



2024:DHC:230



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order : 5th January, 2024**

+ W.P.(C) 10287/2019, CM APPL. 42475/2019, CM APPL. 28804/2021 & CM APL. 46910/2022
M/S INDCON PROJECTS AND EQUIPMENT LTD.

..... Petitioner

Through: Mr. Atul Nigam and Mrs. Tanvi
Nigam, Advocates.

versus

MR. RAHUL RAUTHAN AND ANR. Respondents

Through: Mr. Krishna Chandra Dubey,
Advocate.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant Writ Petition under Articles 226 & 227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

"a. Transmit to itself the record of proceedings of Learned Labour Court by issuing writ of certiorari or such other writ and under the Supervisory Powers of this Hon'ble Court to set aside/quash Ex-Parte Award dt. 22.09.2018 passed by Presiding Officer, Labour Court V, Dwarka Court (POLC-V, Rouse Avenue Courts, Delhi; ID No.1770-2017).

b. Or in the alternative to set aside the order dt. 30.07.2019 dismissing the application of the petitioner to condone the delay in moving application to set aside the Ex-parte Award dt.22.09.2018 and application to set aside the Ex-parte Award

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with directions to the Learned Labour Court to hear the matter afresh after giving opportunity to petitioner to submit its defence/objections to the statement of claim filed by respondent, c. And such other order or orders as this Hon'ble Court may deem fit & proper under the facts & circumstances of the case be passed."

2. The petitioner in the present case is a manufacturing enterprise incorporated under the Companies Act, 1956 and promoted by the technocrats registered under the Micro, Small & Medium Enterprises with Commissioner of Industries, Government of NCT of Delhi and with the National Small Industries Corporation Limited.
3. The respondent no.1 ('respondent workman' hereinafter) was working as the Project Engineer since the year 2011 with the petitioner entity and worked there till the year 2016 and thereafter was provided a cheque bearing no. 007292 for a sum of Rs. 20, 401/- as an alleged payment to the dues accrued towards him.
4. In 2016, the respondent workman left the petitioner entity and the resignation rendered by him has been termed by the petitioner as a decision taken with free will and without coercion, however, the same has been contested by the respondent workman.
5. Thereafter, the petitioner was served a notice dated 20th March, 2017 by a Labour Union namely 'Samast Delhi Karamchhari Union Rashtriya Mazdoor Sangh - Regd. No. 4233' whereby it was demanded that the respondent workman be reinstated along with the payment of the pending dues and increase in salary.



6. In the meanwhile, the petitioner issued another cheque bearing no. 008553 for an amount Rs. 2943/- against the outstanding bonus for the month of April, 2016 and November, 2016 in favour of the respondent workman.

7. In the year 2017, the dispute between the parties was referred by the appropriate Government to the learned Labour Court and the same was registered as ID No. 1770-17 for adjudication and accordingly the summons were issued to the petitioner, however, the petitioner failed to appear before the learned Labour Court and accordingly the matter was adjudicated *ex parte* and the claim was adjudicated in favor of the respondent workman *vide* the award dated 22nd September, 2018. The relevant parts of the award read as under:

"The Dy. Labour Commissioner, Govt of NCT, Delhi while exercising his power u/s 10 (1) (c) and 12 (5) of the Industrial Dispute Act (hereinafter refer to as the Act) r/w notification No.F- 24(385)/Lab/SD/2017/11420 dated 01.06.2017 has sent the following reference to this court for adjudication

"(a) Whether the services of Sh Rahul Rothan S/O Sh.Jagmohan Singh Rothan, age-30 years, 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"?

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 19.12.2011 on the post of Project Manager at a monthly salary of Rs. 21,000/-.*



3. It is claimed that the management was not providing the statutory benefits and when the same were demanded, the management obtained forcible resignation from the claimant on 02.11.2016, and terminated him w.e.f 05.11.2016 without any notice.

