

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3659/1996**

% **Date of decision: 17th May, 2010**

GOVERNMENT OF NCT OF DELHI Petitioner
Through: Mr. Anjum Javed & Mr. Aliafser,
Advocates

Versus

SH. D.S. BAWA & ANR. Respondents
Through: Mr. Anuj Aggarwal, Advocate for
R-2.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

RAJIV SAHAI ENDLAW, J.

1. The petitioner by this writ petition impugns the *ex parte* award dated 22nd February, 1993 of the Labour Court directing the petitioner to reinstate the respondent no.2 workman with full back wages and continuity of service as well as the order dated 27th November, 1995 dismissing the application of the petitioner for setting aside of the *ex parte* award.

2. The Labour Court on the basis of the *ex parte* evidence of the respondent no.2 workman found that the respondent no.2 workman was working as a daily rated casual muster roll worker with the petitioner since

5th May, 1984; the services of respondent no.2 workman had been terminated in May, 1987 without assigning any reason. The Labour Court found that the respondent no.2 workman had worked for the petitioner for more than 240 days in a calendar year preceding the date of his termination and the petitioner could not have terminated the services of the respondent no.2 workman without complying with the provisions of Section 25F of the I.D. Act and which had not been done. The action of the petitioner was thus held to be in violation of the provisions of law and the respondent no.2 workman was held entitled to reinstatement. It was further found on the basis of *ex parte* evidence of the respondent no.2 workman that the work being performed by the respondent no.2 workman was the same as being performed by the regular employees. The respondent no.2 workman was thus also held entitled to be paid at the same scale as being paid to the regular employees, however without any increment. The award also records that though the petitioner had appeared before the Conciliation Officer but chose not to appear before the Labour Court; instead, the Deputy Director (Horticulture), Development Division-II, Public Works Department of the Delhi Administration was found to have showed utter negligence and ignorance in not participating in the matter inspite of knowledge of the proceedings.

3. The Labour Court, vide order dated 27th November, 1995, has dismissed the application of the petitioner for setting aside of the *ex parte*

award for the reason of the application having been filed after the expiry of 30 days from the date of publication of the award and the Labour Court having become *functus officio*. However, it was also observed that the petitioner had knowledge of the proceedings and had thus no case for setting aside of the *ex parte* award.

4. This Court issued notice of the writ petition. Subsequently, vide order dated 25th July, 1997, recovery proceedings were stayed subject to the petitioner depositing a sum of Rs.1,61,562/- in this Court. Out of the said amount, a sum of Rs.3,000/- was permitted to be released to the respondent no.2 workman towards litigation expenses. The respondent no.2 workman applied under Section 17B of the I.D. Act. The said application was allowed and the petitioner was directed to pay Rs.92,678.43p to the respondent no.2 workman towards last drawn / minimum wages from the date of the award till 28th February, 1997. The petitioner preferred an appeal against the order under Section 17B of the I.D. Act. The Division Bench in LPA No.386/1998, vide order dated 18th September, 1998 allowed the sum of Rs.92,678.43p (supra) to be released to the respondent no.2 workman out of Rs.1,61,562/- deposited earlier by the petitioner in this Court. The petitioner was directed to deposit a further sum of Rs.21,657/- in this Court and also directed to make payment under Section 17B of the I.D. Act to the respondent no.2 workman for the period subsequent to 28th February, 1997. Rule was issued in the writ petition on

17th February, 1999. The petitioner failed to comply with the order under Section 17B of the I.D. Act leading to the vacation of the interim order on 19th September, 2000. The Trial Court record was requisitioned on 5th December, 2007. However, the same was not traceable. On 2nd December, 2008 the petitioner was again directed to pay the arrears under Section 17B of the I.D. Act in terms of earlier directions of this Court. The counsels have been heard.

5. The counsel for the respondent no.2 workman has at the outset stated that the present writ petition is liable to be dismissed summarily for the reason of the order under Section 17B of the I.D. Act having not been complied by the petitioner till date inspite of orders / directions aforesaid. Reliance in this regard is placed on order dated 4th May, 2010 of a Single Judge of this Court in WP(C) No.21069/2005. In the said order, the Single Judge of this Court on the contention of the workman that the order under Section 17B of the I.D. Act was un-complied, dismissed the writ petition. However, there is no discussion in the said order as to whether on such non compliance the writ petition is liable to be dismissed.

