

(2009) 03 DEL CK 0263

In the Delhi High Court

Case No : Writ Petition (C) No. 18142 of 2005

Soni Engineering Works

APPELLANT

Vs

Workman, Harpal Singh

RESPONDENT

Date of Decision : 23-03-2009

Acts Referred:

Citation : (2009) 5 ILR Delhi 366

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

Bench : Single Bench

Advocate : Manish Kapur, for the Appellant; None, for the Respondent

Judgement

V.K. Shali, J.—The petitioner has challenged the award dated 7th April, 1997 passed by the learned Labour Court -VII in ID No. 433/1988 titled as The Workman Sh.Harpal Singh v. The Management of Soni Engineering Works.

2. By virtue of the aforesaid award, the learned Labour Court has come to a finding that the services of the respondent/workman was illegally and unjustifiably terminated w.e.f 25th November, 1987 and accordingly, the Labour Court was pleased to direct the reinstatement of the respondent /workman with payment of back wages @ Rs. 600/- per month.

3. The petitioner has challenged the award on the ground that the petitioner was a partner of M/s Soni Engineering Works and on account of the dispute between the partners, the matter could not be followed up because of which the aforesaid ex parte award was passed. It was urged by the learned Counsel that the petitioner was not given an opportunity to adduce evidence and therefore, there was a violation of principles of natural justice.

4. I have heard the learned Counsel for the petitioner and gone through the award. The contention of the counsel for the petitioner is that there was violation of principles of natural justice on account of not having been given an opportunity to cross examine the respondent /workman or an opportunity to adduce the evidence is not correct on account of the fact that the petitioner was

served and had put in appearance. It had even thereafter chosen to file its written statement. This is indicative of the fact that the petitioner /Management was served. The petitioner /Management could pray for setting aside the ex parte award only if they were able to show that they were prevented by "sufficient cause" to appear in the matter and adduce the evidence in the matter. The ground which has been given in the writ petition for setting aside the ex parte award is that there was a dispute between the partners. This is in my view does not constitute a "sufficient cause". The petitioner /Management if it has chosen to abstain from appearance before the learned Labour Court then it has done so at its own peril and it is not open to the petitioner /Management to content that on account of its abstinence, there was violation of principles of natural justice which would warrant the setting aside of the ex parte award. Accordingly, this contention of the counsel is without any merit.

5. A perusal of the award shows that it is a reasoned award and the counsel for the petitioner has not been able to show any perversity in the award or violation of any rule and regulation which would have warrant interference with the same. Therefore, the writ petition of the petitioner so far as the challenge to the award dated 7th April, 1997 is concerned, is without any merit.

6. However, with regard to the question of reinstatement and payment of back wages, it has been laid down by the Supreme Court in catena of cases that merely on account of the Labour Court holding that the termination of the workman is illegal and unjustified would not necessarily mean automatic reinstatement and payment of back wages. There are various other factors to be borne in mind while passing such an order in the instant case. Reliance in this regard is placed on Talwara Coop. Credit and Service Society Ltd. Vs. Sushil Kumar,

7. The petitioner has made a definite averment in the petition that the business of the petitioner is closed. The respondent /workman has also not been appearing for the past nearly a year. This clearly shows that even if the order of reinstatement is sustained, the respondent/ workman is not interested in reinstatement.

8. Keeping in view of the fact that the petitioner's business is closed and the fact that the respondent/workman is not appearing, I feel that the order of reinstatement and payment of back wages needs to be modified by an order directing payment of one lump sum compensation to the respondent /workman.

9. While calculating the payment of compensation, I have taken into consideration the factum that the salary of the petitioner was Rs. 600/- per month and specifically the aforesaid amount if calculated for a period of almost 20 years would be roughly Rs. 1,50,000/- or so.

10. I, therefore, quantified the compensation to be paid to the respondent / workman to the tune of Rs. 1,00,000/- instead of directing the reinstatement and payment of back wages from the date of alleged illegal termination dated 25th

November, 1987. To that extent, the impugned award of the Labour Court stands modified.

11. So far as the amount of Rs. 1,00,000/- is concerned, out of the said amount of Rs. 34,730/- is already deposited by the petitioner in compliance to the order dated 27th September, 2005 passed by the High Court. Accordingly, the petitioner /Management is directed to pay or deposit the balance amount of Rs. 65,270/- (Rs. 1,00,000 - Rs. 34,730 = Rs. 65,270/-) with the learned Registrar General of this Court within four weeks. On deposit of the aforesaid amount along with the interest of proof of subsequent amount, if deposited, shall be released to the respondent/workman as and when he makes an application in this regard.

12. With these observations, the award dated 7th April, 1997 stands modified. Accordingly, the writ petition is disposed of.