

(2009) 04 DEL CK 0459

In the Delhi High Court

Case No : Writ Petition (C) No. 9218 of 2006 and C.M. No. 13042 of 2008

Pro Interactive Service (India) Ltd.

APPELLANT

Vs

Government of NCT of Delhi and another

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Citation : (2009) 123 FLR 722

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Pramod Kumar Sharma, for the Appellant; J.P. Karunakaran, for the Respondent

Judgement

V.K. Shali, J.—With the consent of the parties, the matter is taken up for disposal.

2. This order shall dispose of not only the main writ petition bearing No. W.P. (C) No. 9218/2006 but also the CM No. 13042/2008 u/s 17-B of the Industrial Disputes Act, 1947. Before disposing of the main writ petition on merit the application u/s 17-B of the Industrial Disputes Act, 1947 is taken up for consideration.

3. Section 17-B lays down that where in any case the Labour Court by its award directs reinstatement of any workman and the employer prefers any proceeding against such award in the High Court or the Supreme Court the employer shall be liable to pay to the workman during the period of pendency of such proceedings in the High Court or the Supreme Court the full wages or the wages last drawn by him inclusive of maintenance allowance admissible to him under the rule, if the workman had not been employed in any establishment during the said period and an affidavit to that effect in such Court is filed by the workman.

4. A perusal of the aforesaid provision would clearly show that a mandatory duty is cast on the Court to pass an order granting the full/minimum wages or the last drawn wages which ever is higher in favour of the workman where the management challenges the award before the Court, provided an affidavit to the

effect that he is not employed in any establishment is filed.

5. In the instant case, the petitioner/management by the present writ petition has challenged the award dated 12th July, 2005 by virtue of which the learned Labour Court had directed the reinstatement of the respondent/workman with full back wages. The matter was taken up on 26th May, 2006 and notice was issued to the respondent /workman for 22nd August, 2006 and a stay against the operation of the impugned award was granted which is continuing till date. No order was passed directing the petitioner/ management to deposit an amount in pursuance to the impugned award. The respondent/ workman during the pendency of the writ petition has filed an application on 15th September, 2008 claiming the benefit of section 17-B of the Industrial Disputes Act, 1947 on account of the stay against the operation of the impugned award. In the application, two important facts have been mentioned by the respondent/workman. Firstly, his last drawn wages were Rs. 2600/- and secondly that he has been unemployed w.e.f. 15th January, 2003 despite his best efforts.

6. The petitioner/management had filed the reply to the application. Most of the averments which have been made by the petitioner/management are to the effect that no valid service has been effected on them because of the incorrect address having been furnished by the respondent/workman. With regard to the last drawn wages, the same is not in dispute, but with regard to the employment it has been denied that the respondent/workman has continued to remain unemployed despite best efforts. It has also been stated that the respondent No. 2 has a good experience in various reputed companies like Embassy of USA, Five Star Hotel Maurya Sheraton, Surya International Export, ICICI Bank, etc., and therefore, it is not possible for the respondent/workman to remain unemployed from the date of termination of his service.

7. I have considered the respective submissions and perused the record. The requirement of law is met, in case the petitioner files an application duly supported by an affidavit wherein his last drawn wages are given as well as the factum that he has not been employed anywhere in any establishment are sworn. Once this is done, the onus shifts on to the petitioner/management to show that the respondent/workman is employed in some establishment or is carrying on some gainful activity which would disentitle him to the benefit of section 17-B.

8. In the instant case, the said onus is not discharged by the petitioner/management. The only averment which has been made in the reply is that he has a good experience. Merely on account of the fact that the respondent/workman is having a good experience would not be sufficient to assume that he has not remained unemployed. This fact has to be proved by some prima facie evidence that he was employed. Therefore, in the facts and circumstances of the case, there is no reason to disbelieve that the respondent/workman has remained unemployed. Both the requirements of section 17-B have been satisfied.

9. The respondent/workman cannot be left to a situation of vagrancy despite the fact that the award is in his favour and neither the award has been implemented nor the last drawn wages are being paid to him. This therefore in the Court view to completely squeeze him financially so that he succumbs to the pressure of the petitioner/management.

10. I, accordingly, direct that the respondent/workman is entitled to the last drawn wages w.e.f. 12th July, 2005 i.e. the date of the impugned award till 31st March, 2009 at the rate of Rs. 2592/-. Though the petitioner has claimed his last drawn wages were Rs. 2600/-, however, the photocopy of the pay scale which has been exhibited in the Court below shows that the actual amount payable to him is Rs. 2592/-. The order for payment of minimum wages is not being passed because this Court is setting aside the ex parte award and remanding back the matter to the learned Labour Court to decide the main matter afresh after giving an opportunity to the petitioner/management.

11. Coming back to the facts of the case, the petitioner/management has contended that it was not served on account of the fact that the address on which the notices were sent by the Court was 31/32 Shivalik, Malviya Nagar, New Delhi while as the record shows that the actual address of the petitioner/management was 31-32 Village Begum Pur Park, Shivalik, Malviya Nagar, New Delhi.

12. A perusal of the Court record of the I.D. shows that the notices have been sent at 31-32 Shivalik Park, Malviya Nagar, New Delhi and not at 31-32 Begum Pur Park, Shivalik Park, Malviya Nagar, New Delhi despite the correct address being on record. In the absence of notice having been sent at the correct address the assumption of service on the basis of the report of the process server by the learned Labour Court was not at all valid and justified. This was also not in accordance with Rule 18 of the Industrial Disputes Act.

13. I, accordingly, hold that so far as the main matter is concerned, the petitioner was not validly served and accordingly, the ex parte award against the petitioner/management is set aside, subject to payment of cost of Rs. 10,000/- to the respondent/workman. It is made clear that in case the back wages calculated @ of last drawn wages for the period 12th July, 2005 to 31st March, 2009 are not paid within a period of eight weeks from today before the learned Labour Court, the learned Labour Court shall strike off of defence of the petitioner/management.

Parties are directed to appear before the learned Labour Court on 30th April, 2009.