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

\+ **WP(C) No.2925/2003**

% **Date of decision:22nd February, 2010**

SHRI RAMJAG SINGH ..... Petitioner
Through: Mr. Anuj Aggarwal, Advocate

Versus

M/S RATTAN METAL CORPORATION ..... Respondent
Through: Mr. Ankit Jain, Advocate

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/workman seeks a writ of certiorari with respect to the award dated 17th January, 2000 of the Labour Court holding the petitioner/ workman not entitled to any relief inspite of answering the reference in favour of the petitioner / workman that his services had been terminated illegally and/or unjustifiably by the respondent/management. The respondent/management has not challenged the award.

2. The Labour Court has held the petitioner/workman not entitled to any relief for the reason of the respondent / management having in its reply to the statement of claim of the petitioner/workman pleaded that it had closed down its business. Even though the respondent/management after filing the reply was proceeded against ex parte and neither cross examined the petitioner/workman nor lead any evidence of its own, the Labour Court held that since the petitioner/workman notwithstanding the said plea in the reply of the respondent/management, in his affidavit by way of evidence did not

utter a single word that the management was still doing business, reinstatement was not possible. However, the Labour court did not even advert to the fact that even if reinstatement was not possible, as to why the petitioner was not entitled to any other relief by way of back wages till the date of closure and/or by way of compensation in lieu of reinstatement. The award thus to the said extent qualifies as perverse, so as to invite interference by this Court.

3. The petitioner/workman had worked with the respondent / management for nine years as a helper before his termination w.e.f. July, 1989. The petitioner/workman was being paid Rs.562/- per month at the time of termination of his employment.

4. The respondent/management in reply to the said claim before the Labour Court inter alia pleaded "In any case now the management is not in business ever since long and has completely given up all activities and businesses for some unavoidable reasons and unforeseen circumstances of personal inability and disability". The counsel for the petitioner has contended that the said pleading in the reply is vague; no date even of closure was stated, no document was filed and in any case the burden of proving closure, if any, of business was on the respondent/management and the Labour court could not have drawn any adverse inference against the petitioner/workman in not deposing that the respondent/management continued to be in business. I may notice that the petitioner/workman had filed a rejoinder to the reply aforesaid and in which he had controverted the plea of the respondent/management having closed the business. The counsel for the petitioner contends that the finding of illegal termination being in favour of the petitioner/workman, in terms of the judgments in (i) ***Rajinder Kumar Kindra Vs. Delhi Administration*** AIR 1984 SC 1805 (ii) ***Management of Aurofood Pvt. Ltd. Vs. S. Rajulu*** (2008) II LLJ 1061 SC & (iii) ***Novartis India Ltd. Vs. State of West Bengal*** (2009) 3 SCC 124, the

relief of back wages and compensation in lieu of reinstatement and which in ***Management of Aurofood Pvt. Ltd.*** (supra) as high as Rs.10,00,000/- was granted, ought to have been followed.

5. Per contra, the counsel for the respondent / management has supported the award in so far as not granting any relief to the petitioner/ workman. It is urged that even if the respondent/management was ex parte before the Labour Court, it was the bounden duty of the petitioner, who was the claimant therein, to prove his claim to the hilt. It is further urged that the plea of closure having been taken by the respondent/management, for the petitioner/workman to have been entitled to any relief other than that in the case of closure, he ought to have proved that there was no closure of the business of the respondent/management; else the petitioner is at best entitled to amounts as under Section 25F of the Act and which on enquiry together with the back wages upto March, 1991, the date disclosed before this Court of closure, would not be in excess of Rs.15,000-16,000/-. Reliance is placed on ***Management of DDA Vs. P.O., Industrial Tribunal*** 2001 II AD (Delhi) 861 in which case also the DDA was proceeded against ex parte before the Labour Court and a Single Judge of this Court held that even in an ex parte award, the Industrial Tribunal was supposed to advert to those aspects which were specifically raised in the written statement filed by the DDA and the matter was remanded for reconsideration to the Tribunal. The respondent/management has along with its counter affidavit before this Court also filed certain orders of its sales tax assessment in support of its plea of closure of business. The counsel also contends that none of the judgments relied upon by the petitioner were of a case of closure of industry / establishment and hence it is urged that the principle of full back wages and / or compensation in lieu of reinstatement does not apply.

6. The first question which falls for consideration is the reasoning of the Labour Court qua the aspect of closure. The Labour Court has proceeded on the premise that upon a plea in that regard being taken by the respondent,

inspite of respondent being proceeded ex parte, it was incumbent on the petitioner to prove otherwise. In the ***Management of DDA*** (supra), the Single Judge of this Court found the DDA in that case to have specifically submitted that the initial appointment of the workman as Non-technical Supervisor was on daily wage basis which did not confer upon him any right and that he was appointed substantively, as work charge Beldar w.e.f. 6th March, 1984 on the scale for that post and usual allowances; it was also the plea that the workman gave joining report on 6th March, 1984 on new terms and continued to work on this post for almost six years before raising the alleged dispute and thus was estopped from backing out from the terms and conditions of his appointment w.e.f. 6th March, 1984. The question thus for decision by the Labour Court in that case, was whether such fresh appointment would amount to reversion at all. The Labour Court was found to have not returned a finding on the said aspect. It was in these facts that the observation aforesaid was made and the ex parte award set aside and remanded for re-consideration. The DDA in that case has also applied to the Labour court for setting aside of the ex parte award and which application of the DDA was also held by this Court to have been wrongly dismissed by the Labour Court.

