

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No. 5137 of 2012

DATE OF DECISION : March 10, 2015

Raman Sharma

..... PETITIONER(S)

VERSUS

Assistant Labour Commissioner, U.T., Chandigarh & ors.

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE ARUN PALLI

**Present: Mr. Dinesh Gupta, Advocate, for the petitioner.
Mr. I.P.S. Doabia, Advocate, for respondents No.1 & 2.**

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1. Whether Reporters of local newspapers may be allowed to see the judgment? YES/NO

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in the digest? YES/NO

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ARUN PALLI, J. (Oral)

Petitioner has assailed the Memo dated 02.01.2012 (Annexure P-1), issued by the Assistant Labour Commissioner, Union Territory, Chandigarh, and also the order dated 24.02.2012 (Annexure P-4), vide which application moved by the petitioner for recalling/modifying the Memo (Annexure P-1), was declined.

addressed to the Director, Health Services, Government Multi-Speciality Hospital, Chandigarh, respondent No.1, i.e. the Assistant Labour Commissioner, requested that M/s Capital Security Services (petitioner), be directed to pay notice pay of one month to the workers, who had not been adjusted by the new Contractor, within a period of 15 days. And, in case, the Contractor does not pay the notice pay, the office of the Director Health Services, could pay the same and adjust that amount out of security deposits furnished by the Contractor. Pursuant to the said Memo (Annexure P-1), Director Health and Family Welfare, Chandigarh, vide letter dated 16.01.2012 (Annexure P-2), directed the petitioner to pay the notice pay of one month to the workers within a period of 15 days. As a result, petitioner moved an application for recalling/modification of Memo (Annexure P-1), before respondent No.1, and maintained that in the wake of the provisions of Section 4 of the Industrial Disputes Act, 1947 (for short 'the Act'), and the notification issued by the Chandigarh Administration, the Assistant Labour Commissioner had no authority and jurisdiction to issue any such direction. And there being no adjudication upon the issue, no such order could be passed. However, vide order dated 24.02.2012 (Annexure P-4), respondent No.1 declined the application moved by the petitioner but, apparently, nothing was indicated as to under what provisions of law such an order could be justified. This is how, petitioner approached this Court vide instant petition, as indicated above.

On 16.04.2012, this Court was pleased to pass the

following order :-

“Learned counsel for the petitioner, inter alia, contends that the Assistant Labour Commissioner, UT, Chandigarh exceeded his jurisdiction in passing memo dated 2.1.2012 directing the petitioner to pay notice pay of one month to the workers who have not been adjusted by the new contractor within a period of 15 days. Learned counsel contends that the ALC has neither power nor jurisdiction under the Industrial Disputes Act, 1947 to issue directions to any one.

Notice of motion for 18.07.2012.

Notice re: stay.

In the meanwhile, the operation of the impugned memo shall remain stayed.”

I have heard learned counsel for the parties and perused the paper book.

It is not disputed by the learned counsel for the respondents, that the direction issued by respondent No.1 vide Memo dated 02.01.2012 (Annexure P-1), to pay notice pay of one month to the workers, who had not been adjusted by the new Contractor, within a period of 15 days, was wholly without jurisdiction. In fact, none of the provisions of the Act vest any such power with respondent No.1, therefore, he apparently exceeded his jurisdiction. Learned counsel for respondents No.1 and 2 very fairly states that, in fact, Memo (Annexure P-1), was neither a mandate nor an order but merely a request that was made to maintain industrial peace and harmony.

Be that as it may, in the wake of the position as set out above and the fact that the Act does not confer any such power upon respondent No.1, vide which he could direct the

petitioner to pay notice pay of one month to the workers within a period of 15 days, ex-facie, respondent No.1, exceeded his jurisdiction. The orders being assailed were not preceded by any judicial adjudication, thus can't be sustained.

Accordingly, the petition is allowed, the Memo dated 02.01.2012 (Annexure P-1) and the order dated 24.02.2012 (Annexure P-4) are set aside.

Parties are left to bear their own costs.

MARCH 10, 2015
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(ARUN PALLI)
JUDGE