

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.11107 of 2012

Date of Decision: 15.10.2015

Vinod Kumar

... Petitioner

Versus

Presiding Officer & anr.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Gaurav Tyagi, Advocate,
for the petitioner.

Mr. Tushar Sharma, Advocate,
for respondent No.2.

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

RAJIV NARAIN RAINA, J.(Oral)

1. Heard the learned counsel for the parties. If the petitioner failed to take timely steps in the proceedings to effectively prosecute Reference No.1129 of 2003 regarding termination from service till September 2, 2008 when his evidence was closed on the same day when neither he nor his representative turned up despite repeated calls on the day of the listing then this Court will not extend its helping hand to bring him out of the *ex parte* proceedings in the award passed on September 2, 2008 by the Presiding Officer, Labour Court-I, Gurgaon.

2. The termination which is challenged by the workman was dated September 17, 1997. Non-appearance on September 2, 2008 before the court has been explained in the application for setting aside *ex parte* award and in this petition assigning reason for default that his authorized

which he suffered a fracture of the leg and could not attend to the case of the petitioner, may explain the events of September 2, 2008 but the Court cannot disregard the fact that from 2003 to September 2, 2008 there was not a whit of evidence adduced by the workman on file which prolonged the litigation and the issues could only be struck in the year 2007.

3. The application for setting aside the *ex parte* award filed by the workman has been rejected by the Labour Court vide order dated November 11, 2009. A reading of the order reveals that plea has been taken by the workman that on September 2, 2008 when his matter was listed, his authorized representative was ill and so he went to inform him of the case being called on for hearing, but when he returned to the labour court he found his evidence had been closed. The labour Court reasoned that is such was the position then there is nothing on record as to whether the workman moved an application spontaneously in this regard for re-entry in the proceedings. The application was moved after a month which is held to be belated. The workman also took a plea that his mother was not well and was under medical treatment due to which he could not move the application on time. He produced some documents by way of medical evidence to support his application but the Court found that the documents dated February 29, 2008 issued by the Dr. Lal Path Labs Pvt. Ltd. were regarding collection of some samples and not a treatment record. The application was dismissed as filed beyond limitation since the court had become *functus officio*. The labour court observed that the conduct of a party before the Court in protracting litigation is a relevant consideration in making awards and moulding relief/s. Section 10(1) (c)

of the Industrial Disputes Act does not give a carte blanche to grant relief by resort to all and every means.

4. In the impugned award, the Court noticed that in the written statement filed by the management contesting the case their stand was no relationship of employer and employee between the parties. When the workman went *ex parte* they took the stand that they did not wish to lead evidence and rightly so. The facts asserted by the management in its defence need not have been established on record by evidence in view of the uncontested proceedings leading to the award. Their written statement was sufficient to non-suit the workman if he had failed to discharge his burden of proof. The Industrial Disputes (Central) Rules, 1957 empower Labour Courts and Tribunals to proceed *ex parte* against defaulting party in absence of appearance or proper explanation of non-appearance and therefore, the Labour Court is within its jurisdiction to proceed *ex parte* and to pass an *ex parte* award and while drawing the award it could only deal with the available materials on record, that is pleadings, evidence if any etc. to form a view. The labour court has not believed the story explaining reason for default of appearance and non-prosecution. If the labour court has not placed faith and trust on unsubstantiated facts then it is not for this court to sit in appeal and substitute its opinion for that of the court below. Besides, the labour court has gone into the conduct of the workman in delaying the proceedings inordinately and without reasonable cause by failing even to start his evidence for about four years. For this there is no explanation even in the writ petition. Moreover, the termination of service was

effected 18 years ago in the year 1997 and the dispute was referred in 2003, after six years which is also unreasonable period and is without any explanation although no period of limitation is prescribed in Section 10 (1) (c) of the Industrial Disputes Act, 1947 but all the same delay and laches should not be unreasonable. No manifest injustice has resulted by the impugned award. On the other hand manifest injustice will occasion on the management if it is disturbed by uncalled for interference in a stale claim and the fault lying squarely on the workman not to have tended his stock by being vigilant. It is worth noticing that the award and the order impugned passed in 2008 and 2009 have been challenged in the year 2012 which is also rather late and all the stages of delay add up to enormous delay for any effective legal redress of the grouse.

5. For these reasons, I find no cogent or valid ground to interfere either in the award or the order declining to set aside the *ex parte* award. The petition is, therefore, dismissed for lack of substance and with no order as to costs.

(RAJIV NARAIN RAINA)
JUDGE

15.10.2015
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