4. Despite service of demand notice dated 20.03.2017 by the claimant upon the management in this respect, the management has not reinstated him into service.

PART-B

MANAGEMENT'S STAND/REPLY

5. The management despite being served with the summons failed to appear and accordingly it was proceeded ex parte vide order dated 03.08.2018.

PART-C

WORKMAN'S EVIDENCE

6. In support of his claim workman examined himself as WWI and deposed along the lines of statement of claim and also proved on record documents in support of his claim.

7. The management though being proceeded ex parte has also not come forward to cross examine the WWI.

PART-D

FINDINGS/CONCLUSION

8. After considering the claim, reply, documents and the evidence led on record, the decision of the court is as under

9. As already observed the management has chosen not to contest the petition and also has not come forward to cross examine the claimant deposing as WW 1.

10. In these circumstances the testimony of the claimant deposing as WWI stand accepted on its face value.

11. Hence, the court has come to the conclusion that the services of the claimant were terminated without following the due procedure of law.

12. In these circumstances, the claimant is held entitled to the relief of reinstatement with full backwages along with continuity of services and all other consequential benefits.



13.Reference answered accordingly.”

8. On 21st September, 2018, a notice received by the petitioner company from and on behalf of the respondent workman from *Rashtriya Rajdhani Shramik Sangh* demanding enforcement of the award dated 22nd September, 2018 with full salary, continuous service along with the constitutional facilities with reinstatement within 14 days from the receipt of the letter or else there shall be attachment and contempt of court proceedings.

9. Aggrieved by the same, the petitioner filed an application for setting aside the above said award and for condonation of delay, however, the same was dismissed by the learned Labour Court *vide* order dated 30th July, 2019.

10. Aggrieved by the dismissal of the application seeking setting aside of the award and condonation of delay, the petitioner has filed the present petition seeking quashing of the same.

11. The learned counsel appearing on behalf of the petitioner submits that the impugned award and order dated 30th July, 2019 is illegal and invalid as the dispute between the parties does not amount to an industrial dispute since the respondent workman was neither discharged nor retrenched from the services, rather he had resigned from the same.

12. It is submitted that the impugned award is based on manipulated facts and fraudulent misrepresentation by the respondent workman as he had resigned on his own will citing personal reasons to which the petitioner never objected and had duly paid the amount due towards the respondent workman.



13. It is submitted that the delay in filing the application occurred due to the mistake on part of the counsel engaged by the petitioner and not the petitioner itself, therefore, the petitioner entity should not be punished as no fault has been committed on their part.

14. It is submitted that the learned Labour Court did not consider the sufficient cause shown in the application and therefore erred in dismissing the application filed for setting aside of the *ex parte* award and condonation of delay.

15. It is submitted that the impugned award is in contradiction of the settled facts as the employer employee relationship between the parties ended once the respondent workman chose to resign from the petitioner entity and thereafter had taken all the consequential benefits accrued towards him.

16. It is also submitted that the learned Labour Court erred in accepting the testimony of the respondent no. 1 without providing a chance to the petitioner to contest and cross examine the respondent, therefore leading to injustice to the petitioner herein.

17. It is further submitted that the respondent workman is enforcing an invalid award to recover all its dues after willful resignation and therefore, the impugned award is an abuse of process of law and a coercive method adopted by the respondent for recovery of a non-recoverable amount.

18. Therefore, in view of the foregoing submissions, the learned counsel appearing for the petitioner submitted that the present petition may be allowed and reliefs may be granted as prayed for.



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19. *Per Contra*, the learned counsel appearing on behalf of the respondent workman vehemently opposed the instant petition submitting to the effect that the petitioner has not raised any *bonafide* grounds which can be considered by this Court and in view of the same the present petition is liable to be set aside.

20. It is submitted that the learned Labour Court had issued notice to the petitioner and the same were duly served upon them, however, the petitioner deliberately chose to not appear before the learned Labour Court, thereby forcing the learned Labour Court to adjudicate the matter *ex parte*.

