

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

+ **WP (C) Nos. 674/2006**

% Judgment delivered on: 30.04.2009

Joint Plant Committee Petitioner
Through: Mr. Alakh Kumar, AAdvocate

versus

Shri Ram Respondent/workman
Through: Mr. Gajender Giri, Advocate

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. (Oral)

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1. By way of this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the impugned award dated 16.11.2004 passed in I.D. No. 13/2000 whereby directions were given by the Labour Court to the petitioner to reinstate the respondent with 50% of the back wages drawn by him at the time of termination of his services or as per the Minimum Wages Act whichever were higher from the date of his termination till the date of his reinstatement.

2 . Brief facts of the case in nut shell are as under:-

The workman was employed with the management as Safai Karamchari w.e.f. January, 1988 and his last drawn salary was Rs.1500/- per month. During his tenure of service, he never gave any cause of complaint to the management. However, the management was not providing legal facilities, such as, annual leave, weekly off, bonus, overtime, and was also not paying his wages as per Minimum Wages Act. The workman had been demanding from the management the said legal facilities and the wages as per Minimum Wages Act. Ultimately, the management got annoyed and terminated the services of the workman w.e.f. 14.1.1999 without giving any notice or issuing any chargesheet and without adhering to the mandate of Section 25-F of the I.D. Act, 1947. A demand notice dated 19.1.1999 was sent to the management but it did not respond. The matter was sent to the Conciliation Officer and on failure of the conciliation proceedings the reference was sent to the Labour Court. Notice was sent to the management but nobody appeared hence on 2.11.2000 it was proceeded ex-parte. The Labour Court passed the impugned award in favour of the workman. Aggrieved with the said award the petitioner has preferred this petition.

3 . Counsel for the petitioner submits that the petitioner was not served before the Labour Court as a result of which an ex-parte award was passed against the petitioner. Counsel further submits that the Labour Court wrongly recorded in the proceedings dated 2.11.2000 that the petitioner was served and not present and then directions were given for ex-parte evidence after proceeding the management ex-parte. The contention of the counsel for the petitioner is that since the petitioner was not served then how the presence could have been made on behalf of the petitioner. Counsel further submits that the petitioner is an autonomous body under the Ministry of Steel, Central Government of India and therefore, being a Government body would not have refrained from appearing before the Labour Court once having received the summons from the Labour Court. Counsel further submits that the respondent workman was under the contractual employment of respondent No.2 and therefore, there was no relationship of employer and employee between the parties. Counsel also submits that the salary and all other statutory payments were being paid by the respondent No.2 to the respondent No.1 under the terms and conditions of the agreement executed between them. Counsel thus submits

that these facts could not be placed by the petitioner since the petitioner was proceeded ex-parte before the Labour Court and therefore, believing the stand of the respondent/workman the Labour Court passed an ex-parte award giving directions for the reinstatement of the respondent with 50% of the back wages. Giving an explanation for non-appearance of the petitioner the counsel submits that no notice was ever issued by the Labour Court to the petitioner and therefore, the Labour Court wrongly proceeded ex-parte against the petitioner vide orders dated 16.11.2004. Counsel further submits that the petitioner came to know about the said ex-parte award by notice dated 17.11.2005 received by it from the office of the Recovery Collector Officer and thereafter necessary steps were taken by the petitioner to carry out the inspection of the records and therefore to challenge the same by filing the present writ petition.

4 . I have heard counsel for the parties and perused the record.

5 . The petitioner was proceeded ex-parte on 2.11.2000 when none appeared for the petitioner management. The Labour Court kept waiting for the petitioner/management till 2.15 p.m. and when nobody appeared till then, directions were

given for proceeding ex-parte to the petitioner management. The petitioner claims that no notice from the Labour Court was received by it and therefore, the petitioner could come to know about the pendency of the said proceedings only on 17.11.2005 and not prior thereto. The petitioner has also stated in the present petition that the records of the Labour Court were inspected and thereafter steps were taken to file the present petition. In the entire petition the petitioner has not given any explanation or reasons to satisfy this Court about the service effected upon the petitioner through registered AD for the date fixed before the Labour Court. On perusal of the record it is evident that summons were sent to the petitioner vide postal receipt No. 2156 and on the returned AD Card there is an acknowledgment by some person although without the seal of the company. It is further not in dispute that the addresses of the petitioner is correctly stated on the postal receipt as well as on the AD card. Simply, because the AD card does not bear the seal of the company this Court cannot come to the conclusion that the summons were not received by the petitioner. It was for the petitioner to have given the reasons as to under what circumstances, the said summons were not received by the

petitioner when clearly summons were directed at the correct address and there is AD Card which is duly signed by some person on behalf of the petitioner in acknowledgment of the receipt of the summons. Since no such explanation has been given by the petitioner, therefore, I am not persuaded to believe the contention of the petitioner that they had gained knowledge of the ex-parte award only after the receipt of the notice from the office of the recovery collector. In the absence of any reasons, an adverse inference can be drawn against the management that it was not vigilant and diligent in pursuing the case before the Tribunal. The presumption certainly arises under Section 27 of the General Clauses Act as against the petitioner when summons were sent by way of registered AD and postal receipts and AD Cards are available in record of the case.

6 . In the light of the aforesaid position, I am not inclined to set aside the ex-parte award, since I do not find any plausible reasons given by the petitioner to show that the petitioner did not receive the summons of the case before the Labour Court.

Dismissed.

April 30, 2009
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KAILASH GAMBHIR, J.