6. I find that another Single Judge of this Court in *M/s Hindustan Carbide P. Ltd. Vs. NCT of Delhi* W.P.(C) No.817/1999 decided on 11th October, 2002 has also taken a similar view. I however find that the Supreme Court in *Hindustan Zinc Ltd. Vs. Industrial Tribunal* (2001) 10

SCC 211 has deprecated the practice of disposing off the writ petitions for the reason of non-compliance with the order under Section 17B, without dealing with the merits. The Division Bench of the Madhya Pradesh High Court in ***Krishi Upaj Mandi Samita Bada Malhara Vs. Yashwant Singh Bundela*** MANU/MP/0622/2007 following the aforesaid dicta set aside the order of a Single Judge directing automatic dismissal of the writ petition because of non compliance of Section 17B of the Act. Besides, in the present case, it transpires that the respondent no.2 workman had earlier also complained of non compliance of the order under Section 17B of the I.D. Act and filed CM No.1061/2000 in this Court. However, the said CM was disposed of with the order only of vacation of the interim order. It was not deemed appropriate at that stage to dismiss the writ petition. The counsel for the respondent no.2 workman has not been able to show as to how inspite of the said order, the respondent no.2 workman has now become entitled to dismissal of the writ petition for the same reason. The respondent no.2 workman having availed the benefit of vacation of the interim order cannot now seek the dismissal of the writ petition also. The same would tantamount to review of the order dated 19th September, 2000 and for which no case is made out.

7. That brings me to the merits of the controversy. It is the admitted position that the respondent no.2 workman was a daily rated muster roll employee. On enquiry, the counsel for the respondent no.2 workman states

that he is seeking reinstatement as a daily rated muster roll employee only and not as a regular employee. It is however stated that if the seniority of the respondent no.2 workman in the muster roll is maintained, the respondent no.2 workman would have a much better chance of regularization.

8. The petitioner at the outset has sought setting aside of the *ex parte* award and an opportunity to contest the same on merits. However, neither is a case for setting aside of the *ex parte* made out nor is it deemed expedient now, after 17 years to relegate the parties to the status quo ante. The petitioner also in the writ petition admits that it had knowledge of the industrial dispute. Its version is that the dispute was transferred from one Labour Court to the other and the petitioner was not sent any notice from the transferee Labour Court and was unaware of the date of hearing before the transferee Labour Court. However, it is admitted that the petitioner of its own had traced the case and had written to the Labour Court seeking certain information. In fact, the Labour Court has in the award as well as in the order dismissing the application for setting aside of the *ex parte* award commented adversely on the said conduct of the officials of the petitioner. This Court also from time to time enquired from the petitioner as to what action had been taken against the erring official of the petitioner. However, save for stating that disciplinary proceedings had been initiated against such official, no information has been given. Once it is admitted

that the petitioner was aware of the proceedings before the transferee Labour Court, the non appearance and non participation of the petitioner therein is inexplicable and the petitioner has no case for setting aside of the *ex parte* award.

9. The counsel for the petitioner next contends that as per the policy decision laid down by DG, Central Public Works Department, New Delhi, only a muster roll labourer who renders minimum 240 days of continuous service in each of the two consecutive years is eligible to be considered for regularization in the said Department subject to availability of vacancies. It is contended that the respondent no.2 workman worked from 5th May, 1984 to 31st December, 1984 i.e. for 134 days, from 1st January, 1985 to 31st December, 1985 i.e. for 248 days and from 1st January, 1986 to 2nd July, 1986 i.e. for 106 days. It is contended that since the respondent no.2 workman did not fulfill the basic requirement of minimum continuous service of 240 days in two consecutive years, he was not eligible to be considered for regularization. It is further the case of the petitioner that with effect from 3rd July, 1986, the petitioner abandoned his duties.