21. It is submitted that the contention regarding willful resignation is not true, rather the petitioner had forced the respondent to sign the resignation letter dated 2nd November, 2016 and was harassed in multiple ways to compel him to do so.

22. It is also submitted that the petitioner's claim of payment of the remaining dues towards the respondent workman is false and the respondent was forced to sign the voucher issued by the petitioner.

23. It is further submitted that another cheque bearing no. 0088553 for an amount of Rs. 2943/- was issued by the petitioner only after the notice was served to them by the Labour Union, therefore, the same cannot be termed as a gesture on part of the petitioner rather can only be inferred as an aftermath of the legal notice issued to them.

24. In view of the foregoing submissions, the learned counsel appearing on behalf of the respondent workman submitted that it is submitted that the present petition, being devoid of any merits, may be dismissed.



25. Heard the learned counsel for the parties and perused the records.

26. It is the case of the petitioner that the learned Labour Court had wrongly rejected its application seeking setting aside of the award and condonation of delay without appreciating the circumstances and grounds taken by the petitioner despite showing *sufficient cause* and therefore, the award dated 22nd September, 2018 passed by the learned Labour Court is bad in law as the same was done without providing an opportunity to the petitioner to cross examine the respondent workman and the rejection of the application *vide* order dated 30th July, 2019 has further caused prejudice to the petitioner by not granting him the fair opportunity to substantiate its arguments.

27. In rival submissions, the learned counsel for the respondent workman has opposed the abovesaid contentions advanced by the petitioner and argued that the petitioner was duly provided with an opportunity to represent his case before the learned Court below and the same is evident in view of the notices and summons issued to the petitioner which has also been recorded in both impugned award dated 22nd September, 2018 and order dated 30th July, 2019, however, the petitioner deliberately did not avail the said opportunity, leading to adjudication of the matter *ex parte*.

28. In view of the submissions advanced before this Court, this Court is of the view that the limited issue before it is to decide whether the learned Labour Court erred in dismissing the application filed for setting aside of the award and condonation of delay and whether the *ex parte* award is illegal in nature on the grounds of adjudication of matter without providing the



opportunity to the petitioner to cross-examine the respondent workman.

29. Before delving into the issue at hand, it is imperative for this Court to reiterate the settled position of law regarding the issuance of writ of certiorari for setting aside an order passed by the Court below and remand back the matter to the Labour Court and remand back the matter for trial.

30. The nature and scope of the said writ has been summarized by the Hon'ble Supreme Court in ***Central Council for Research in Ayurvedic Sciences v. Bikartan Das***, 2023 SCC OnLine SC 996 whereby, the Hon'ble Court determined the two cardinal principles to be considered for issuance of the said writ by the High Courts. The relevant parts of the judgment read as under:

“50. Before we close this matter, we would like to observe something important in the aforesaid context:

Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.

51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari,



being a high prerogative writ, should not be issued on mere asking.

52. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.

53. The essential features of a writ of certiorari, including a brief history, have been very exhaustively explained by B.K. Mukherjea, J. in T.C. Basappa v. T. Nagappa, AIR 1954 SC 440. The Court held that a writ in the nature of certiorari could be issued in 'all appropriate cases and in appropriate manner' so long as the broad and fundamental principles were kept in mind. Those principles were delineated as follows:

"7. ... In granting a writ of 'certiorari', the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably



erroneous, but does not substitute its own views for those of the inferior tribunal

8. The supervision of the superior court exercised through writs of certiorari goes on two points, as has been expressed by Lord Sumner in King v. Nat Bell Liquors Limited [[1922] 2 A.C. 128, 156]. One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise.

9. Certiorari may lie and is generally granted when a court has acted without or in excess of its jurisdiction.”

54. Relying on T.C. Basappa (supra), the Constitution Bench of this Court in the case of Hari Vishnu Kamath (supra), laid down the following propositions as well established:

“(1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior court or tribunal acts without jurisdiction or in excess of it, or fails to exercise it.

