



2024:DHC:1955



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 28th February, 2024**
+ **W.P.(C) 15736/2023 & CM APPL. 63197/2023**
RAKBRO INDUSTRIAL CORPORATION Petitioner
Through: **Mr. Shrey Kumar, Advocate**

versus

ASHOK KUMAR Respondent
Through: **None**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“a) Pass an appropriate Writ, Order or Direction in the nature of the certiorari to set aside the Impugned Order dated 20.09.2023, passed by Sh. Mukesh Kumar, Ld. Presiding Officer Labour Court in Misc. DJ No. 252/2023 (LIR No. 145/2017) and remand the matter back for cross examination of the Respondent (Workman) and evidence of the Petitioner (Management), AND/OR;

b) Pass an appropriate Writ, Order or Direction in the nature of the certiorari to set aside the Impugned Award dated 22.12.2022 in LIR No. 145/2017, whereby Sh. Mukesh Kumar, Ld. Presiding Officer Labour Court, allowed the claim of wrongful termination alleged by the Respondent and granted a compensation of ₹3,50,000/-



c) Pass such other order(s) or further orders as this Hon'ble Court deems fit and proper in the fact and circumstances of the case, for which act of kindness the Petitioner as in duty bound shall ever pray."

2. The petitioner ('petitioner establishment' hereinafter) is a manufacturing unit registered under the Micro, Small and Medium Enterprise Development Act, 2006. The respondent ('respondent workman' hereinafter) was working in the petitioner establishment since the year 1991 as a laborer at last drawn wages of Rs. 10,000/- per month.
3. In the year 2015, the services of the respondent workman were terminated on alleged improper usage of the machinery, thereby, leading to filing of an industrial dispute bearing no. 145/2017. After conclusion of the proceedings, the learned Labour Court passed an award dated 22nd December, 2022 and held the termination to be illegal and directed the petitioner establishment to pay Rs. 3,50,000/- to the respondent workman as compensation for the said termination.
4. Thereafter, the petitioner establishment preferred an appeal against the award by filing an application, however, the same was rejected by the learned Court below *vide* order dated 20th September, 2023 ('impugned order' hereinafter).
5. Aggrieved by the same, the petitioner has approached this Court seeking quashing of the impugned order.
6. The learned counsel appearing on behalf of the petitioner establishment submitted that the impugned order is bad in law and therefore,



liable to be set aside.

7. It is submitted that the learned Court below failed to take cognizance of the documents filed by the petitioner establishment and therefore, erred by not scrutinizing the same, leading to passing of the impugned order.

8. It is submitted that the documents filed by the petitioner were merely notices and the receipts of the delivery of said notices, and the same do not create any legal liability or could have aided the learned Court below in fairly adjudicating the issue of termination as the same does not hold any material significance.

9. It is submitted that the learned Court below failed to appreciate the fact that the respondent workman was never terminated, and was merely suspended and the same is also evident from the salary receipt of the workman during the alleged termination period.

10. It is submitted that the learned Court below erred in appreciating that the respondent workman was a habitual offender where he had committed a financial fraud in the year 2001, and a police complaint was also lodged against him in the year 2015 for stealing goods from the petitioner establishment.

11. It is submitted that the learned Court below failed to understand that despite huge financial loss, the petitioner establishment conducted an unbiased enquiry regarding the alleged incident and did not impose any penalty on the respondent workman.

12. It is also submitted that the employee was never terminated by the petitioner establishment, therefore, requirement of prior notice for



termination does not arise.

13. It is further submitted that the proprietor of the petitioner establishment was bedridden due to serious health issues, therefore, leading to non-appearance in the proceedings before the learned Court below.

14. In view of the foregoing submissions, it is therefore submitted that the present petition be allowed, and reliefs be granted as prayed.

15. Heard the learned counsel for the petitioner and perused the record.

16. It is the case of the petitioner that the impugned order was passed by the learned Court below without appreciating the material facts, leading to upholding an erroneous award despite sufficient material on record, suggesting the case to be in the favor of the petitioner.

