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

*Date of Decision: 31<sup>st</sup> January, 2022*

+ **W.P.(C) 3842/2019**

SH. AMIT KUMAR SHARMA ..... Petitioner  
Through: Mr. Rama Shankar, Advocate.  
versus

SH. SANJEEV RASTOGI ..... Respondent  
Through: None.

**CORAM:**  
**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through video conferencing.
2. The present writ petition challenged the impugned award dated 22<sup>nd</sup> December, 2018 in **LIR No.9389/16** titled **Sh. Amit Kumar Sharma v. Sh. Sanjeev Rastogi**, by which the claim filed by the Petitioner/Workman (*hereinafter "Workman"*) was rejected by the Labour Court.
3. In this matter, notice was issued vide order dated 12<sup>th</sup> April, 2019. The Management's counsel had appeared on the first few dates being 27<sup>th</sup> August, 2019 and 6<sup>th</sup> February, 2020, and opportunity was granted to the Management to file their reply. However, vide order dated 6<sup>th</sup> February, 2020, the right to file reply was closed. On subsequent dates being 24<sup>th</sup> November 2020, 29<sup>th</sup> January, 2021 and 6<sup>th</sup> October, 2021, despite the Management having been served, there has been no appearance on its behalf. Vide previous order dated 6<sup>th</sup> October, 2021, this Court had also directed that the Registry give intimation to the counsels of the next date. Accordingly, as per the office noting, copy of the previous order had been



issued to the counsels. However, there is no appearance even today for the Management. In view of these facts, this Court proceeds to hear the matter.

4. The brief facts in this case are that the Workman was appointed as a Field Worker in 2007 with a last drawn salary of Rs.15,000/-. Some time around April, 2016, it appears that disputes arose between the Workman and the Management. The case of the Workman is that since February, 2016, his salary was not paid and he was abruptly terminated on 18<sup>th</sup> April, 2016. Thus, the Workman filed a claim before the Labour Court seeking reinstatement and declaration that his termination was illegal.

5. On the other hand, the case of the Management was that the Workman voluntarily left his duty on 8<sup>th</sup> April, 2016, though, the letter dated 4<sup>th</sup> May, 2016, issued by the Management, annexed at page 76 of this writ petition, states the date of leaving by the Workman as 18<sup>th</sup> April, 2016 and not on 8<sup>th</sup> April, 2016. The Management further stated that they repeatedly asked the Workman to join back the services of the Management but he refused to do so.

6. The claim of the Workman has been rejected by the Labour Court on the ground that the Workman did not furnish any explanation for his absence since 18<sup>th</sup> April, 2016. The second finding of the Labour Court is that during the pendency of the case before the Labour Court, a sum of Rs.1,00,000/- was offered to the Workman by the Management, as lump sum compensation which was not accepted by the Workman. The Labour Court appears to have been prejudiced by this fact as well. The relevant extract of the order of the Labour Court is as under:



***“ Issue no. 1. Whether services of workman (Amit Kumar Sharma) were terminated by management (M/s Koron Engineers) illegally or unjustifiably? O.P.W.***

*The onus to prove this issue was upon the workman who himself had placed on record the letter Ex. WW1/5 wherein the management had categorically mentioned that he was running absent without any prior intimation or permission since 18.04.2016 and was directed to report back to his duties within 72 hours along with his written explanation.*

*Not only this, workman had also placed on record his rejoinder but had never furnished any explanation for his absence since 18.04.2016. Even the management had also relied upon the same document as Ex. MW1/1 which shows the management's intention that it had never terminated the services of the workman. Rather it was the workman who was avoiding to join back his duties on one pretext or the other. Therefore, the issue is answered in negative and decided in favour of the management and against the workman.*

***Issue no. 2. Whether there remained some dues of salary etc., against the management.***

*Although no onus was fixed upon any of the parties for discharging the same, however, from the language of this issue, it is clear that the onus to prove this issue was again upon the workman who had not adduced any evidence on record, besides doing a mere lip service in this regard. No co-worker had been examined by him to prove that the management was running into arrears of his salary and he had not even cited the mode of payment of salary to him.*



*Although it has been argued by Id. AR for the workman that during the proceedings, the management had agreed to settle the matter with the workman for a lump-sum payment of Rs. 1 lakh which shows that the management was owing certain amount of money to the workman.*

*However, I am not impressed with this contention of Id. AR for the workman because the settlement was arrived between the parties without prejudice to their rights and contentions on merits and furthermore, it was the workman who had backed out from the settlement and not the management. The mere fact that the management wanted to settle the case with the workman does not indicate that it was also guilty of withholding the salary of the workman. Since the workman has failed to discharge the onus of proving this issue, hence, the present issue is also answered in negative and decided in favour of the management and against the workman.*”

7. Mr. Rama Shankar, Id. Counsel appearing for the Workman, submits that the case of the Workman is that from February, 2016, his salary was not paid and this is not disputed in the evidence which has come on record. He, further, submits that any lump sum compensation which may have been discussed during pendency of proceedings cannot affect the merits of the matter. He also relies on the pleadings before the Labour Court to show that most of the case of the Workman has been admitted by the Management. He therefore seeks the following reliefs in this writ petition:

*“In view of the above it is therefore most respectfully prayed as under:*

*1. That a writ of mandamus or any other appropriate writ or direction may kindly be issued in favour of the petitioner and against*