(2) Certiorari will also be issued when the court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous.”

55. This Court explained that a court which has jurisdiction over a subject matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy if a superior court were to rehear the case on the evidence and substitute its own finding in certiorari.



56. In Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 SC 477, P.B. Gajendragadkar, CJ., speaking for the Constitution Bench, placed the matter beyond any position of doubt by holding that a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals. The observations of this Court in para 7 are worth taking note of:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be



corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised.....”

57. In Surya Dev Rai v. Ram Chandra Rai, (2003) 6 SCC 675, a Bench of two Judges held that the certiorari jurisdiction though available, should not be exercised as a matter of course. The High Court would be justified in refusing the writ of certiorari if no failure of justice had been occasioned. In exercising the certiorari jurisdiction, the procedure ordinarily followed by the High Court is to command the inferior court or tribunal to certify its record or proceedings to the High Court for its inspection so as to enable the High Court to determine, whether on the face of the record the inferior court has committed any of the errors as explained by this Court in Hari Vishnu Kamath v. Ahmad Ishaque, AIR 1955 SC 233 occasioning failure of justice.

58. From the aforesaid, it could be said in terms of a jurisdictional error that want of jurisdiction may arise from the nature of the subject matter so that the inferior court or tribunal might not have the authority to enter on the inquiry. It may also arise from the absence of some essential preliminary or jurisdictional fact. Where the jurisdiction of a body depends upon a preliminary finding of fact in a proceeding for a writ of certiorari, the court may determine, whether or not that finding



of fact is correct. The reason is that by wrongly deciding such a fact, the court or tribunal cannot give itself jurisdiction.

59. In Anisminic Ltd. v. Foreign Compensation Commission, [1969] 2 A.C. 147, the House of Lords has given a very broad connotation to the concept of 'jurisdictional error'. It has been laid down that a tribunal exceeds jurisdiction not only at the threshold when it enters into an inquiry which it is not entitled to undertake, but it may enter into an enquiry within its jurisdiction in the first instance and then do something which would deprive it of its jurisdiction and render its decision a nullity. In the words of Lord Reid:

"But there are many cases where, although the tribunal had jurisdiction to enter on the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive."

60. So far as the errors of law are concerned, a writ of certiorari could be issued if an error of law is apparent on the face of the record. To attract the writ of certiorari, a mere error of law is not sufficient. It must be one which is manifest or patent on the face of the record. Mere formal or technical errors, even of law, are not sufficient, so as to attract a writ of certiorari. As reminded by this Court time and again, this concept is indefinite and cannot be defined precisely or



exhaustively and so it has to be determined judiciously on the facts of each case. The concept, according to this Court in K.M. Shanmugam v. The S.R.V.S. (P) Ltd., AIR 1963 SC 1626, 'is comprised of many imponderables... it is not capable of precise definition, as no objective criterion could be laid down, the apparent nature of the error, to a large extent, being dependent upon the subjective element.' A general test to apply, however, is that no error could be said to be apparent on the face of the record if it is not 'self-evident' or 'manifest'. If it requires an examination or argument to establish it, if it has to be established by a long drawn out process of reasoning, or lengthy or complicated arguments, on points where there may considerably be two opinions, then such an error would cease to be an error of law. (See : Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale, AIR 1960 SC 137.)