10. It thus stands admitted by the petitioner itself that the respondent no.2 workman had worked with it for more than 240 days in the 12 months preceding 2nd July, 1986 when his services were admittedly dispensed with. The provisions of Section 25B and 25F of the I.D. Act thus become

applicable. The petitioner could not have terminated the services of the respondent no.2 workman without compliance with law and which has admittedly not been done. The further case of the petitioner is that it is the respondent no.2 workman who after 2nd July, 1986 did not turn up for duty. The case of the respondent no.2 workman is otherwise i.e. that he was not given employment. The petitioner having chosen not to contest the proceedings before the Labour Court has only itself to blame. The Labour Court on the basis of unrebutted evidence of the respondent no.2 workman held that the respondent no.2 workman had offered his services. The petitioner failed to establish a case of abandonment. Moreover, abandonment amounts to misconduct which requires proper enquiry (see *Shakuntala's Export House (P) Ltd. Vs. Secretary (Labour)* MANU/DE/0541/2005, *Municipal Corporation of Delhi Vs. Shri Begh Raj* 117 (2005) DLT 438 & *D.K. Yadav Vs. J.M.A. Industries Ltd.* (1993) 3 SCC 259). The petitioner admittedly did not conduct any enquiry as it was required to do if the respondent no.2 workman had absented / absconded.

11. No case, therefore, of setting aside of the *ex parte* award in so far as it declares the termination to be illegal, is made out.

12. The question however arises as to the relief to be granted to the respondent no.2 workman. In this context, the conduct of the respondent

no.2 workman of raising the dispute after three years of 2nd July, 1986 becomes relevant. Though there is no time limit prescribed for raising the dispute but in the present case no reason has come out for the respondent no.2 to have raised the dispute after the long span of three years. A daily rated muster roll worker is expected to raise the dispute immediately. The delay gives credence to the plea of the petitioner, though not substantiated, of abandonment / absenteeism on the part of the respondent no.2 workman.

13. Coupled with the aforesaid is the circumstance of long time having been elapsed. The respondent no.2 workman has not worked for the petitioner for nearly quarter of a century. Imposing the respondent no.2 workman now on the petitioner is not found to be conducive to the industrial harmony being the spirit running throughout the I.D. Act. Further, the respondent no.2 workman was only a daily rated worker. The counsel for the respondent no.2 workman as aforesaid admits that reinstatement would also be as a daily rated worker. The only case is that such reinstatement may enable regularization / absorption of the respondent no.2 workman with the petitioner. The counsel for the petitioner on the contrary states that there is no vacancy and the practice of engaging daily rated workers has also since been stopped. I thus wonder whether the order of reinstatement would not lead to further controversies / disputes. The parties have already been litigating since the year 1989 and the endeavour of this Court should be to grant a relief which would put an end to the

misery through litigation rather than encourage it. Considering all the circumstances, I had also called upon the parties to address on the relief of the lumpsum compensation to be paid in lieu of reinstatement and back wages etc. The counsel for the respondent no.2 workman has relied on the recent dicta in *Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Board* 2010 III AD (S.C.) 525 (in that case also reinstatement was ordered as daily wager only) and *Anoop Sharma Vs. Executive Engineer, Public Health Division* MANU/SC/0281/2010 (also a case of a casual workman who was granted the relief of reinstatement).

14. However, for the reasons aforesaid in the facts and circumstances of the present case, the award of compensation rather than of reinstatement is found to be appropriate. Ofcourse, compensation has to be such which is in lieu of the order of reinstatement and back wages etc.

15. The details of the payments deposited during the pendency of the writ petition have already been narrated herein above. The petitioner has also filed reply to CM No.4503/2005 stating that it has made payment of Rs.1,61,562/-, Rs.21,650/- and Rs.1,88,816/-, i.e. of the total sum of Rs.3,72,028/- to the respondent no.2 workman. Considering that all the aforesaid payments are without the respondent no.2 workman having done any work and further that if the order of reinstatement as daily wager was to be made, the respondent no.2 workman would have continued to earn the

minimum wages, which recently stood revised, from the petitioner, it is deemed expedient that besides the payments aforesaid already made (and of which the respondent no.2 workman would not be liable to refund any part to the petitioner), the petitioner shall pay a further sum of Rs.3,00,000/- (Three lacs only) to the respondent no.2 workman in lumpsum settlement of all claims of the respondent no.2 workman against the petitioner under the award or otherwise (and inclusive of arrears if any under the Section 17B order). In payment of the said amount, the amounts if any lying deposited in this Court together with interest if any accrued thereon be released forthwith to the respondent no.2 workman. The balance amount be paid within a period of six weeks hereof, failing which it shall incur simple interest at 9% per annum. The award impugned in the petition is modified in terms of above and the writ petition is disposed of. The respondent no.2 workman is also awarded costs of this proceeding of Rs.15,000/- payable by the petitioner along with the amounts aforesaid.

**RAJIV SAHAI ENDLAW
(JUDGE)**

17th May, 2010
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