



2024:DHC:1952



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 28th February, 2024**
+ **W.P.(C) 2724/2024 and CM APPL. Nos.11114-15/2024**

MOHD RAFI ANWARI TRADING PVT LTD Petitioner
Through: **Mr.Aditya Gaur, Advocate**

versus

MOHD NAZIR Respondent
Through: **Nemo**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner vide the present petition under Article 226 of the Constitution of India seeks the following reliefs:

- “a) Set aside the exparte order dated 6.2.2020 passed by Ld. Joint Labour Commissioner, Authority Under Minimum Wages Act, 1948, Labour Deptt, Govt of NCT, Delhi, Pushpa Bhawan, Pushp Vihar, New Delhi in a Case No.MW /SD/38/2018/2011 titled as Mohd Nazir Vs. Mohd Rafi Anwari Trading Pvt Ltd, vide which the petitioner is directed to pay Rs.50,808/towards difference arrears of minimum wages to the respondent for the period June 2017 to November 2017 alongwith two time penalty of Rs.1,01,616/ on awarded amount total Rs.1,52,424/- to respondent.*
- b) Set aside the order dated 28.1.2021 and 30.11.2023 passed by Dy Labour commissioner (South East), Labour Deptt., Govt of NCT, Delhi, Labour Welfare Centre, Bal Mukund Khand, Giri Nagar, Kalkaji, New Delhi vide which the applications for setting aside exparte order dated 6.2.2020 filed by the petitioner was dismissed.*



2024: DHC: 1952



c) Pass any other or further order, as this Hon'ble Court may deem fit and proper in the interest of justice."

2. The respondent ('respondent workman' hereinafter) started working in the petitioner entity in the year 2016 with last drawn wages of Rs. 8000/- per month. Due to non-adherence to the minimum wages as provided for by the Government of Delhi, the petitioner filed a claim bearing no. MW/SD/38/2018/2011 before the Labour Department seeking adherence to the statutory mandate of minimum wages.
3. In the year 2018, the learned Joint Commissioner ('Court below' hereinafter) passed an *ex parte* award dated 6th February, 2020 ('impugned award' hereinafter) in favour of the respondent workman, thereby, directing the petitioner to pay Rs.50,808/- towards arrears of minimum wages along with two times penalty of Rs.1,01,616/- on the awarded amount.
4. Thereafter, the petitioner preferred an appeal against the award dated 6th February, 2020, however, the same were dismissed by the learned Court below *vide* orders dated 28th January, 2021 and 30th November, 2023.
5. Aggrieved by the same, the petitioner has preferred the instant petition.
6. The learned counsel appearing on behalf of the petitioner submitted that the impugned award is improper, unjust and bad in law and therefore, is liable to be set aside.
7. It is submitted that the learned Court below failed to appreciate the fact that the claim application was filed by the respondent workman to harass the petitioner and for the sole reason to extort money from the



2024:DHC:1952



petitioner entity.

8. It is submitted that the learned Court below erred in not appreciating the law of the land and wrongly awarded the compensation much higher than the statutory limit.

9. It is further submitted that the petitioner had misplaced the files related to the claim application and therefore, he could not participate in the proceedings, leading to passing of an *ex parte* award against it.

10. In view of the foregoing submissions, the learned counsel appearing on behalf of the petitioner, prays that the present petition be allowed, and reliefs be granted as prayed.

11. Heard the learned counsel for the petitioner and perused the records.

12. The petitioner has preferred the instant petition against the *ex parte* award on the grounds of non-grant of opportunity to be heard.

13. To supplement the claim of *bona fide* mistake on his part, he has contended that the files pertaining to the claim application were misplaced during shifting of the office premises.

14. As per the settled position of law, the findings of fact reached by the Appellate Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings, therefore, leaving the scope of the issuance of the said writ limited to the question of illegality committed by the Court below.

15. Therefore, it is clear that this Court cannot re-appreciate the evidence in the present case, rather need to adjudicate the same with regard to illegality (*if any*) committed by the learned Court below.