61. *However, in our opinion, such a test should not be applied in a straitjacket formula and may fail because what might be considered by one Judge as an error self-evident, might not be considered so by another Judge.*

62. *At this stage, it may not be out of place to remind ourselves of the observations of this Court in Syed Yakoob (supra) on this point, which are as follows:*

"Where it is manifest or clear that the conclusion of law recorded by an inferior court or tribunal is based on an obvious misinterpretation of the relevant statutory provision, or something in ignorance of it, or may be even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. Certiorari would also not lie to correct mere errors of fact even though such errors may be apparent on the face of the record. The writ jurisdiction is supervisory and the court exercising it is not to act as an appellate court. It is well settled that the writ court would not re-appreciate the evidence and substitute its



own conclusion of fact for that recorded by the adjudicating body, be it a court or a tribunal. A finding of fact, howsoever erroneous, recorded by a court or a tribunal cannot be challenged in proceedings for certiorari on the ground that the relevant and material evidence adduced before the court or the tribunal was insufficient or inadequate to sustain the impugned finding.

It is also well settled that adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal and these points cannot be agitated before the writ court.”

63. *In the aforesaid context, it will be profitable for us to refer to the decision of this Court in the case of Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union, (2000) 4 SCC 245 : AIR 2000 SC 1508. This Court observed as under:*

“... The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings at any rate, as long as they are based upon such materials which are relevant for the purpose or even on the ground that there is yet another view which can be reasonably and possibly undertaken. ...”

64. *However, we may clarify that findings of fact based on ‘no evidence’ or purely on surmises and conjectures or which are perverse points could be challenged by way of a certiorari as such findings could be regarded as an error of law.*

65. *Thus, from the various decisions referred to above, we have no hesitation in reaching to the conclusion that a writ of certiorari is a high prerogative writ and should not be issued on mere asking. For the issue of a writ of certiorari, the party concerned has to make out a definite case for the same and is*



not a matter of course. To put it pithily, certiorari shall issue to correct errors of jurisdiction, that is to say, absence, excess or failure to exercise and also when in the exercise of undoubted jurisdiction, there has been illegality. It shall also issue to correct an error in the decision or determination itself, if it is an error manifest on the face of the proceedings. By its exercise, only a patent error can be corrected but not also a wrong decision. It should be well remembered at the cost of repetition that certiorari is not appellate but only supervisory.

66. *A writ of certiorari, being a high prerogative writ, is issued by a superior court in respect of the exercise of judicial or quasi-judicial functions by another authority when the contention is that the exercising authority had no jurisdiction or exceeded the jurisdiction. It cannot be denied that the tribunals or the authorities concerned in this batch of appeals had the jurisdiction to deal with the matter. However, the argument would be that the tribunals had acted arbitrarily and illegally and that they had failed to give proper findings on the facts and circumstances of the case. We may only say that while adjudicating a writ-application for a writ of certiorari, the court is not sitting as a court of appeal against the order of the tribunals to test the legality thereof with a view to reach a different conclusion. If there is any evidence, the court will not examine whether the right conclusion is drawn from it or not. It is a well-established principle of law that a writ of certiorari will not lie where the order or decision of a tribunal or authority is wrong in matter of facts or on merits. (See : King v. Nat Bell Liquors Ltd., [1922] 2 A.C. 128 (PC))”*

31. Upon perusal of the relevant paragraphs of the above-cited judgment, it is clear that the rule regarding issuance of the writ of certiorari is based on the two cardinal principles as reiterated in the above cited case. As stated above, the writ of certiorari can only be issued if the High Court is satisfied



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that the Court below had committed any material illegality or acted arbitrarily, therefore deeming it necessary to set aside the impugned award to do justice to the parties.

32. Furthermore, the Hon'ble Court also clarified that the findings of fact reached by the inferior Court or Tribunal as 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.

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

34. In the instant case, the primary contention of the petitioner is regarding the acceptance of the evidence provided by the respondent workman regarding their claim without providing the opportunity to cross-examine the respondent workman despite filing application for setting aside of the award and condonation of delay.

35. The Principle of natural justice is one of the most important principles that need to adhered by the adjudicating bodies. In a case, if a dispute has been decided *ex parte*, it is imperative for the adjudicating body to decide whether the party deprived of such right has shown *sufficient cause* for allowance of such application seeking condonation of delay in filing application for setting aside the said award.

