

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

Civil Writ Petition No.21509 of 2011

Date of decision: 23.9.2015

The Hoshiarpur National Transporters (P) Ltd., Hoshiarpur

... Petitioner

Versus

Daljit Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Gurcharan Dass, Advocate,
for the petitioner.

Mr.B.D.Sharma, Advocate,
for respondent No.1.

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 company has approached this Court under Article 226 and 227 of the Constitution of India for quashing *ex parte* order dated 26th December, 2008 passed by the Authority under the Minimum Wages Act, Hoshiarpur directing the company to pay a sum of ₹ 61,077/- to the applicant-respondent along with one time compensation claimed totalling ₹ 1,22,151/-. The application filed by the management for setting aside the *ex parte* order has been rejected vide order dated 26th November, 2010 and this is what has brought the action.

2. It is argued that the claim amount represents minimum wages due with effect from 20th December, 2004 to 31st May, 2008 and hence, the delay in filing the application under Section 20(2) of the Minimum Wages Act, 1948 was beyond the prescribed period of 6 months and, therefore, the claim was barred. Besides, petitioner contends that no reasons have been stated in the application showing sufficient cause for condoning the delay. The second proviso to Section 20(2) carves out an exception to the first proviso and prescribes that if the application satisfies the authority that applicant had sufficient cause for not making the application within the period then delay can be condoned.

3. It is further urged that the management appeared before the Authority through its representative Sanjay Kumar who sought an adjournment to file the written statement which request was granted subject to payment of costs of ₹ 500/- and the case was adjourned to 12th December, 2008. Neither did Sanjay Kumar or any other authorized representative on his behalf of the management appear before the authority nor were costs paid and therefore the company was proceeded *ex parte* and the applicant was directed to produce evidence. The applicant produced his evidence by way of an affidavit Ex.AW1/1 and reiterated his version in the claim statement. The applicant also filed an application dated 17th June, 2008 for condoning the delay in presenting his claim. Both these applications remained un rebutted in their averments and the Court accepted them as true and correct and proceeded to pass orders.

4. In the application moved by the management for setting aside the *ex parte* order, they pleaded that one Shri Brij Thakur, Advocate was authorized to take further legal action for and on behalf of the company in

the case. In para. 7 of the application, the management pleaded that neither did the counsel inform them of the further proceedings nor any notice was received from the authority and the company was under the impression that the matter stood resolved. It is their submission that the dispute was initiated for a reconciliation of the dispute before Balbir Singh Inspector of the company on 25th August, 2008 and before the Court. They say that the applicant had agreed to reconcile the matter and he presented himself in the office of the company on 3rd September, 2008 and 15th September, 2008 for the purpose and his arrears were calculated to his satisfaction and were paid by the Accountant of the company under proper receipt.

5. It may not be necessary to trace out the past litigation history between the parties but suffice it to say that they presently put the blame on their counsel for letting them down.

6. When this matter came up for the second time before this Court in motion hearing, the Company was directed to file an affidavit of Brij Thakur, Advocate who is said to have appeared before the authority at Hoshiarpur. Notice of motion was not issued till that stage but was issued to the respondent workman on 1st March, 2012. While issuing notice of motion on 1st March, 2012, this Court found no infirmity in the work of the authority in proceeding *ex parte* against the company when the authority had clearly observed that repeated opportunities were given to the petitioner company to submit its reply to the application because of the persistent default which was not rectified despite costs being imposed, it led to the passing of the *ex parte* order against the petitioner. However, notice was issued keeping in view purely the interest of justice and to ensure that the petitioner company is not prejudiced on account of the fact that it has been

deprived of an opportunity of presenting its case by reason of fault of counsel.

7. Despite almost four years having elapsed, the direction contained in the interim order dated 7th December, 2011 requiring the petitioner to file an affidavit of Brij Thakur, Advocate has not been complied with and the same has not been filed and the order remains in breach. Neither has extension of time been sought to file the affidavit even though costs of ₹ 20,000/- imposed by court to defray costs of litigation of the workman have been deposited with the Registrar of this Court after seeking extension of time even for that.

8. In absence of compliance of the second interim order, this petition is dismissed for lack of care as well as on merits.

(RAJIV NARAIN RAINA)
JUDGE

September 23, 2015

Paritosh Kumar