2026:AHC:209150

# HIGH COURT OF JUDICATURE AT ALLAHABAD

**WRIT - C No. - 16238 of 2025**

Simlex Engineers India Pvt Ltd

.....Petitioner(s)

Versus

State Of Up And 3 Others

.....Respondent(s)

| | | |
|---|---|---|
| Counsel for Petitioner(s) | : | Chandra Bhan Gupta, Harsh Gupta |
| Counsel for Respondent(s) | : | C.S.C., Umesh Chandra Kesarwani |

**Court No. - 36**

**HON'BLE SAURABH SHYAM SHAMSHERY, J.**

1. This Court has passed following order on 21.05.2025 :

*"1. Award dated 02.10.2019 was passed by the respondent no.2-Presiding Officer, Labour Court, NOIDA, Gautam Budh Nagar is under challenge in the present writ petition. It is argued that the aforesaid award was ex-parte, restoration application was filed by the petitioner. Since no decision has been taken on the restoration application, petitioner has preferred Writ-C No. 5670 of 2024, which was decided on 11.03.2024. The aforesaid order is extracted below:-*

*"This writ petition is directed against the award dated 02.10.2019, published on 04.02.2020 as well as seeking a direction upon respondent no. 2 to decide the restoration application.*

*It is contended by learned counsel for petitioner that an ex-parte award has been made and a restoration application has been filed which is pending consideration. Learned counsel further prays that recovery proceedings be stayed till the pendency of restoration application.*

*Opposing the writ petition, Sri J.A. Khan, learned counsel appearing for workman submits that award is of the year 2019 and the restoration application has been moved after a lapse of 4 years on 14.11.2023.*

*This Court after hearing learned counsel for the parties finds that no interference in the award is required at this stage and the Labor Court, Gautam Budh Nagar is hereby directed to decide the restoration application expeditiously preferably within a period of one month from the date of production of certified copy of this order, after hearing all the affected parties.*

*It is made clear that this order will not preclude the petitioner from approaching this Court again for challenging the award.*

*With the aforesaid observation, writ petition stands disposed of."*

*2. Pursuant to aforesaid, order dated 23.04.2025 passed by the respondent no.2-Labout Court, NOIDA, Gautam Budh Nagar by which the restoration application submitted by the petitioner was rejected.*

*3. Aggrieved against the aforesaid, petitioner has preferred the present writ petition.*

*4. It is argued by learned counsel for the petitioner that the award given by the respondent no.2 in favour of respondent no.4 is per se illegal. Apart from the same, various other arguments raised by the learned counsel for the petitioner that award given by the respondent no.2 in favour of the respondent no. 4 is absolutely non speaking order. It is further argued that establishment of the petitioner has already been closed in the year 2012 itself. In this view of the matter it is argued that petitioner has not even comply with Section 17-B of Industrial Dispute Act. The aforesaid Act is extracted below:-*

*"Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such*

*award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:*

*Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period of part, as the case may be".*

*5. Matter requires consideration.*

*6. Sri Umesh Chandra Kesarwani, learned counsel for the workman-respondent no.4 is granted two weeks time to file counter affidavit. Rejoinder affidavit, if any, may be filed within two weeks thereafter.*

*7. Heard Sri Chandra Bhan Gupta, learned counsel for the petitioner and Sri Umesh Chandra Kesarwani, learned counsel for the workman-respondent no.4.*

*8. List this case in the week commencing 21.07.2025.*

*9. Till the next date of listing, no coercive action shall be taken against the petitioner."*

2. Heard Sri C.B. Gupta, learned counsel for petitioner and Sri U.C. Kesarwani, learned counsel for respondents.

3. After going through impugned award, Court finds that it was an ex-parte award as well as that only on basis of statement made by workman, it was held that he has worked for 240 days i.e. from 20.03.2009 to 10.03.2010, therefore, workman has not discharged his initial burden to

prove that he worked for 240 days.

4. Otherwise also, an order of entire back wages could not be an automatic order upon an order of reinstatement. (see **State of U.P. and others vs. Presiding Officer Labour Court and others, 2026:AHC:195564**)

5. It is being contended that petitioner company has been closed, however, it is disputed by learned counsel for respondent-workman.

6. In aforesaid circumstances, since Court is of the view that manner under which award was decided was not proper as well as it was an ex-parte award, therefore, impugned award is set aside and matter is remitted back to concerned Labour Court to pass a fresh award after hearing both parties. Both parties shall appear before Prescribed Officer, Labour Court, NOIDA on 26.10.2026 so that matter be commenced for hearing and be decided within 3 months.

7. The petitioner shall pay an amount of Rs. 21,000/- to respondent-workman towards cost within six weeks from today.

8. Writ petition stands **disposed of** with above observations, directions and modifications.

**(Saurabh Shyam Shamshery,J.)**

**October 6, 2026**
N. Sinha

Digitally signed by :-
NIRMAL SINHA
High Court of Judicature at Allahabad