

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

Civil Writ Petition No.19334 of 2013

Date of decision: 8.12.2015

Homerton Grammer School

... Petitioner

Versus

Sanjeev Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Ashwani Bakshi, Advocate,
for the petitioner.

Mr.Adish Gupta, 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.

1. Heard learned counsel for the parties at length and perused the paper-book and particularly copies of the daily orders passed on the order sheet by the labour court placed collectively as Annexure P-5 from pages 34 to 44 of the paper-book. Their reading presents a very peculiar state of affairs. More often than not hearing was prevented by causes beyond the control of parties, including many times when the Presiding Officer was on leave or had retired or awaiting joining by a new Presiding Officer. On several dates, the case was fixed for proper orders since the Presiding Officer was to go on leave. There were times when management failed to

lead evidence but they were not such junctures in the trial that should have foreclosed the evidence of the management.

2. Leaving aside those, the basic flaw in the proceedings lies mostly in the order sheet of March 2, 2012 when the last opportunity was given to the management to produce evidence and if there was failure to do so, then the evidence of the management will stand closed by virtue of the previous order dated March 2, 2012. Before the next date approached, the Presiding Officer was transferred and no new Presiding Officer joined and the case was adjourned to May 8, 2012 for proper orders. On the next day, the new Presiding Officer was on leave and the case was adjourned to June 6, 2012 for proper orders. Then a second major problem occurred when one Tarun Kumar appeared for the authorized representative of the management, namely, Ramesh Kumar on June 6, 2012 on a date when the case was fixed for proper orders. On the next date, no one appeared for the respondent. This has led to the impugned *ex parte* award. The management attributes this to a communication gap between Tarun Kumar and Ramesh Kumar not informing of the next date.

3. After the management was proceeded *ex parte* on August 28, 2012, an application for setting aside of the *ex parte* award was filed before the Labour Court and was rejected by reason of labour court having become *functus officio* and the law laid down by in **Municipal Committee, Tarn Taran v. Kulwant Kumar and another**; 2005 (3) RSJ 186 would applied to refuse the application. The Labour Court in its impugned order dated May 2, 2013 has held that even otherwise, the affidavit filed by Kuldeep Singh on behalf of the management was no affidavit in the eyes of law

because each fact was not deposed on oath and verified as per law. This may be correct from the point of view of the Code of Civil Procedure, 1908 but in the labour laws, some relaxation or latitude is capable of being granted so that the disputes are settled on merits after contest in order to restore peace and harmony in industry for which purpose the Industrial Disputes Act, 1947 is edified. The order may be technically correct but it ends up doing injustice, disturbing the balance of justice and therefore the equilibrium must be restored by putting parties where the flaw occurred. This would put parties back to trial on merits for good cause. This view is reinforced in the elaborate judgment and dicta laid down by the learned single judge of this Court in **Balbir Singh v. Presiding Officer & Another**, 2013 (2) SLR 724: 2013 (4) S.C.T. 555: 2014 (2) RSJ 214 where the issue of ex parte awards and orders rejecting recall applications has thrashed out threadbare and deserves to be applied to the case in hand in favour of the petitioner.

4. In the considered view of this Court, this is a fit case for remand with leave to management to produce evidence on 3 dates after the parties put in appearance in the remand proceedings. In case parties insist on producing further evidence the labour court will take the call on such an application and decide it on merits.

5. Accordingly, this petition is partially allowed. The award is set aside and also the order dismissing the application for setting aside the *ex parte* proceedings. The case is remanded to the Labour Court, Circle-I, Faridabad for passing fresh award in accordance with law.

6. Since the workman is not at fault nor his conduct is in doubt but since he has been put to loss of time and wasteful expenditure and

further expenses which he is likely to suffer in the remand proceedings, it is found just and proper that he should be compensated in the sum of ₹ 75,000/- to be paid to him before the Labour Court on the next date of hearing only upon which the remand proceedings will be initiated in terms of this order. The Labour Court would pass a fresh award without being influenced by anything said in the earlier award or in this order and it would act independently after the evidence has been produced by the parties pro and contra.

7. Parties to appear before the Presiding Officer, Labour Court, Circle-I, Faridabad on January 11, 2016.

(RAJIV NARAIN RAINA)
JUDGE

December 8, 2015

Paritosh Kumar