by virtue of Demand Draft as a

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precondition for issuance of notice of the application to the non applicant / workman.

Now by virtue of the present application it is submitted on behalf of the applicant that the applicant was a proprietorship concern which has since stopped its operation w.e.f. 21.11.2009 and the proprietor being Senior Citizen is not having financial position to comply with the order dated 28.05.2019 and accordingly, modification is sought that instead of depositing of 75% of the award amount, the applicant be granted permission to deposit the said amount by way of collateral security in the form of property papers or bank guarantee etc.

The court has given considerable thought to the averments made in the application and is not at all satisfied with the submissions / averments made therein.

There is no documentary proof filed on record w.r.t. the so called financial position of the proprietor of the management in order to support the averments made out in the application.

Furthermore, perusal of the order dated 28.05.2019 makes it clear that the court has passed the said order after taking into account the conduct of the applicant / management during the course of pendency of the original claim/petition.

Accordingly, finding no merit in the application, the application stands dismissed.

Furthermore, as the order dated 28.05.2019 stand not complied with by the applicant / management, the application under Order 9 Rule 13 CPC moved on behalf of the applicant / management also stand dismissed.

File be consigned to Record Room after completing due formalities."

8. Learned counsel appearing on behalf of the petitioner points out various reasons including the reason of illness of the petitioner. Learned counsel for the petitioner has specifically pointed out that the medical



documents clearly demonstrate that *Mrs. Gunita Ahuja*, proprietor of the petitioner-management being an old lady, aged about 73 years at the time of receiving of summons could not attend two hearings before the concerned court and accordingly, the concerned court has proceeded *ex-parte* against the management. He also submits that the entire unit of the management has now been shut down and, therefore, the order of reinstatement cannot be implemented. He also points out that even the order passed by the court below is bereft of any merit and no reasons are explained as to why the respondent-workman is entitled for reinstatement that too with full back wages.

9. Learned counsel appearing on behalf of the respondent-workman opposes the submissions made by learned counsel for the petitioner. He points out from page no.62 of the petition that ample opportunity of hearing was extended to the management.

10. Learned counsel appearing on behalf of the respondent-workman further submits that despite service of notice, if no one appears on behalf of a party, then the court is bound to proceed *ex-parte* and to deal with the matter on merits. He submits that on the basis of the material available on record, the court has come to the conclusion that the termination of the respondent-workman was illegal and improper and accordingly the order of reinstatement with full back wages has been passed.

11. Learned Counsel for the respondent-workmen further submits that once the termination was found to be illegal, reinstatement is the necessary



relief and the same has to be awarded with full back wages. He, then, submits that in the instant case, there is no evidence produced by the management to indicate that the workman was gainfully employed, therefore, the order of reinstatement with full back wages cannot be found fault with.

12. I have considered the submissions made by learned counsel for the parties and have perused the record.

13. Extract of the impugned award reads as under:-

AWARD

The Dy. Labour Commissioner, Govt of NCT, Delhi while exercising his power u/s 10 (I) (c) and 12 (5). of the Industrial Dispute Act (hereinafter refer to as the Act) r/w notification . No.F- 24(357)/Lab/SD/2008/l6150 dated 14.12.2010 has sent the following reference to this court for adjudication :-

"(a) Whether Md. Lal. Mohammad s/o Sh. Abdul Gani absented form His duties unauthorisedly or his services have been terminated illegally and/or unjustifiably by the management; and if so, to what reliefs is he entitled and what directions are necessary in this respect"?

PART-A

REFERENCE/CLAIM

- 1. After being called upon, the workman filed statement of claim.*
- 2. As per the workman he was employed with the management since 08.01.2003 on the post Embroidery Man at a monthly salary of Rs.6,200/-.*
- 3. It is claimed that management was not providing the facilities as per the various labour laws and when they were demanded, the management terminated him on 12.11.2007 without any notice.*
- 4. A demand letter dated 07.12.2007 clamming reinstatement and the allowance was sent by registered post but the same was neither replied nor acted upon.*
- 5. The workmen thereafter approached the Labour Commissioner who summoned the management but it failed to appear therein and accordingly*
- 6. the above reference to this court.*
- 7. The workmen also claimed that since the date of his termination, he is unemployed.*

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PART-B
MANAGEMENT'S STAND /REPLY

8. *The management despite being served with notice of claim petitioner did not put up appearance and accordingly proceeded ex/parte vide dt.29.11.2018.*

PART-C
WORKMEN'EVIDENCE

9. *In support of his claims workmen examined himself as ww1 and deposed along the lines of statement of claims and also proved record documents in support.*
10. *The management has also not come forward to cross examine the claimant.*

PART-D
FINDINGS/CONCLUSION

11. *After considering the claim, reply, documents and the evidence lead on record decision court is as under-*
12. *As the management has not come forward to file any Written Statement or to cross examine the claimant or to lead its own evidence the evidence of the claimant remain unconverted and unrebutted and as such accepted on its face value.*
13. *Hence, the claimant is held entitled to the relief of reinstatement with full back wages and continuity of service.*
14. *Reference answered accordingly.*
14. The sole reason, assigned in the finding/conclusion paragraphs, is that the management has not filed any written statement and has not cross-examined the workman. The same cannot be the only reason for accepting the claim put forth by the respondent-workman. The concerned court was to deal with the material available before it and only then to arrive at a finding as to how the claimant/workman is able to prove the case of illegal termination. There is no reason whatsoever much less a good reason. The order of judicial body cannot possibly be mechanical.



