

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18986 of 2012

Date of Decision: 27.11.2015

Malout Institute of Management and
Information Technology, Malout

... Petitioner

Versus

The Presiding Officer, Industrial
Tribunal, Bathinda and others

... Respondents

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

Present: Mr. Balwinder Singh, Advocate,
for the petitioner.

Mr. Vikas Singh, Advocate,
for R-4.

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

RAJIV NARAIN RAINA, J.

1. The management was proceeded ex parte by the Labour Court by order dated August 27, 2008 which led to ex parte award dated August 05, 2010. The application for setting aside the ex parte award in Ref. No.23 of 2008 was refused by the Labour Court on January 20, 2012 (P-13) by an elaborate order granting parties right to adduce evidence both oral as well as documentary for restoration of the case to make way for a contested trial.

2. The management examined Mukesh Saini, Superintendent as AW-1 who categorically deposed by way of affidavit Ex.AW1/A that though he appeared in the labour Court on May 29, 2008 in the reference proceedings yet he was under the impression that the reference has been dismissed due to which notion, he did not appear after May 29, 2008 in the

Court. The learned Presiding Officer, Industrial Tribunal, Bathinda by order dated January 20, 2012 has held that in order to get an ex parte award/order set aside it is incumbent upon the applicant to prove that either the summons were not duly served or that he was prevented by some sufficient cause to appear before the Court when the case was called for hearing and when any of these conditions are satisfied an ex parte order or award is liable to be set aside. The Court found that the management had presented its authority letter before the Court on May 29, 2008 and the case was adjourned to August 27, 2008. But on the adjourned date, he did not appear and accordingly, management/applicant was proceeded against ex parte. The Labour Court weighed the evidence of Mukesh Saini appearing as AW-1 and held that the story that Mukesh Saini narrated was that he was under mistaken impression that the reference was dismissed, was a coined story just to make out a ground for a favourable order in the application. Even after reference was adjourned, a number of times it remained listed and pending for two years before the final award was passed. Besides, the Labour Court had become *functus officio* and no interference was warranted.

3. In the main, the Labour Court was of the considered view that no sufficient cause existed for setting aside the ex parte award dated August 05, 2010 or the application which appeared to the Court was filed just to delay the execution of the ex parte award. The Labour Court based its decision mostly on the question of sufficient cause for non-appearance of the management. The story set up for interference was disbelieved.

4. I have no reason to substitute the opinion of the Labour Court

on the moot point taken after assessing the evidence on record which suffers from no legal or factual infirmity and does not show an error apparent on record. Therefore, no interference is called for against the order dated January 20, 2012 which is upheld.

5. Consequently, the writ fails and is dismissed. The award will remain open to execution.

(RAJIV NARAIN RAINA)
JUDGE

27.11.2015
manju