

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

Civil Writ Petition No.18997 of 2012

Date of decision: 24.2.2015

Bijender Singh

... Petitioner

Versus

The Presiding Officer and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Raminder Pratap Kaur, Advocate for
Ms.Gurpal Kaur Dulat, Advocate
for the petitioner.

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

RAJIV NARAIN RAINA, J.

The petitioner was employed as a Cycle Mechanic and Rim Fitter with the respondent cycle store in Faridabad. He was appointed in January, 1990 on a monthly salary of ₹ 6500/- per month and other service benefits. After he had put in about 18 years of continuous service, his services were terminated in September, 2008 without following the procedure for retrenchment under Section 25-F of the Industrial Disputes Act, 1947 (for short, “the Act”).

2. Feeling aggrieved, he raised a dispute and demanded reinstatement through a demand notice dated 28th April, 2009 with copies to the Labour-cum-Conciliation Officer, Circle-I, Faridabad. The conciliation proceedings failed after about a month. The failure report was forwarded to

the Labour Commissioner, Haryana. The appropriate Government referred the dispute for adjudication to the Labour Court, Faridabad and parties were directed to appear on 4th February, 2010. On 4th February, 2010, the petitioner says that his file was not traceable and the reference was dismissed in default of his appearance. He submits that his previous authorized representative had not intimated the fate of the case to him, upon which, he engaged a new authorized representative who after enquiry, informed the workman that the reference under Section 10(1)(c) of the Act has been dismissed when neither of the parties were present on the first date of hearing on 4th February, 2010. He then applied to the Labour Court for restoration of his case pleading what he thought was sufficient reason and cause for non-appearance. The application was filed on 4th January, 2012 but the same has been declined by the Court *a quo* by order dated 13th July, 2012. In the restoration application, the Labour Court met delay of 23 months in presenting the application which period was not sufficiently explained. There were found no specific averments in the application with respect to the mode of gaining knowledge of the order and when it was passed. At the stage of the restoration application, the management appeared and was represented by an authorized representation who urged that the file was available in the Court on the relevant date and the Labour Court was within its jurisdiction to proceed *ex parte* and in absence of appearance, submitting claim statement and producing evidence of the claimant in support of the claim which had led to declining of relief.

3. This is the pass which has brought the workman to this Court in the present petition filed under Article 226 of the Constitution of India assailing both the award and order as unjust and the first of which suffered

from lack of due notice and opportunity of hearing.

4. This Court has had occasion to deal with a labour matter where also the workman did not appear on the first day fixed before the Labour Court by the Labour Commissioner, Haryana in its reference order for appearance of the parties. This was in CWP No.12139 of 2010; titled *Smt.Urmila v. Presiding Officer, Faridabad, Haryana and another* decided on 17th January, 2012. There the Labour Court treated the date fixed by the Labour Commissioner as sacrosanct but which is not a date fixed by a judicial order after due process of law. The same Judicial Officer who has passed the impugned order in this case dismissing the reference had passed the similar order in *Smt.Urmila* case. In *Smt.Urmila* case, the Labour Court had unceremoniously wrapped-up the proceedings in three days and closed the case which act was held by me to be a judicial misconduct. The award was quashed and the matter was remanded for a decision on merits. The order was also circulated to all the Presiding Officers of Labour Courts within the territorial jurisdiction of this Court. However, it may be noted that the impugned order in this case was passed on 4th February, 2010 before the decision in *Smt.Urmila* case was rendered but that alone would not save it since the order suffers from the same infirmities as was pointed out in *Smt.Urmila*. On the first date of appearance fixed in the reference order, the Labour Court should not proceed *ex parte* straightaway but should endeavour to issue notice to the parties for appearance so that summons can be properly served on the parties by the process serving agency of the Labour Court. This would ensure appearance and entail consequences of non-appearance which may then alone be seen as adverse to the defaulting party.

5. It may be mentioned that at least from 13th July, 2012, the view of this Court had been circulated in such matters for guidance of Labour Courts and that could have formed basis of restoration of the case for a decision on merits. Pleadings before the Labour Court are not to be strictly viewed and if an affidavit was not filed in support of the application for restoration, the same was a curable defect and the workman could have been called upon to file an affidavit with better particulars to explain reasons for delay in making the application. The view taken in the impugned order refusing restoration of the reference is far too cussed, strict and technical in labour court settings where due allowance deserves to be given to those who can ill-afford expert advice of trained lawyers who may be beyond the financial reach of poor workers. Lack of knowledge of rights, their timely enforcement and poverty should not be used as weapons against the mite of marginal workers toiling in cycle shops and factories and then facing arbitrary and unfair treatment and retrenchment at the hands of a whimsical management which has the means to destroy life and livelihood of others and bring them to hunger and want. There is not crystal gazing in labour courts. Labour courts should welcome themselves to the real world to do real justice even if it means to be unconventional in doing so.

6. Still further, the Labour Court in the restoration application could have called upon the workman to lead evidence in support of his claim that he had no knowledge of the orders/award and was wrongly proceeded *ex parte* on the first date fixed for appearance before the Labour Court on 4th February, 2010.

7. The infirmity found in the impugned order seriously impairs the subsequent order of 13th July, 2012 as well and in the considered view of

this Court, both the orders should not be allowed to stand since they have worked injustice and caused serious prejudice to the workman who has been unable to get his dispute resolved through the process of a fair and impartial adjudication. Therefore, the petition is allowed. Both the impugned orders, i.e., award dated 4th February, 2010 [P-4] and the order declining restoration of the case dated 13th July, 2012 [P-5] are set aside.

8. In view of the above, the matter is remanded to the Labour Court. Reference No.22 of 2010 is restored on the file of the Labour Court-I, Faridabad for disposal of the case on merits after permitting both the parties to lead their evidence in support of their respective cases against each other.

9. Parties are directed to appear before the Labour Court on 6th April, 2015.

(RAJIV NARAIN RAINA)
JUDGE

February 24, 2015
Paritosh Kumar