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

+ LPA 107/2020 & CM APPL.6893/2020

SPIRITED AUTO CAS (I) LTD. (ESPIRIT TOYOTA)..... Appellant

Through: Mr.Manoj Kumar Garg, Advocate
(through VC).

Versus

STATE (GOVT OF NCT OF DELHI) & ORS. Respondents

Through: Ms.Lija Merin John, Advocate
(through VC).

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Date of Decision: 31st August, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MANMOHAN, J: (ORAL)

1. Present appeal has been filed challenging the judgments and orders dated 04th February, 2020 passed by the learned Single Judge in Writ Petitions being W.P.(C) 1282/2020, 1283/2020, 1285/2020, 1286/2020, 1287/2020 and 1289/2020 as well as awards dated 3rd September, 2019 passed in ID Nos. 1542/2017, 1543/2017, 1544/2017, 1545/2017, 1546/2017 and 1547/2017.

2. Learned counsel for the Appellant states that the learned Single Judge failed to consider that even if the defence of the management had been struck off, then also management was entitled to cross-examine the

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witnesses and to address argument on the basis of the case set up by the workmen. In support of his submission, he relies upon the judgments of the Supreme Court in *Modula India Vs. Kamakshya Singh Deo, (1988) 4 SCC 619* and *M/s Paradise Industrial Corpn v. M/s Kiln Plastic Products, (1976) 1 SCC 91* wherein it has been held that even when a defence is struck off, the management/defendant is entitled to appear, cross-examine the workmen/plaintiffs' witnesses and submit that even on the basis of the evidence on behalf of the workman, the award cannot be passed.

3. Learned counsel for the Appellant also states that the learned Single Judge failed to consider that there had been a violation of principles of natural justice, inasmuch as, the Appellant-Company was not adequately represented by its counsel on record before the District & Sessions Judge, POLC-V, Rouse Avenue Court Complex, Delhi on the date the impugned awards were passed.

4. A perusal of the paperbook reveals that on 9th May, 2017, the Deputy Labour Commissioner had framed the following terms of reference and had referred the disputes to the Labour Court for adjudication:-

*“SCHEDULE
TERMS OF REFERENCE*

“Whether services of workmen S/Sh.Dinesh & 5 Others as shown in Annexure “A” have been terminated illegally and/or unjustifiably by the management; and if so, to what reliefs are they entitled and what directions are necessary in this respect?”

*(Banbari Lal)
Dy.Labour Commissioner
Dated: 9/5/17”*

No.F-24(370)/Lab./SD/2017/9409

5. Thereafter admittedly, the Appellant-Company was served with copies of statements of claims and it was given an opportunity to file its written statements. As the written statements were not filed, the Additional



District & Sessions Judge, POLC-V vide order dated 8th July, 2019 extended the time for filing the written statements subject to payment of costs of Rs.10,000/- in each case. The order dated 8th July, 2019 is reproduced herienbelow: -

“ID No.1542-17 to 1547-17

08.07.2019

Present:- ARs for the parties.

WS stand not filed in terms of order dated 28.03.2019 and again adjournment sought to file the same without assigning any reasonable cause.

Accordingly, a cost of Rs.10,000/- in each case stand imposed upon the management.

Subject to payment of cost in each case, last and final opportunity is provided to the management to file the WS with advance copy to the opposite party.

Put up for payment of cost/filing of WS now on 27.08.2019.

(Vinay Singhal)

***Addl. District & Sessions Judge,
POLC-V, Rouse Avenue Court Complex
08.07.2019”***

6. However, as despite imposition of costs, the written statements were not filed, the Additional District & Sessions Judge, POLC-V struck off the defence of the management vide order dated 27th August, 2019. The matters were thereafter fixed for evidence of the workmen on 3rd September, 2019. The order dated 27th August, 2019 is reproduced hereinbelow:-

“ID No.1542-17 to 1542-17

27.08.2019

Present: ARs for the parties.

The matter is fixed today for the purpose of filing WS subject to payment of cost as imposed vide order dated 08.07.2019.

However, again adjournment sought to file the WS as well as for payment of cost on the ground that management was not aware about the imposition of cost as per the order dated 08.07.2019.



During the course of arguments, it is also submitted on behalf of the management that on the last date of hearing when cost was imposed upon the management, its associate appeared and he did not inform the management about the imposition of cost.

However, the court did not find any merit in the said averment made on behalf of the management.

Accordingly, on account of non payment of cost as well as non filing of WS, defence of management stand struck off.

Put up for workman evidence on 03.09.2019.

(Vinay Singhal)

***Addl. District & Sessions Judge
POLC-V, Rouse Avenue Court Complex
27.08.2019"***

7. On 3rd September, 2019, the workmen examined themselves as WW-1 in their respective cases and brought on record the documents in support of their claims. However, the Appellant-Company did not come forward to cross-examine the claimants. It was only thereafter the Labour Court held that the workmen were entitled to relief of reinstatement with full back wages and continuity of service.

8. Consequently, this Court finds that in the present case, adequate time and opportunity had been given to the Appellant-Company to file its written statements as well as to cross-examine the workmen. Accordingly, there has been no violation of principles of natural justice.

9. This Court is further of the view that the judgments in ***Modula India Vs. Kamakshya Singh Deo*** (supra) and ***M/s Paradise Industrial Corpn v. M/s Kiln Plastic Products*** (supra) offer no assistance to the Appellant, as the Appellant-Company in the present cases were given repeated opportunities to file written statements and it is only when the written statements were not filed despite imposition of costs the defence was struck off. Moreover, the award was passed only when the management did not come forward to



cross-examine the claimant/workman. Consequently, the Labour Court was justified in fact and law in passing the impugned awards.

10. Accordingly, the present appeal along with pending application being bereft of merits is dismissed. The Registry is directed to release the amounts deposited by the Appellant to the respondents/workmen. For this purpose, list the matter before Registrar on 25th September, 2023.

MANMOHAN, J

MINI PUSHKARNA, J

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