15. The Hon'ble Supreme Court in the case of ***Uttar Pradesh State Road Transport Corporation Vs. Jagdish Prasad Gupta***¹ has held that it is the duty of the court to ensure that reasons are provided so as to introduce clarity in the order indicating the application of mind thereby avoiding arbitrariness in the decision. The relevant paragraph nos. 8, 9 & 10 are reproduced hereunder:-

“8. “5. ... Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the [High Court's judgment] not sustainable. ...

6. Even in respect of administrative orders, Lord Denning, M.R. in Breen v. Amalgamated Engg. Union [(1971) 2 QB 175 : (1971) 2 WLR 742 : (1971) 1 All ER 1148 (CA)] observed : (WLR p. 750 G) ‘The giving of reasons is one of the fundamentals of good administration.’ In Alexander Machinery (Dudley) Ltd. v. Crabtree [1974 ICR 120] it was observed:

‘Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.’

Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the ‘inscrutable face of the sphinx’, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The ‘inscrutable face of a sphinx’ is ordinarily incongruous with a judicial or quasi-judicial performance.”

¹ (2009) 12 SCC 609



[*Ed.* : As observed in *State of Punjab v. Bhag Singh*, (2004) 1 SCC 547, pp. 550-51, paras 5-6.]

9. “3. ... This Court in *State of Orissa v. Dhaniram Luhar* [(2004) 5 SCC 568 : (2008) 2 SCC (Cri) 49] has while reiterating the view expressed in the earlier cases for the past two decades emphasised the necessity, duty and obligation of the High Court to record reasons in disposing of such cases. The hallmark of a judgment/order and exercise of judicial power by a judicial forum is to disclose the reasons for its decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. ... Any judicial power has to be judiciously exercised and the mere fact that discretion is vested with the court/forum to exercise the same either way does not constitute any licence to exercise it at whims or fancies and arbitrarily as used to be conveyed by the well-known saying: ‘varying according to the Chancellor’s foot’. Arbitrariness has been always held to be the anathema of judicial exercise of any power, all the more so when such orders are amenable to challenge further before higher forums. ... Such ritualistic observations and summary disposal which has the effect of, at times, ... cannot be said to be a proper and judicial manner of disposing of judiciously the claim before courts. The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind. ...

4. The attempt to draw an analogy on the power of this Court under Article 136 of the Constitution of India and the practice of rejecting appeals at the SLP stage invariably without assigning reasons with the one to be exercised while dealing with [a writ petition] has no meaning and is illogical. First of all, the High Court is not the final court in the hierarchy and its orders are amenable to challenge before this Court, unlike the obvious position that there is no scope for any further appeal from the order made declining to grant special leave to appeal. It has been on more than one occasion reiterated that Article 136 of the Constitution does not confer any right of appeal in favour of any party as such and it is not that any and every error is envisaged to be corrected in exercising powers under Article 136 of the Constitution of India. The powers of this Court under Article 136 of the Constitution are special and extraordinary and the main object is to ensure



that there has been no miscarriage of justice. That cannot be said to be the same with [a writ petition]....” [Ed. : As observed in State of Rajasthan v. Sohan Lal, (2004) 5 SCC 573, pp. 575-77, paras 3-4.]

The above position is highlighted in Vishnu Dev Sharma v. State of U.P. [(2008) 3 SCC 172 : (2008) 1 SCC (L&S) 596] (SCC pp. 173-74, paras 8-9).

10. In the circumstances the impugned order of the High Court is clearly unsustainable and is set aside. The matter is remitted to the High Court to hear Civil Miscellaneous Writ Petition No. 52959 of 2005 to be disposed of by a reasoned order. There shall be no order as to costs. The appeal is disposed of accordingly.”

16. The Hon’ble Supreme Court in the case of **Kranti Associates (P) Ltd. V. Masood Ahmed Khan**² made the following observations:-

“47. Summarising the above discussion, this Court holds:

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
- (b) A quasi-judicial authority must record reasons in support of its conclusions.*
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
- (e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.*
- (f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
- (g) Reasons facilitate the process of judicial review by superior courts.*

² (2010) 9 SCC 496



(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37].)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

17. It is thus seen that the impugned award itself is found to be bereft of



any reason and accordingly suffers with material illegality. Accordingly, the same deserves to be set aside.

18. In view of the aforesaid, this court finds that the impugned award is unsustainable and, therefore, the same is set aside. Accordingly, the petition is disposed of along with the pending application.

19. The matter, is however, remitted back to the concerned court for its fresh disposal after extending appropriate opportunity of hearing to the parties.

20. The parties shall appear before the concerned court on 16.10.2023 alongwith the copy of the order passed today.

21. Let the amount deposited by the petitioner in terms of the order dated 09.12.2019 passed by this court, be sent to the concerned court. The same shall remain subject to further orders to be passed by the concerned court.

22. The amount be kept in interest bearing FDR in auto renewal mode.

23. The court below would deal with the matter afresh strictly in accordance with law, without being influenced by any of the observations made in the instant order.

PURUSHAINDRA KUMAR KAURAV, J

SEPTEMBER 21, 2023

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