7. Else, the general rule is that the onus of proof is on a party taking the plea. Reference may be made to ***U.P. State Electricity Board Vs. Aziz Ahmad*** (2009) 2 SCC 606 reiterating the principle that the burden of proof is on a person who alleges the facts.

8. The Supreme Court in ***Shankar Chakravarty Vs. Brittania Biscuit Co. Ltd.*** AIR 1979 SC 1652 after considering the duties and functions of the Industrial Tribunal or the Labour Court held that any party appearing before it must make a claim or demur the claim of the other side and when there is a burden upon it to prove or establish the fact so as to invite a decision in its favour, it has to lead evidence; the quasi judicial tribunal is not required to advise the party either about its rights or what it should do or omit to do. It

was held that the test for determining the onus would be, who would fail if no evidence is led. This Court also in ***UCO Bank Vs. Presiding Officer*** 81 (1999) DLT 696 has held that the burden of proof does not lie on the party which denies it but on the party which asserts the existence of a certain state of things.

9. In the present case, the plea of closure was taken by the respondent/management. The onus to prove the said plea would be on the respondent/management. As noted above, the petitioner / workman had in his rejoinder controverted the said plea. The positive evidence to prove closure would be available with the respondent / management only rather than with the petitioner/workman. The Labour Court is found to have taken a hyper technical and wrong view of the matter in observing that the petitioner/workman had in his affidavit not stated that the respondent/management continued to carry on business. Without the petitioner/workman being put to notice that he was required to prove or rebut the plea taken by the management, the petitioner/workman could not have been non suited as done by the Labour Court. It was merely a plea of the respondent/management that the business had been closed down and hence the burden of proof was on the respondent/ management to lead cogent evidence in support of the same and the Labour Court has committed an error of law in arriving at a finding that the business had been closed down.

10. I also find that for relief being denied to the petitioner/workman, on the plea of closure of business, within the meaning of Section 25F of the Act the respondent/management was required to satisfy that it had given one months notice in writing to the petitioner/workman indicating the reasons and that the petitioner / workman had been paid at the time of retrenchment compensation as provided in Clause (b). The Supreme Court has held compliance with the said two conditions to be mandatory (reference in this regard may be made to ***Pramod Jha Vs. State of Bihar*** AIR 2003 SC 1872).

Even though the third condition of service of notice of closure on the appropriate government has been held to be directory but the management which desires to take benefit of such plea of closure ought to prove service of such notice and which alone can relieve the management of the rigours of the other provisions of law. All the said evidence could have been led by the respondent/management only and not by the petitioner/workman.

11. Before this Court also though a specific date of March, 1991 is mentioned as that of closure of business but the documents filed before this Court also do not shown any closure. All that the respondent/management had filed is the sales tax assessment orders for the year 1990-91, 1993-94, 1994-95 & 1995-96. While the business appears to have been carried on for assessment year 1990-91, for subsequent years, it is recorded that affidavit had been filed stating that no sale purchase had been made. I have enquired from the counsel for the respondent as to whether it was informed to the Sales Tax Authorities that the respondent/management had closed the business and the sales tax number returned. The answer is in the negative.

12. The counsel for the petitioner has also rightly contended that the respondent/management cannot be permitted to lead any evidence before this Court or to take any new pleas before this Court. However, as noticed above, there is no evidence even before this Court of the respondent/management being entitled to any benefit of Section 25F of the Act.

13. The petitioner/workman is thus certainly entitled to relief and which in the face of the circumstances aforesaid has to be compensatory only. The question is how much. The counsel for the respondent/management has contended that the respondent/management in this case is admittedly a sole proprietary; that the petitioner/workman ceased to work with the respondent/management more than 20 years ago and the said factors will have to be taken into consideration in determining the compensation. Per

contra, the counsel for the petitioner has contended that the petitioner/workman has remained unemployed; that there is not even a plea to the contrary and in the circumstances he is entitled to back wages for the last over 20 years and compensation in lieu of reinstatement. He reminds that in ***Management of Auro Food Pvt. Ltd.*** (supra) back wages for over 20 years and compensation equal to Rs.10,00,000/- were allowed. He also contended that the salary of Rs.562/- per month being paid to the petitioner / workman was also below the minimum wages.

14. In the opinion of this Court, the petitioner ought to have been allowed back wages till the date of award i.e. for approximately 10 years. That brings me to the figure of approximately Rs.60,000/-. I deem compensation in lieu of reinstatement of Rs.40,000/- to be just and proper in the aforesaid facts.

15. The petition therefore succeeds. The award dated 17th January, 2000 in so far as holding the petitioner to be not entitled to any relief is corrected. The petitioner is held entitled to a sum of Rs.1,00,000/- from the respondent / management towards back wages and compensation in lieu of reinstatement. The said amount be paid within a period of thirty days from today, failing which it shall incur future interest at the rate of 9% per annum.

16. The petition is disposed of. The petitioner is also entitled to costs of proceedings assessed at Rs.20,000/- from the respondent / management

RAJIV SAHAI ENDLAW
(JUDGE)

February 22nd, 2010/gsr