

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20302 of 2015

Date of Decision: 23.09.2015

M/s Vodafone South Ltd. and others

... Petitioners

Versus

Presiding Officer Industrial Tribunal,
Amritsar and others

... Respondents

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

Present: Mr. Vishal Gupta, Advocate,
for the petitioners.

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 3rd respondent – Swift Securitas Pvt. Ltd. is a labour contractor supplying security guards to the petitioner. The contractor was not made party before the Labour Court in proceedings under section 33-C (2) of the Industrial Disputes Act, 1947 initiated by the respondent workmen. Vodafone has impleaded them in this petition as the 3rd respondent seeking judicial review of the ex parte order dated October 04, 2011 passed by the Presiding Officer, Industrial Tribunal, Amritsar in Application No.155 of 2008 instituted on October 21, 2008 computing money due to the applicant by way of execution of a pre-existing right based on work performed but wages/salary remaining unpaid since long.

2. It is not disputed that the money is not owed to the workman but it is sought to be disputed that the petitioner Company had discharged

its wage liability towards the workman/Security Guard by paying money representing his claims/dues to the 3rd respondent. Since the liability to pay is not disputed except to dispute that the obligation to pay was on the contractor then no interference is called for against the impugned order. The question is who pays the money. If the impugned order is ex parte then an ex parte order is as good as any other order in absence of proof that party had no knowledge of the proceedings. This is a pure question of fact whether the petitioner was served or not and the discretion exercised by the Labour Court judicially in coming to the conclusion one way or the other is not liable to be interfered in supervisory writ jurisdiction. When the scope of judicial review shrinks in the manner above then it is not possible for this Court to proceed with the writ petition to sort out a financial dispute between the petitioner and the 3rd respondent. They must do so between themselves. At any rate, the petitioner company remains the principal employer.

3. There is another reason why this petition is liable to be dismissed. The order was passed on October 04, 2011 and the writ petition has been filed on September 19, 2015. The petition eminently suffers from unreasonable delay and laches which has not been explained by sufficient cause except to urge that the company was proceeded ex parte for the wrong reason.

4. The principal employer owes a duty in the first instance to discharge the liability created by the court a quo and of those whose services it secures through a contractor and thereafter it is open to them to recover money from the contractor in case of default of payment by the

security agency. I have no reason to upset the order impugned principally on the question of liability. It is also not for this Court to permit a party to be impleaded for the first time in writ petition which was not before the lower court.

5. For the foregoing reasons, no merit is found in this petition which is ordered to stand dismissed. The petitioner and the 3rd respondent will be free to sort out their private differences based on a contract with the 3rd respondent or air their inter se grievances by taking resort to whatever remedy may be available to them in law, if and as advised.

6. However, nothing said in this order will be taken as an expression of opinion as to the relationship between the petitioner company, the 2nd workman and the 3rd respondent, contractor.

7. Copy of this order be sent by the office to the 2nd respondent/workman and the labour court for information.

(RAJIV NARAIN RAINA)
JUDGE

23.09.2015
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