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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 623/2019 CM APPL. 42423/2019
GAJ RAJ SINGH

..... Appellant

Through: Mr.Amit Kumar, Advocate with
appellant.

versus

HOLIDAY CLUB

..... Respondent

Through: Mr.Rajeev Sharma, Sr Advocate with
Mr.Gaurav Bhardwaj and Ms.Shreya
Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

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07.03.2024

1. The appellant (hereafter '*the workman*') has filed the present appeal impugning the order dated 21.02.2019 (hereafter '*the impugned order*') passed by the learned Single Judge whereby, the petition filed by the respondent (hereafter '*the management*') being W.P.(C) No.4935/2008, was allowed. The management had filed the aforesaid writ petition impugning an *ex parte* award dated 28.06.2003 (hereafter '*the impugned award*') passed by the learned Labour Court.

2. The principal ground raised by the workman is that the management's writ petition was highly belated and therefore, the same was liable to be dismissed on that ground.

3. The brief facts necessary to address the controversy are as under:

3.1 The workman had joined the employment of the management on



11.07.1996. There were allegations of grave misconduct against the workman. Accordingly, the management instituted an enquiry against the workman and on 21.06.1997, a charge-sheet was issued against him. The workman duly participated in the enquiry and led evidence in his defence before the Enquiry Officer. The Enquiry Officer conducted the enquiry and found that the workman had misconducted himself. He submitted a report dated 17.08.1998.

3.2 The Enquiry Officer found that the workman had declined to print the invoice of a customer on the ground, that he would do so only after the his lunch break was over. It is important to note that the invoice was for a lunch party of ladies. The same had concluded and the and the guests were waiting to settle the invoice and leave the premises.

3.3 The Enquiry Officer found that the workman had refused to carry out the legitimate orders of the General Manager in the presence of the guests as well as junior staff. It was found that he had behaved in an insolent manner, unbecoming of an employee. The said behaviour was found to be unacceptable of someone working in an establishment involved the hospitality industry.

3.4 In view of the above, by a letter dated 19.09.1998, the workman was provided a copy of the enquiry report and was informed that the management had decided to terminate his services. He was provided with an opportunity to submit his comments in this regard.

3.5 The workman submitted his comments on the enquiry report by a letter dated 25.09.1998. The management states that the said comments were



considered and the services of the workman were terminated by a letter dated 03.10.1998.

3.6 The appellant/workman raised the dispute before the learned Labour Court on 02.11.1999. The said proceedings culminated in the impugned award. In terms of the impugned award, the learned Labour Court held that the action of the management was illegal and unjustified and the workman was entitled to reinstatement. However, the learned Labour Court also found that the workman had absented himself at a number of hearings and was negligent in contesting the case resulting in delay in disposal of the case. Accordingly, the learned Labour Court awarded back wages at the rate of 60% of the last wages drawn, with effect from 03.10.1998.

3.7 Aggrieved by the impugned award, the management filed an application for recall of the impugned award. The said application was dismissed by the learned Labour Court on 31.01.2004. In the meantime, workman also instituted the proceedings for enforcement of the impugned award.

3.8 The management filed a petition [CM (Main) No. 261/2004] for setting aside the order dated 31.01.2004, whereby the management's application for recall of the impugned award, was dismissed. The said petition was dismissed by an order dated 29.08.2006.

3.9 Thereafter, the management filed the writ petition [W.P(C) 4935/2008] which was allowed by the impugned order.

4. The learned Single Judge examined the impugned award and faulted



the same on the ground that the learned Labour Court had not examined the enquiry report on the basis of which the management had terminated the services of the workman. The principal issue before the learned Labour Court was whether the management had terminated the services of the workman, illegally or unjustifiably. The learned Single Judge held that although the management had not participated in the proceedings and was proceeded *ex-parte*, the least that was required by the learned Labour Court was to examine the enquiry report of the Enquiry Officer on the basis of which the workman's services were terminated.

5. It is also relevant to note that it was the workman's case that the Enquiry Officer had not given him an opportunity to defend himself in the enquiry proceedings. Apparently, the said contention was accepted. However, a bare perusal of the enquiry report would indicate that it extensively sets out the number of opportunities granted to the workman to participate in the said proceedings. It also mentions the adjournments granted to accommodate the workman. The enquiry report indicates that the workman had participated in the proceedings and had led evidence.

6. There is no cavil that the enquiry report was submitted to the workman. He had also made a representation against the action taken by the management on the basis of the said report. None of the said material was considered by the learned Labour Court. Although, the workman had challenged the enquiry, he had not filed the enquiry report before the learned Labour Court. Thus, the labour court had proceeded to deliver the decision regarding the workman's challenge to termination of his services without examining the report that had led to his dismissal.



7. We find no infirmity with the decision of the learned Single Judge in setting aside the impugned award on the aforesaid grounds and remanding the matter for consideration afresh.

8. As noted at the outset, the only ground raised by the workman is that the writ petition was filed by the management at a belated stage and therefore, ought to have been rejected. Undeniably the approach of the management in pursuing the case before the learned Labour Court was lackadaisical. The explanation is that the concerned employees failed to inform the management about the proceedings, which prevented the management from taking appropriate steps at the material time, is a weak one. This explanation itself indicates that the management was not diligent in defending the proceedings before the learned Labour Court, which led to the passing of the impugned award. However, thereafter, the management had filed an application for recall of the impugned award, which was dismissed on 31.01.2004. The management had immediately challenged the same by filing the petition before this Court (CM (Main) No. 261/2004), which was dismissed by this Court on 29.08.2006. The management had thereafter filed the writ petition (W.P.(C) No. 4935/2008) on 11.07.2008. Thus, undeniably, the management was at fault in not pursuing its matter before the learned Labour Court. It had further delayed the filing of the writ petition by almost two years.

9. The learned Single Judge had examined the aforesaid facts and directed the management to compensate the workman by payment of costs quantified at Rs. 1 lakh. In addition, the learned Single Judge had also directed that the arrears of wages be paid from the date of the workman's



application.

10. We find the approach of the learned Single Judge to be equitable and one that does not warrant any interference in this appeal.

11. The learned counsel for the workman also submits that the application under Section 17B of Industrial Disputes Act, 1947 was required to be decided earlier. Whilst in a normal case that may be correct, however, in the present case, the learned Single Judge had heard the parties on merits and disposed of the writ petition. In this regard, no relief can be granted to the workman at this stage.

12. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MARCH 07, 2024

g.joshi

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