36. In ***Haryana Suraj Malting Ltd. v. Phool Chand***, (2018) 16 SCC 567, the Hon'ble Supreme Court reiterated the settled position of law regarding



the same and held as under:

“35. It is a matter of natural justice that any party to the judicial proceedings should get an opportunity of being heard, and if such an opportunity has been denied for want of sufficient reason, the Labour Court/Tribunal which denied such an opportunity, being satisfied of the sufficient cause and within a reasonable time, should be in a position to set right its own procedure. Otherwise, as held in Grindlays [Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal, 1980 Supp SCC 420 : 1981 SCC (L&S) 309] , an award which may be a nullity will have to be technically enforced. It is difficult to comprehend such a situation under law.

36. In this context, it is also necessary to refer to Section 29, the penal sanction which includes imprisonment for breach of award:

“29. Penalty for breach of settlement or award.— Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach.”

37. Merely because an award has become enforceable, does not necessarily mean that it has become binding. For an award to become binding, it should be passed in compliance with the principles of natural justice. An award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being nullity. An award which is a nullity cannot be and shall not be a



binding award. In case a party is able to show sufficient cause within a reasonable time for its non-appearance in the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal is bound to consider such an application and the application cannot be rejected on the ground that it was filed after the award had become enforceable. The Labour Court/Tribunal is not functus officio after the award has become enforceable as far as setting aside an ex parte award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. It needs to be restated that the Industrial Disputes Act, 1947 is a welfare legislation intended to maintain industrial peace. In that view of the matter, certain powers to do justice have to be conceded to the Labour Court/Tribunal, whether we call it ancillary, incidental or inherent.

38. We may also add that when an application for setting aside an ex parte award is made at the instance of the management, the Labour Court/Tribunal has to balance equities. The appeals are hence disposed of as follows. The awards are remitted to the Labour Court for consideration as to whether there was sufficient cause for non-appearance of the management. Since the litigation has been pending for a long time, we direct the appellants to pay an amount of Rs 1,00,000 in each case to the workmen by way of provisional payment. However, we make it clear that the payment is subject to the final outcome of the awards and will be adjusted appropriately. We record our deep appreciation for the gracious assistance rendered by Mr Shekhar Naphade ”

37. Upon perusal of the abovesaid, it is clear that the Courts need to interpret the term *sufficient cause* on the basis of the reasons provided for such delay and then adjudicate the application/issue on the basis of the same.

38. It is no doubt that the settled position of law requires the Courts to



strictly adhere to the principle of natural justice and the Hon'ble Supreme Court and this Court has reiterated the said position time and again, whereby delay in filing an application seeking setting aside of an *ex parte* award can be condoned if sufficient cause has been shown by the applicant.

39. Therefore, it is necessary to analyze the impugned order dated 30th July, 2019 and determine whether the petitioner was deprived of a rightful opportunity by adjudicating upon the claim of the respondent workman *ex parte* and if the application was wrongly dismissed by the learned Labour Court despite *sufficient cause* shown by the petitioner/applicant. The relevant extracts of the impugned order dated 30th July, 2019 are reproduced herein:

“Present:- None for the applicant / management since morning despite second call.

This is an application u/s 5 of the Limitation Act for condonation of delay in filing the application under Order 9 Rule 13 r/w Section 151 CPC. As none has appeared on behalf of the applicant, the court has gone through the application.

*Perusal of the application transpires that the applicant has taken the ground that summons of the petition were indeed served upon one Sh. P.K. Sarkar, who was working as an Advisor with the applicant but he did not inform the applicant w.r.t. the said summons leading to the passing of order dated 03.08.2018 whereby the applicant was proceeded *ex parte*.*

It is further averred in the application that thereafter the applicant on 26.11.2018 received a letter from the trade union whereby it acquired the knowledge regarding passing of the impugned award.



