

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

+ **W.P.(C) No. 10499/2009**

% **Date of Decision: 29 July, 2009**

Mr. Rajeshwar Kumar

..... PETITIONER

! Through: Mr. Davinder Singh, Sr. Advocate with
Mr. Saurabh Tiwari, Advocate.

VERSUS

\$ Shri Nem Singh & Anr.

.....RESPONDENTS

^ Through: Nemo.

CORAM:

Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper 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**

S.N.AGGARWAL, J (ORAL)

CM No. 9251/2009 (Exemption) in WP(C) No.10499/2009

Exemption as prayed for is granted subject to all just exceptions.

WP(C) No.10499/2009 & CM No. 9250/2009 (for stay)

This writ petition filed by the management (the petitioner herein) is directed against an award dated 28.04.2003 passed by Mr. M.K. Gupta, then Presiding Officer Labour Court IX, Delhi directing reinstatement of the workman (respondent No. 1 herein) with 50% back wages.

2 Heard.

3 The workman (respondent No. 1 herein) was appointed as Pattern Master by the petitioner in March, 1991 at a salary of Rs.5,500/- per month. His services were terminated w.e.f. 12.11.1996. Aggrieved by his

termination, he raised an industrial dispute which was referred by the appropriate Government for adjudication to the Labour Court. The workman filed his statement of claim before the Labour Court in which he alleged termination of his services by the management (the petitioner herein) w.e.f. 12.11.1996. However, the petitioner in its written statement filed before the Labour Court took a plea that the workman had abandoned its service of his own w.e.f. 14.11.1996. The issue for adjudication in the reference before the Labour Court was whether the workman had abandoned the services of the petitioner of his own or was he terminated by the petitioner management? The Labour Court gave opportunity to both the parties to prove their respective stands but Mr. Anil Kumar Singhal, authorized representative of the petitioner management withdrew himself from the proceedings on 23.04.2003 and for that reason, the management was proceeded ex-parte by the Labour Court on that day. The Labour Court on the basis of evidence produced by the workman before it passed the impugned award directing reinstatement of the workman with 50% back wages except full back wages for the period from 01.10.1996 to 12.11.1996. The period for which full back wages were awarded by the Labour Court is the period for which the workman had actually worked with the petitioner management and was not paid his salary by the management. This point that he was not paid his salary for the period from 01.10.1996 to 12.11.1996 has been proved by the workman before the Labour Court by proving that the management had given a cheque towards wages for the aforesaid period which was dishonoured when presented for encashment.

4 The award challenged in the present writ petition was passed by the Labour Court way back on 23.04.2003. This petition has been filed by the management after more than six years of passing of the said award.

5 Mr. Davinder Singh learned senior counsel appearing on behalf of the petitioner management contends that there is no delay on the part of the petitioner in filing of the present writ petition because according to him, this petition was filed by him in about a year's time after the petitioner came to know in July, 2008 about passing of the impugned award. According to the learned senior counsel, the petitioner came to know about the impugned award for the first time in July, 2008 when he received warrants of attachment issued pursuant to the impugned award. Learned senior counsel appearing on behalf of the petitioner has also argued that the Hon'ble Supreme Court has condoned delay of even 10-12 years in filing of the writ petition and he has placed reliance on two judgments of the Supreme Court in ***Salonah Tea Co. Ltd. & Ors. VS. Superintendent of Taxes, Nowgong & Ors. reported as (1988) 1 SCC 401*** and ***Suresh Chand Vs. Union of India & Ors.; (2004) 13 SCC 563*** in support of his above contention. In my view none of these two judgments is applicable to the facts of this case. Each case has to be decided on its own merits. It is true that no limitation is prescribed for filing of a writ petition under Article 226 of the Constitution. Though no limitation is prescribed for filing of writ petition, but a litigant seeking to invoke the extraordinary writ jurisdiction of the High Court against a decision of the Industrial Adjudicator must file the petition within a reasonable time and in case there is delay in filing of the petition, some satisfactory explanation for such delay must be given by the writ petitioner.

6 Learned senior counsel appearing on behalf of the petitioner has contended that the petitioner could not file the present writ petition earlier because he was suffering from severe depression right from 1997 onwards and in support of his said contention, he has referred to the medical prescriptions which are at pages 54 to 69 of the paper book. I

have gone through copies of these medical prescriptions and on going through the same, I do not find that the alleged illness of the petitioner was of such a nature that he was prevented from filing the present writ petition, if he was aggrieved from the impugned award passed about six years back. In my considered opinion, the writ petition is hopelessly barred by delay and laches and the petitioner has not given any satisfactory explanation to show why he took more than six years in filing of the said petition.

7 The contention of the petitioner that he came to know about the impugned award for the first time in July, 2008 or that his earlier counsel Mr. Anil Kumar Singhal has withdrawn himself from the proceedings pending before the Labour Court without following the procedure for discharge does not appeal to my conscious. It is difficult to ram down the throat that a management defending a reference before the Labour Court would sleep over between 2003 when his counsel had withdrawn himself from the proceedings in the Labour Court and July, 2008 when he allegedly came to know about passing of the impugned award. A prudent litigant is expected to keep a tab on the progress of his case pending in the Court. The contention that the petitioner came to know about the impugned award for the first time in July, 2008 appears to be an afterthought and seems to have been taken to give an impression as if the delay in filing of the writ petition was only of one year.

8 For the foregoing reasons, this writ petition is dismissed as barred by delay and laches. Stay application is also dismissed for the same reasons.

JULY 29, 2009
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S.N.AGGARWAL, J