

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-11822-2011

Date of decision : 24.08.2015

M/s Pooja Security & Manpower Services.

... Petitioner

Vs

Presiding Officer, Industrial Tribunal-cum-Labour Court-I,
Gurgaon & Anr.

...Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present : Ms. Kamaldeep Kaur, Advocate
for the petitioner.

Mr. Narender Yadav, Advocate
for respondent No.2.

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

RAJIV NARAIN RAINA, J. (ORAL)

1. The workmen has secured an ex parte award granting reinstatement to service with 30% back wages. The Management was proceeded against ex-parte vide order dated February 6, 2009. An ex parte award was made on May 8, 2009. The award was published on 19.05.2009 in compliance of Section 17A of the Industrial Disputes Act, 1947. An application was moved after a lapse of two years praying for setting aside of the ex parte award; this was on March 14, 2011. The period prescribed for applying for setting aside the ex-parte award expired with 30 days passing after the publication of award.

2. The sole question arising is whether the management was proceeded ex-parte properly or not or the abstention was for sufficient cause. These aspects have been considered by the Labour Court in paragraphs 3 and 4 of the award which read as hereafter:

“3. I have heard the submissions made by ARs for both the parties. It is not disputed that ex-parte award has been passed in favour of the workman on 08.05.09 and the same was published on 19.05.09. The perusal of record shows that on 06.02.09, notice was issued to the mgt. through registered letter but even after the expiry of a period of more than one month, nobody had put in appearance and my Ld. predecessor passed ex-parte order dated 06.02.09 thereby initiating ex-parte award dated 08.05.09 against the applicant/mgt. However, the present application has been filed by respondent no.-1 on 14.03.11 i.e. after more than a period of 2 years and after the expiry of period of limitation of 30 days.

4. *In addition to this, the perusal of photocopy of letter dated 22.06.09 issued by Labour Inspector to M/s Pooja Security & Manpower Service show that notice was given to the mgt. to appear before the Labour Officer on 01.07.2009. It is further seen that on 01.07.2009, Ashok Kumar authorized representative appeared and made statement to the effect that the award passed in favour of the workman would be implemented very soon and some time may be given to implement the award, but it was never implemented and detailed report in this regard was sent to Labour-cum-Conciliation Officer, Rewari. It is further seen that criminal complaint under Section 29/31 of I.D. Act has*

been filed by Labour Inspector, Circle-I, Rewari in the court of C.J.M., Rewari.” (underlined for emphasis)

3. If Ashok Kumar, the authorized representative of the Management appeared in Court and suffered a statement to the effect that the award passed in favour of the workman would be implemented 'very soon' and some time may be given to the management to implement the award and thereafter the award was never implemented after extending the promise in court, then the Management cannot complain of or be heard that they had no knowledge of the reference proceedings which have resulted in an ex-parte award against them since they did not complain and accepted the ex parte award. It is also not the case that Ashok Kumar exceeded his instructions while he made the statement.

4. Then the authorized representative of the management had due notice of the award when he appeared before the Labour Officer on July 01, 2009 in the proceedings taken for implementation and therefore the management was aware. In the face of this finding of fact the management cannot be permitted to raise the issue in writ jurisdiction impugning the award of the Labour court on the ground that it was ex parte and so also the order rejecting the application for setting aside the ex-parte award, that it had no notice of the passing of the same.

5. Besides, the Presiding Officer, Labour Court-I, Gurgaon had become *functus officio* by then and, therefore, was

correct in declining the application filed belatedly. There is ample authority on the proposition that the labour court is denuded of power to revisit the award after expiry of 30 days from publication. See Sangham Tape Co. v. Hans Raj, (2005) 9 SCC 331 and Jammu Tehsil v. Hakumar Singh & Ors., (2006) 12 SCC 193.

6. The authority to proceed ex parte is drawn by the Tribunal/Labour Court etc. from Rule 22 of the Industrial Disputes (Punjab) Rules, 1958 as applicable to Haryana, framed under the Act. Rule 22 of the Punjab rules is identical to Rule 22 of the Industrial Disputes (Central) Rules, 1957. The enabling rule in both the rules reads:-

“22. Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. The mode of service of summons or notice is prescribed in Rule 18 of the Industrial Disputes (Punjab) Rules, 1958 as substituted vide Haryana Government Notification No. G.S.R 94/CA. 4/47/S/38 Amd.(1)/76 dated April 21, 1976 which reads:-

“18. Service of summons or notice. --Subject

to the provisions contained in Rule 20, any notice, summons, process or order issued by a Board, Court, Labour Court, Tribunal or an Arbitrator, empowered to issue such notice, summons, process or order may be served wither personally or by registered post and in the event of refusal by the party concerned to accept the said notice, summons, process or order, the same shall e sent again under certificate of posting.”

8. Rule 20 in Rule 18 is not relevant to the present context since it deals with the manner of service in the case of numerous persons as parties to the dispute.

9. Consequently, failure to attend court hearings without sufficient cause shown entails ex parte proceedings. In this case sufficient cause of abstention on the date fixed for hearing was not proven. A presumption of service arises when summons are sent by registered post at the address of the respondent. Management did not deny the address was not where they could be found.

10. The only noticeable reason to approach this Court is not the ex parte award but the real rub is the criminal complaint under Sections 29/31 of I.D. Act filed by the Labour Inspector, Circle-I, Rewari in the court of the C.J.M., Rewari. The writ jurisdiction cannot ordinarily be invoked including in labour matters to avoid or prevent criminal action initiated in a court of law for defiance of the award.

11. For these reasons this Court finds no valid reason to undo the award or the order dismissing the application for

setting aside the ex parte award. There is no merit in this petition. It is accordingly dismissed.

(RAJIV NARAIN RAINA)
JUDGE

24.08.2015

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