

(2006) 11 DEL CK 0109
In the Delhi High Court
Case No : Writ Petition (C) 7277 of 2005

Metal Crafts	Vs	APPELLANT
Raj Kumar Verma		RESPONDENT

Date of Decision : 07-11-2006

Acts Referred:

Citation : (2006) 11 DEL CK 0109

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Jainendra Maldahiya, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has challenged the validity of Award dated 21.2.2004 whereby the reference

was answered by the Labour Court No. VI in favor of the workman and he was directed to be reinstated with full back wages and continuity of service.

2. It is submitted that the petitioner was proceeded ex parte on 3.1.2004 as nobody could appear before the Labour Court on behalf of the

petitioner because of non posting of date of hearing in the counsel's diary. This was unintentional mistake of the counsel. Management was under

impression that counsel would appear before the Labour Court and file affidavit. As per record of the Labour Court, the matter was adjourned to

21.2.2004. Again none appeared before the Labour Court because the date was not with the petitioner's counsel and ex parte Award was passed

on 21.2.2004.

3. A perusal of the Award would show that management had filed written

statement and contested the claim of the respondent that he was not terminated illegally and unjustifiably. After workman's evidence was complete when the case was fixed for management's evidence, no one appeared on behalf of the management on 3.1.2004 so the management was proceeded ex parte. Case was posted on 13.2.2004 again none appeared for the management. Tribunal heard the arguments and decided the reference on 21.2.2004.

4. It is noticed by this Court that not noting down the correct date or any date, is a general excuse taken where a party is proceeded ex parte.

Every Advocate in this profession who has some cases with him, in the evening sits down in his office and posts next date of hearing in his diary

and completes the diary. A professional diary is maintained for this purpose so that nothing is left to the memory. Apart from completing the diary

he has also to post the case file in the relevant dates, so that no file is misplaced. There is almost no chance of an Advocate not posting his cases to

the next date. If he forgets to note the next date in some case, the case file of the case shall lie at his table unposted and remind him to find out the

date immediately or on the next day.

5. In this case, three pages of the diary of the Advocate 3.1.2004, 13.2.2004 and 21.2.2004 have been filed. These pages would show that the

Advocate was having only one case on each date. Thus petitioner's Advocate was not such a busy person that he would not remember posting of

his cases to next date or could not get time on next day to find out the date. The pages of last diary of hearings prior to 3.1.2004 have not been

filed. Those pages would have reflected whether the date was noted or not.

6. Industrial Dispute is required to be decided normally in a period of three months or in the extended period of six months. Because of the

frequent adjournments, where a case should be over in seven/eight hearings, normally it takes 70 to 80 hearings, resulting into over crowding of

dockets and a labour dispute decided instead of in months, in years.

7. This Award in question was made in respect of a dispute referred in 1999. It got decided in 2004 i.e. in a period of span of five years. Another

two years passed after the decision of the Tribunal. Sending back cases by High Court where such excuses are taken to the Labour Court for

fresh trial, would mean another five years or so. When, finally, Award comes, one

of the parties may not be satisfied with the Award and again

rush to the High Court. Thus, an industrial dispute which should be decided in about six months" time, get decided in decades. I consider that such

excuses as not noting or posting the case in diary, forgetting the date, noting wrong dates, should not be entertained. Every advocate and litigant

must act in a diligent manner and must be extra cautious in noting next dates in the case. If he is not diligent or cautious, he must suffer.

8. The pages of diary filed by the petitioner does not inspire affidavit. It seems as if a new diary has been taken and one case each has been

entered on three pages. No complaint has been made against the Advocate for his negligence to appear before the Tribunal. I consider the excuse

taken by the petitioner, was not a valid excuse.

9. I find no merit in the writ petition. Writ petition stands dismissed.