It is further averred that after receiving the intimation of the passing of the impugned award dated 22.09.2018, on 26.11.2018 it instructed its counsel to inspect the court file who filed his vakalatnama, inspected the judicial file and applied for certified copies only on 12.03.2019 and thereafter the said counsel misplaced the certified copies of the said papers, which were again traced back on 05.07.2019 and the present application stand filed on 09.07.2019.

The court has considered the averments made in the application and is not at all satisfied with the same.

As per the averments made in the application, the applicant acquired knowledge w.r.t. the passing of the order dated 03.08.2018 on 26.11.2018 and from that date till 12.03.2019 i.e. the first date as mentioned in the application. It did not take any step for filing the present application within the period of limitation as it cannot be imagined that the Copying Agency officials could have taken a period of around four months to supply the certified copies.

The second ground that after applying for certified copies, which were received by it on 12.03.2019, the counsel lost the case file which was traced back only on 05.07.2019 i.e. after four months, also cannot be believed. Accordingly, as the application is hopelessly time barred and there is no ground made out for condonation of delay, the application u/s 5 of the Limitation Act stand dismissed.

As the application u/s 5 of the Limitation Act is dismissed, the application under Order 9 Rule 13 CPC automatically stand dismissed.”

40. Upon perusal of the impugned order, it is crystal clear that despite filing of the application for setting aside of the *ex parte* award and



condonation of delay, the petitioner again did not appear before the learned Labour Court, therefore, leaving the Court no option but to decide the application based on the evidence available before it.

41. The impugned order clearly mentions that the notice regarding the dispute was duly served to Sh. P.K. Sarkar, i.e., the person working as an Advisor with the petitioner entity, therefore, the argument of petitioner being oblivious to such litigation cannot be accepted.

42. Furthermore, the impugned order also evidences that the petitioner also received a letter dated 26th November, 2018 from the Labour Union and the same was acknowledged by the petitioner, and despite having knowledge of the passing of the impugned award, the petitioner chose not to file the application rather has provided reason of misplacing of the case file by their counsel.

43. It is pertinent to mention that the said impugned order clearly says that no one appeared on behalf of the petitioner despite the application filed for setting aside of an award adjudicated *ex parte* due to non-presence of the petitioner on the earlier occasion, therefore, leading to the inference that the petitioner had deliberately chosen to avoid the Courts on all occasions.

44. The petitioner's non-appearance on all occasions 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 as none of the reasons can be categorized as *sufficient cause* for condonation of delay of the application as the same does not amount to *bonafide* mistake committed on part of the petitioner entity.



45. At last, it is imperative to mention that the poor workman is at the receiving end of mistakes deliberately committed by the petitioner and in the event the arguments advanced by the petitioner are accepted, the respondent workman will be left high and dry.

46. The material on record i.e. the *ex parte* award clearly suggests that the workman was first forced to leave the petitioner entity. Later on, despite filing of the industrial dispute by the workman, the petitioner did not take the respondent workman seriously and now, the petitioner made an attempt to subject him to further litigation despite failing to appear in the previous one.

47. The said chain of events can only be termed as a dilatory tactic adopted for not enforcing the impugned award wherein the petitioner was directed to reinstate the respondent workman along with backwages and other consequential benefits.

48. In light of the discussions of facts and law, this Court is of the considered view that there is no force in the propositions put forth by the petitioner as he has failed to show *sufficient cause* for condonation of delay and in view of the same this Court is not inclined to exercise its powers under its extraordinary writ jurisdiction.

49. Therefore, considering the observations made in the foregoing paragraphs, this Court does not deem it appropriate to allow the present petition and issue the writ of certiorari for setting aside the impugned award dated 22nd September, 2018 and order dated 30th July, 2019.

50. Accordingly, the present petition is dismissed, along with pending



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applications, if any.

51. The Order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JANUARY 5, 2024
Rk/AV/RYP

Signature Not Verified

Digitally Signed
By: GAURAV SHARMA
Signing Date: 11.01.2024
18:47:14

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