16. In order to ascertain whether the impugned award suffers from any illegality or not, this Court deems it appropriate to examine the contents of the said award, which read as under:

1. Vide this order I shall disposed of claim application filed on 19/02/2018 by claimant under section 20 (2) of Minimum Wages Act, 1948. (Herein after referred as an Act)

*2. Claimant **Mohd. Nazir S/o Sh. Nurul Hoda** contented in his application that he was working with respondent from 22.01.2016 as a hand embroidery on last drawn wages Rs. 8000/- per month with full honesty and devotion, there was no complaint against him to the respondent, during his tenure of service period. It is further submitted that respondent was not providing any legal facilities to claimant such as notified minimum wages Rs. 16,468/- by the Delhi Govt. as per his designation which is the violation of provision of Minimum Wages Act, 1948. It is further submitted that respondent terminated his service w.e.f 14.12.2017. It is further submitted that respondent management was not providing notified minimum wages for the period of June 2017 to November 2017 Rs. 16,468/- per month for category of his work. While he was being paid Rs. 8000/- thus respondent management paid less wages Rs. 8,468/-. In this regard claimant send demand notice dated 16.01.2018 with the request to the respondent management to pay difference arrears of minimum wages for the month of June 2017 to November 2017 Rs. 50,808/-. In the last claimant prayed that direction to be issued to respondent to pay difference arrears of minimum wages Rs. 50,808/- for the period of June 2017 to November 2017 along with penalty.*

3. Summon was issued to the respondent with direction to appear before this authority to file his reply/defence in the matter. On 04.12.2018 AR of management was appeared in the proceeding and copy of claim was provided with



direction to file reply. But thereafter respondent did not appear on any date hence he was proceeded Ex Parte on 04.07.2019 and matter was fixed for evidence of claimant. Claimant filed his statement by way of affidavit Ex WW 1/A on 16.11.2019. The contents of affidavit are corroborative of those claim petition and statement of claimant was also recorded on 12.12.2019. Claimant also filed documents Ex WW 1/1 to Ex WW 1/4 i.e. copy of demand notice dated 16.01.2018, Postal receipt, copy of complaint addressed to Dy. Labour commissioner dated 14.12.2017, copy or proceeding labour inspector 28.12.2017 to 28.06.2018. Claimant also filed written submission on record.

4. Since respondent did not defend the matter despite given sufficient opportunity hence he was proceeded Ex parte on 04.07.2019, hence I have left no option except to consider claim of claimant. Accordingly, I hold that claimant Sh. Nazir is entitled to receive difference arrears of minimum wages for the period of June 2017 to November 2017 @ Rs.8,468/- from the respondent management along with two time penalty on awarded amount.

5. In view of discussion I direct respondent management M/s Mohd. Rafi Anwari Trading Pvt. Ltd., to pay Rs. 50,808/- towards difference arrears of minimum wages to claimant Sh. Nazir for the period in question along with two time penalty Rs. 1,01,616/- on awarded amount which comes total Rs. 1,52,424/- to claimant Sh. Nazir by way of demand draft in his favour within 30 days from the date of order, failing which, ordered amount shall be recovered as per provisions of the Act.

6. Order is announced in the open court today i.e. on 06.02.2020

17. The perusal of the impugned award shows that pursuant to filing of the claim application by the respondent workman, the learned Court below



had issued summons to the petitioner to appear before them and adduce their counter, which were duly complied by the petitioner and the AR who had appeared before the learned Court below.

18. The impugned award also clarifies that the claim application was filed by the respondent workman due to alleged non-adherence to the statutory provisions pertaining to disbursement of minimum wages.

19. However, in the subsequent proceedings, no one appeared from the petitioner's side and therefore, leading to passing of the *ex parte* award. Therefore, the contention regarding the petitioner being completely oblivious to the proceedings cannot be accepted as the representative of the petitioner was present in the first hearing and had duly filed the statement of claim.

20. The material on record, i.e. the impugned award clearly suggests that the respondent workman was underpaid and was getting half of the wages as mandated under the relevant statutes and even after passing of the impugned award, the petitioner did not comply with the same, rather preferred to appeal to the higher authority, which was also dismissed.

21. The petitioner's non-appearance in the subsequent proceedings can only be termed as a willful conduct and therefore, the learned Labour Court was right in not accepting the reasons cited by the petitioner in the appeal against the impugned award.

22. After dismissal of the said appeal, the petitioner has approached this Court, therefore, making it evident that the instant petition is nothing but a dilatory tactics adopted by the petitioner entity.



2024:DHC:1952



23. In light of the foregoing discussions, this Court is of the view that the present petition is nothing but a gross misuse of process of law, where the poor workman was firstly denied the rightful wages, and then subsequently made to suffer with further litigations against him.

24. Therefore, this Court does not deem it appropriate to allow the present petition to set aside the impugned award dated 6th February, 2020, as the propositions put forth by the learned counsel for the petitioner do not satisfy this Court that the non-appearance on behalf of the petitioner was a *bona fide* mistake on its part.

25. Hence, the present petition, being devoid of any merit, is dismissed, along with pending applications.

26. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

FEBRUARY 28, 2024
SV/AV/ryp

[Click here to check corrigendum, if any](#)