

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP no. 13471 of 1993(O&M)

Date of Decision : 28.01.2015

The Jhandi Cooperative Agriculture Service Society

....Petitioners

Versus

The Presiding Officer, Labour Court, Patiala and another

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

1)Whether reporters of local newspapers may be allowed to see the judgment?

2) To be referred to the Reporters or not?

3) Whether the judgment should be reported in the Digest?

Present : Ms.Ishratt Pannu, Advocate for
Mr. Vikas Singh , Advocate for the petitioner

Mr. A.P.Bhandari, Advocate for the respondent - workman

MAHESH GROVER, J.

By virtue of an ex parte award dated 30.10.1992 the respondent – workman was directed to be reinstated with complete back wages. His termination had been held to be bad as it was not preceded by a regular inquiry. The workman had put in 12 years of service when his services were terminated. This award was duly published in the Punjab Govt. Gazette on 12th March, 1993. An application for setting aside the ex parte award was moved by the management (petitioner) on 10.6.1993 and the same was declined solely on the ground that such an application ought to have been moved within 30 days of the publication of the award.

During the course of proceedings an application under Section 17-B of the Industrial Disputes Act was moved by the workman as despite the order passed at the stage of admission staying the award subject to the compliance of provisions of Section 17 B of the Act, the same had not been

complied with. The petitioner contested this application to contend that the workman was gainfully employed and thus not entitled to the benefit of the provisions of Section 17 B. On 26.2.2014 the petitioner was directed to comply with the provisions of Section 17B of the Act only and pay last wages drawn to the workman from 10.8.2011. They were required to bring the requisite amount in Court for onward disbursal to the workman. An amount of Rs.42312/- was then paid to the workman by way of a cheque dated 2.12.2014 as a measure of complete satisfaction of the provisions of Section 17 B of the Act.

This leads the Court to examine the core issue as to whether the Labour Court was justified in declining the prayer of the petitioner to set aside the ex parte award.

The termination of the services of the workman and its validity without holding an inquiry as alleged by the workman was an issue that would have substantially effected the rights of both the parties and therefore when the application for setting aside the ex parte award was moved then Labour Court could not have fallen back on technicalities to decline the prayer on the solitary ground of delay. This Court is of the opinion that the substantial issues in this case need to be determined rather than leaving it to a process which effectively defeats the whole issue altogether.

There is a serious contest on the validity of termination and non compliance of the provisions of Section 17 B. The writ petition was admitted without notice to the other side and as per the showing of the respondent – workman he was served with the intimation of the proceedings in the year 2011 (3.8.2011). The amount paid by way of compliance of Section 17 B of the Act is limited to these three years even though the

entitlement of the workman stemmed from the date when the restraint order was passed i.e. 3.11.1993.

Thus on both the counts i.e no decision on merits of the controversy as also on account of fortuitous circumstances the workman stands to suffer and an equal sufferer is the petitioner who would have to bear the burden of an employee alleged to have committed serious irregularities if the material on record is to be accepted.

Thus taking into view the totality of the circumstances I am of the view that order dated 20.8.1993 as also the ex parte award dated 30.9.1992 need to be set aside with a direction to the Labour Court to decide the issue positively within a period of six months from the date of receipt of the certified copy of this order by taking into consideration whatever material that may be brought on record by the petitioner as also the respondent. Ordered accordingly.

The impugned order and the award are therefore set aside and the matter is remanded back as above.

Since the order has been passed in the presence of the parties they are directed to put in appearance before the Labour Court on 16.3.2015.

Before parting with the order this Court would like to observe that at the time of conclusion of proceedings the Labour Court would do well to settle the equities which should form a predominant consideration considering the delay caused on account of the peculiar circumstances of the case.

Disposed of in above terms.

January 28, 2015
rekha

(MAHESH GROVER)
JUDGE