

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 18734 of 2012
Date of decision : May 12, 2015

Ramesh Chand

..... Petitioner

Versus

Presiding Officer and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Raminder Partap Kaur, Advocate
for the petitioner.

Mr. Neeraj Madan, Advocate for
Mr. Abhishek Pareek, Advocate
for respondent No.2.

1. Whether reporters of local papers 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?

Amit Rawal, J (oral).

The challenge in the present writ petition is to the award dated 1.9.2011 whereby the reference has been declined against the petitioner-workman and in favour of the respondent-Management.

Learned counsel appearing on behalf of the petitioner submits that the workman, though had appeared for examination-in-chief could not appear for cross examination owing to the fact that he had noted the wrong date. On 9.5.2011 the case had been adjourned to 11.8.2011 and from that date it was adjourned to 1.9.2011. Since the workman could not appear on the date on

1.9.2011 his cross examination was directed to be treated as Nil and accordingly the representative of the Management suffered a statement that in absence of any evidence by workman no evidence was to be lead on behalf of Management.

Notice of motion was issued to the Management and the Management has put in appearance through Mr. Abhishek Pareek, Advocate and filed a written statement. In the written statement it has been stated that the petitioner did not turn up for cross examination despite availing the last opportunity and the authorized representative of the claimant was present therefore the plea that he had noted a wrong date is a ploy, thus cannot be accepted.

It has further been stated that on 2.9.2011 the application was moved on behalf of the authorized representative of the applicant, wherein it was stated that the case was listed for 29.9.2011 but it had appeared in the cause list on 1.9.2011 and the workman was not present on the said date as last opportunity had been granted to appear for cross examination and the Labour Court vide order dated 2.9.2011 (Annexure P-6) rejected the application. The order 2.9.2011 is thus extracted hereunder:-

“File taken up on an application moved today alleging therein that the date fixed for the case was 29.9.2011 but on 1.9.2011 the case appeared in the cause list and the workman was not present.

No such claim was raised when evidence of the workman was closed by court order on 1.9.2011 as the case was fixed for 1.9.2011 and it was last opportunity for workman evidence. Sh. C. L. Gera

himself was present and in case if it was fixed for 29.9.2011 then this fact could be brought to the notice of court on 1.9.2011 itself when evidence of the workman was being closed. Hence the allegations of the application appear to be after thought and as such the application deserves dismissal and the same is dismissed.”

Thus, it is submitted that the writ petition is liable to be dismissed on this short ground above.

I have heard learned counsel for the parties and appraised the paper book.

On going through the order dated 2.9.2011 it is found that the authorized representative of the Management did not have only one case but may be having many cases. On going through the cause list on 1.9.2011 he must have been amazed that the matter pertaining to the workman had perhaps inadvertently was listed on 1.9.2011 instead of 29.9.2011 and accordingly an application, as indicated in the order dated 2.9.2011 was moved with promptitude. The plea of the Management that the workman had coined a story by noting date as 29.9.2011 instead of 1.9.2011, thus workman could not appear or present himself for cross examination.

Since the Labour Court has declined the reference on the ground that the cross examination of the workman has been treated as Nil, it appears that the workman has not been given an effective opportunity to prove his case and had the workman been given an opportunity by leading a direct, cogent and positive

evidence, the Management would have chosen to rebut the same.

In view of what has been observed above, I deem it appropriate to remand the case back to the Labour Court to decide the reference afresh by giving an effective opportunity to the parties to the *lis* to put forth their respective claims/counter claims. Since already a number of years have been wasted in these proceedings it is appropriate to fix a time line for the Labour Court to decide the controversy between the parties to the *lis*.

The Labour Court shall make an endeavour to decide the aforementioned controversy within a period of six months from the date of receipt of certified copy of the order after giving two effective opportunities to the parties to the *lis* to lead evidence support of their rival claims.

The writ petition stands disposed of.

The parties through their authorized representatives are directed to appear on 28.5.2015 before the Labour Court.

(AMIT RAWAL)
JUDGE

May 12 , 2015
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