*the respondent, thereby quashing the award dated impugned Award dated 22.12.2018, passed in LIR No. 9389/2019 by Sh. Lokesh Kumar Sharma, Presiding Officer of Labour Court No. XIX Dwarka Courts New Delhi.*

*2. That the trial court record may kindly be summoned.*

*Any other relief which this Hon'ble court deems fit and proper may kindly be passed in favour of the petitioner and against the respondent.”*

8. Heard and perused the record. In the statement of claim before the Labour Court, the Workman has categorically pleaded to the following effect:

*“1. That the workman had been working with the management from January 2007 as a field worker on the last drawn salary on Rs. 15000/-per month whereas the management had given the designation of sale executive to the workman. The workman was made to work in other organization such as M/s Koron Pump & Project Pvt. Ltd. and M/s Sanjeev Electrical.*

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*6. That the management withheld the earned wages for the period 1.02.2016 to 18.04.2016 (for which separate proceeding under the Shops and establishment Act is pending adjudication) leave encashment, amount towards the overtime, bonus was not paid by the management. In this manner the management without giving any notice pay, service compensation, without any charge sheet, and holding enquiry wrongly and illegally terminated his service in the violation of section 25 F Industrial Dispute Act.”*



9. In response to these paragraphs, in their written statement before the Labour Court, the Management has stated as under:

*“Para 1 to 6 of the statement of claim as written are matter of record to the extent of his date of appointment and last drawn salary as regards the other averments he should be put to strict proof of the averments as made by him. It is submitted that the management is/was providing all the legal facilities to its employees and to him also and as such the question of management getting annoyed and terminating his services w.e.f 18.04.2016 by withholding his wages from 01.02.2016 till 18.04.2016 as alleged does not arise. It is submitted that Shri. Amit Kumar Sharma is absenting himself from duty w.e.f. 08.04.2016 without any information or prior sanction of leave and he was repeatedly advised to report for duty but he failed to do so for the reasons best known to him. It may not be out of place to mention here that the management has not terminated his services till date and as such he should be directed to report for duty along with his explanation in writing and on a clear understanding that he will not be entitled to any wages w.e.f. 08.04.2016 till such time he reports for duty. Therefore all the allegations as contained in these paras are false, baseless and fabricated and as such one and all are categorically denied.”*

10. A perusal of the evidence before the Labour Court shows that even in the evidence of the Workman, the Workman has stated that he is not ready to join the services of the Management. Notably, the Management was willing to take him back only on the condition that back wages would not be demanded. The written statement of the Management is conspicuously silent about the payment of salary for the months of February – April 2016.



Even in the evidence of the Management, there is no statement as to whether the salary from February, 2016 to April, 2016 was paid to the Workman or not. The statement of the Management's witness-MW1- Sh. Sanjeev Rastogi, Proprietor, is clear that the Management is willing to take the Workman back on fresh employment, but they would not take back the Workman with full back wages. The relevant part of the statement is set out below:

*"I had told the Labour Inspector to re-send the workman for reemployment. However, it was not submitted in writing. I had not appeared before the Conciliation Officer. Management is not at all ready to take back the workman on job with full back wages. Vol. We can still take him on job as fresh employment.*

***Q. I put it to you that workman was working with you since January, 2007, is it correct?***

*At this stage, the witness wants to refresh his memory from judicial record. Heard. Permission granted. Witness has referred to his written statement filed on record and after going through the same, he has replied as under: -*

*Ans. I cannot tell if he has started working since January, 2007 but as far as my knowledge goes the workman had worked with us with one break of six months after which we had still re employed him without any further queries.*

*It is wrong to suggest that workman had lastly worked with the management till 18.04.2016. Vol. He had worked till 08.04.2016. It is correct that the last drawn salary of workman was Rs. 15,000/- per month."*

11. Therefore, a conjoint reading of the pleadings and the evidence which



have come on record clearly suggest that there is no denial by the Management with regard to the non-payment of the Workman's dues from February, 2016 to April, 2016. It is also noted that a letter dated 4<sup>th</sup> May, 2016 was issued by the Management to the Workman, stating that he was absenting himself from 18<sup>th</sup> April, 2016. Thus, the disputes arose between the parties only around April, 2016. The Management has also relied upon another letter dated 23<sup>rd</sup> April, 2016 by which he was directed to join back duties, however, since there is no clear denial of the non-payment of salary by the Management to the Workman, for the period between February, 2016 to April, 2016, the termination cannot be held to be legal. In any event, the Workman has served the Management for more than 9 years since 2007, thus, even if the provisions of Section 25F of the Industrial Disputes Act, 1947 (*hereinafter "Act"*) are considered, this Court is of the opinion that the Workman is entitled to certain amounts, in terms of Section 25F of the Act, concerning retrenchment compensation.

12. Accordingly, the Workman is awarded a lump sum compensation of Rs.2,00,000/- in lieu of his claims before the Labour Court. The said amount shall be paid by the Management to the Workman, within 8 weeks, failing which the Workman would be free to seek execution of this order and simple interest then shall be payable @ 6% per annum.

13. Counsel for the Workman to provide details of the Workman's bank account to the Management for such payment to be made directly into the bank account of the Workman.

14. The present petition is allowed in the above terms. With these observations, the present petition, along with all pending applications, is disposed of.





NEUTRAL CITATION NO: 2022/DHC/000379

15. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, [www.delhihighcourt.nic.in](http://www.delhihighcourt.nic.in), shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

**PRATHIBA M. SINGH**  
**JUDGE**

**JANUARY 31, 2022**

*dj/ms*

