

(2009) 04 DEL CK 0510

In the Delhi High Court

Case No : Writ Petition (C) No"s. 8075 of 2007

Management of Ellar Sales Corpn.

APPELLANT

Vs

Sh. Vijay Kumar

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25F

Citation : (2009) 04 DEL CK 0510

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : D.N. Vohra, for the Appellant;

Final Decision : Disposed Off

Judgement

Kailash Gambhir, J.—By way of this petition filed under Article 226 of the Constitution of India the petitioner seeks to challenge the impugned award dated 26.2.2005.

2 . The brief facts of the case are as under:

The respondent/workman was working with the petitioner management as a helper from January, 1998 and his last drawn wages were Rs. 2500/- per month. The management had been violating the provisions of Labour laws and were not providing legal facilities to them and the demand thereof by the workman resulted into termination of his service on 13.5.2005 without any notice or notice pay. The workman sent demand notice which was not replied. He raised an industrial dispute which ended in failure. The workman prayed for passing of an award in his favour for reinstatement with continuity in service and full back wages, pleading further that his services were terminated in violation of labour law and principles of natural justice. Nobody appeared on behalf of the management despite service hence it was proceeded ex-parte. The Labour Court passed an ex-parte award holding that the workman is entitled for reinstatement

with full back wages from the date of his termination till the date of his reinstatement. Aggrieved with the said award the management has preferred this petition.

3 . Mr. D.N. Vohra, counsel for the petitioner submits that the petitioner could not contest the case on merits as the petitioner was proceeded ex-parte. Counsel further submits that the petitioner has a strong case on merits as the respondent had not worked with the petitioner for a continuous period of 240 days so as to get entitled to the benefit of Section 25F of the Industrial Disputes Act. Counsel further submits that the respondent/workman except examining himself did not produce any other evidence to support his continuous employment with the petitioner for a period of 240 days. Counsel for the petitioner states that the petitioner had moved an application dated 14.8.2006 seeking setting aside of the ex-parte award but the same was dismissed by the Labour Court without passing any speaking order. Counsel further submits that the advocate who was appointed to represent the petitioner had left for America without giving any proper information or intimation to the petitioner.

4. Refuting the said submissions counsel for the respondent submits that the petitioner deliberately did not appear before the Labour Court even after filing their reply to the statement of claim. Counsel further submits that already the matter has been delayed to the advantage of the petitioner and therefore exemplary costs should be imposed upon the petitioner for causing unnecessary delay in the matter.

5. I have heard counsel for the parties and perused the record.

6. Since an ex-parte award was passed against the petitioner therefore without commenting on the merits of the case the interest of justice would be met if the matter is remanded back to the Labour Court for adjudication of the reference on its merits. Since the petitioner had filed their reply before the Labour Court but thereafter did not choose to contest the case which ultimately caused delay in the matter therefore the petitioner is burdened with the costs of Rs. 3,000/- to be paid by it to the respondent within one month. The petitioner shall also pay a sum of Rs. 5000/- to the respondent towards litigation expenses as again the respondent will have to engage the services of an advocate to represent him before the Labour Court.

With the above directions, the impugned order is hereby set aside. Parties are directed to appear before the Labour Court on 4.5.2009. The Labour Court shall decide the reference after giving due opportunity to both the parties.

7. With these directions the petition is disposed of.