

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

**CWP No.16676 of 2013
Date of decision: 13.05.2015**

MSP Enterprises Pvt. Ltd. (previous name
M/s PI Apparels Pvt. Ltd)

... Petitioner

Vs.

Smt. Sapna and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. K.B.Raheja, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of 7 writ petitions bearing CWP Nos.16676, 16725, 16730, 16742, 16747, 16748 and 16870 of 2013, as the question of law and facts involved are same.

For the sake of convenience, the facts are being taken from CWP No.16676 of 2013.

Challenge in the present writ petitions is to the Award dated 26.02.2013 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurgaon (Haryana), whereby the workman have been held entitled to reinstatement with continuity of service and

back wages to the extent of 40% on the basis of last drawn salary.

Mr. K.B.Raheja, learned counsel for the petitioners submits that the petitioner-Company was originally incorporated as P.I. Foods Private Limited on 09.01.2004 and subsequently its name was changed to PI Apparels Private Limited and further changed to MSP Enterprises Private Limited vide notification No.G.S.R.507/(E) dated 24.06.1985 vide SRN BB28641454 dated 10.01.2012. A copy of the notification has been annexed as Annexure P-1.

Respondent No.1 raised industrial dispute on the ground that she was working with the Company as Hand Worker w.e.f. 2.1.2008, but her services were terminated on 24.04.2009 and after raising reference, the matter was referred to the Labour Court and the Labour Court has decided the reference in favour of the workman and the Management was proceeded ex-parte. He further submits that as per notice sent by the Labour Court, name of one P.I. Industries Limited was mentioned which is not having concern or relation with the petitioner. A copy of the notice has been annexed as Annexure P-6. In response to such notice, the said PI Industries Ltd. moved an application vide reference No.142/2000 dated 17.08.2010 (Annexure P-7), stating therein that it had no connection with the alleged claim of workman despite that the said application was contested by the workman. The Labour Court vide order dated 25.07.2012, accepted the application by holding that notice was wrongly issued to the Company because of similarity in the name and

the notice issued to the company, was, ordered to be recalled and the workman was directed to file all relevant documents relating to PI Apparels Pvt. Ltd. on 18.09.2012. The order dated 25.07.2012 (Annexure P-11) reads thus:-

“Present: SH. D. TYAGI, AR FOR THE WORKMAN.

Sh. Ajit Kothari AR for respondent/non-applicant.

Heard on application. It has been alleged in the application that non-applicant company has no connection with so-called P.I. Apparels Pvt. Ltd. and it was wrong to say that the name to P.I. Apparels Pvt. Ltd. has been changed to P.I. Industries Ltd. It is further mentioned that non-applicant company was one of oldest company of Udaipur, thereafter, its name was changed to Pesticides India Ltd. w.e.f.13.10.1992 its name was changed to P.I. Industries Ltd. Copy of certificate issued by P.I. Industries Ltd. Copy of certificate issued by Registrar of companies, Rajasthan, Jaipur has been also placed on record.

From the above mentioned facts detailed in the application, it is amply clear that P.I. Industries Ltd. 403, Millennium Plaza, Tower-A, Gurgaon has no concern or connection what so ever with regard to P.I. Apparels Pvt. Ltd. and the notice has been wrongly sent to the said

company because of similarity of name. This being so, notice issued to the said company is ordered to be recalled or the workman is directed to file all the relevant documents relating to P.I. Apparels Pvt. Ltd. on the next date i.e. 18.9.2012 positively.

*SD/-A.K.VERMA
P.O.L.C-I, GGN.
25.7.12.”*

On the next date i.e. 18.09.2012, instead of noticing whether the workman had furnished the correct address or notice had been sent to the Company or not, the Labour Court erroneously presumed that notice has been sent to petitioner-Company at its correct address and since nobody had put in appearance, proceeded the Management ex-parte.

The order dated 18.9.2012, reads thus:-

“Smt. Sapna vs. P.I. Apparels Pvt. Ltd.

Ref.142/10

Present: SH. D.TYAGI, AR FOR THE WORKMAN.

Mgt. Already ex-parte.

None has come present on behalf of mgt.

Case called repeatedly. Sufficiently waited, so, mgt. Is proceeded against ex-parte. Now case to come up on 27.11.12 for ex-parte evidence.

*SD/-A.K.VERMA
P.O.L.C-I, GGN.*

18.9.2012.”

Thereafter, the Labour Court decided the reference on 26.02.2013 by noticing the fact that initially the Management had put in appearance and thereafter, proceeded against ex parte.

Notice of the writ petitions was issued to the workmen. However, workmen received notice but had not appeared nor filed any representation. Due to inadvertence, presence of Mr. Aseem Aggarwal, Advocate was marked for respondent No.1.

Mr. Aseem Aggarwal, Advocate, who, is present in the Court, states that he has no connection with these cases and his presence has wrongly been marked.

On going through the aforementioned order, it is crystal clear that Labour Court has not followed the procedure for effecting the service on the Management, strictly, as per the procedure prescribed under the Code of Civil Procedure, inasmuch as that provisions of Section 11 of the Industrial Disputes Act, 1947, envisages that the procedure as prescribed under the Code of Civil Procedure shall be applicable for the purpose of enforcing the attendance of the person. On perusal of the order dated 25.07.2012, it is evident that the workmen were enjoined upon the obligation to submit the correct address of PI Industries Pvt. Ltd. However, no document had been placed on record before the Labour Court or in these proceedings to show that the correct address of the PI Industries Pvt. Ltd. i.e. of the present petitioner-Company was

furnished and summons of the claim of the workman were accordingly sent. In the absence of any such record, which is also not reflected in the order dated 18.09.2012, the Labour Court ought to not have proceeded petitioner ex-parte, thus, ex-parte award is vitiated in law, thus not sustainable.

The petitioner-Management has been denied the opportunity to defray alleged claim of workmen.

In view of what has been observed above, I deem it appropriate to set aside the order dated 26.02.2013 and the matter is remitted back to the Labour Court. The parties through their counsel are directed to appear on 06.07.2015, before the Labour Court. On appearance, the petitioner-Management will be permitted to file written statement and thereafter, the Labour Court shall decide the case in accordance with law, preferably within a period of one year, after giving due opportunity to the parties.

The parties shall be at liberty to lead evidence.

Accordingly, writ petitions are allowed.

(AMIT RAWAL)
JUDGE

May 13, 2015
savita