17. Therefore, the only question for determination before this Court is whether the learned Court below committed an error while passing the impugned award or dismissing the application filed for setting aside of the said award.

18. The extracts of the impugned order dismissing the application of the petitioner read as under:

“1. This is an application of the management for setting aside ex-parte Award dated 22.12.2022.

2. It is stated in the application of the management that management came to know about passing of Award dated 22.12.2022 only recently and thereafter, A.R for management made enquiry and downloaded the ex-parte Award. It is further stated that the proprietor of management is an old aged persona and senior citizen suffering from various old age ailments. It is further stated that due to Covid-19, the entire work of the management came to standstill and the management



had been running small establishment of 5 employees. It is further stated that the proprietor of the management got hospitalised for quite some time and confined to bed and therefore the management could not approach the Court for attending the proceedings. It is further stated that the Award was passed on 22.12.2022 and Award has yet not published. It is further stated that non appearance on the part of management was neither intentional nor deliberate and the application has been filed within the period of limitation.

3.Reply to the application filed by A.R for workman, it stated that application filed by the management is not maintainable as this Court does not have any power to entertain the present application as this Court has become functus officio after publication of the Award on 28.03.2023. It is further stated that the application of the management is time barred as present application filed after expiry of 30 days from the date of Award. It is therefore prayed that present application be dismissed with heavy cost.

4.I have heard A.R for both the parties and gone through the record carefully.

5.The management filed the written statement and after filing of the same none has appeared on their behalf. Therefore, the presence of management is presumed under Rule 22 of Central Rules Industrial Dispute Act on 02.12.2019. Thereafter on 19.12.2020, A.R for management appeared and again on 28.08.2022, A.R for management appeared and the matter was fixed for final arguments. The matter was fixed for management evidence on 02.12.2019 but no such steps or evidence has been taken by the management and the management evidence was closed vide order dated 05.04.2022. Further, this is an Award which was published on 28.03.2023 by Labour Department with the endorsement that the Award would be enforceable as per Section 17-A of the Industrial Dispute Act. Moreover, this is not an Award passed as ex-parte Award. Though, the present application has been filed by the A. R for management before



publication of the Award. The management despite having the knowledge of pendency of this case did not appear before the Court. In view of the facts and circumstances of the case the application of the respondent/management is liable to be dismissed and the relief cannot be granted being contrary to the law. Hence, Award dated 22.12.2022 can not be set aside and the application of management is dismissed.

Present application be attached with main file and consigned to Record Room.”

19. Upon perusal of the extracts of the impugned order, it is made out that the AR of the petitioner establishment had duly appeared before the learned Court below and had filed their statement of claim, however, no one appeared from their side at the time of cross-examination of the evidence.

20. Furthermore, it is also clear that the contention of the management regarding passing of the award without providing them opportunity to produce their evidence is misleading as paragraph 5 of the impugned order clearly suggests that the learned Court below had appreciated the material facts from both the sides.

21. Paragraph 9 of the impugned award clarifies the position regarding appreciation of evidence from both the parties, whereby, the learned Court below has categorically stated that the petitioner establishment failed to give any notice pay or notice to the workman, therefore, amounting to illegal termination of the workman.

22. The issue regarding employer-employee relationship has also been answered by the learned Court below in the same paragraph, where the position of parties is not disputed.



2024:DHC:1955



23. The perusal of paragraph 10 also suggests that the respondent workman had worked in the petitioner establishment for more than 24 years and the *bona fides* proving the same were attached and duly appreciated by the learned Court below.

24. It is well settled that the Higher Courts have limited interference with the orders passed by the Courts below and it can only correct the jurisdictional error apparent on face.

25. In light of the same, this Court does not find any error with the impugned order, whereby the learned Court below had dismissed the application filed for setting aside the impugned award as there is no merit in the case of the petitioner since the material on record suggests the termination of the respondent workman to be illegal in nature.

26. Therefore, the present petition, being devoid of any merits, is dismissed, along with pending applications (if any).

27. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

FEBRUARY 28, 2024
gs/av/ryp

Click here to check corrigendum, if any