IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23418 of 2015
Date of Decision: 03.11.2015

Mahindra & Mahindra Financial Services Ltd. and others ... Petitioners

Versus

Presiding Officer, Industrial Tribunal, Patiala and others ... Respondents

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

Present: Mr. Nitin Thatai, 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 management is against an ex parte award dated August 05, 2011 passed by the Presiding Officer, Industrial Tribunal, Patiala. The management contested the reference by filing reply on April 24, 2009 after having put in appearance in Ref. No.184 of 2008. They engaged an authorized representative to appear for them and defend the reference who is said to have advised them that the matter being of a civil nature therefore the company need not to appear before the Court. He assured them that he would handle the matter and keep them posted with the case, advising that if their presence is required he would intimate the management.

2. The management complains that the authorised representative failed to appear before the Labour Court which has resulted in the ex parte proceedings and the ex parte award. The Tribunal relied on the evidence led

by the workman which remain unrebutted and unchallenged and accepted the reference.

3. The facts briefly are that respondent No.3 workman served the company from December 01, 2006 to July 02, 2008 as Field Officer in Grade-L-9(E) drawing a salary of Rs.12,506/- per month at the time of termination. The mandatory pre-requisites of section 25-F of the Industrial Disputes Act, 1947 ("the Act") were breached by the management inasmuch as neither notice, nor wages in lieu of notice or retrenchment compensation was paid at the time of termination. The award was published on February 24, 2012 and became enforceable with the passage of one month thereafter. It was only when respondent No.3 approached the company and submitted joining report with the award in hand that the management preferred an application on March 26, 2012 for setting aside the ex parte proceedings and the award. The application has been dismissed by the Tribunal by order dated September 08, 2015 holding that the same has been filed after the expiry of 30 days of publication of the award and, therefore, the application is not maintainable. The Tribunal had become *functus officio*. The Tribunal applied the law in **M/s Sangham Tape Company vs. Hans Raj**, 2004 (4) SCT 788; (2005) 9 SCC 331 and the judgment of this Court in **Ravinder Kumar vs. Timken Services Pvt. Ltd. and another**, 2011 (4) PLR 410 to reject the application filed after the expiry of 30 days from the date of publication of the award in the gazette the Labour Court held it ought not to entertain an application for setting aside the ex parte proceedings and the ex parte award.

4. Faced with both the exparte award and the contested order the

management has approached this Court by way of this present writ petition filed under Articles 226/227 of the Constitution of India. The principal argument raised is that w.e.f. April 01, 2007 the respondent No.3 had been redesignated as Customer Manager and had attained a managerial post and was not a workman. He was not covered under the definition of workman in section 2 (s) of the Act. It is submitted that respondent No.3 was paid Rs.19,128/- vide cheque No.951921 dated December 04, 2008 drawn on HDFC Bank along with the full and final settlement sheet the amount representing one month salary in lieu of notice. This was proper and sufficient compliance of the law.

5. Learned counsel appearing for the petitioner relies on the letter dated August 13, 2007 (P-3) which redesignates R-3 as Customer Manager w.e.f. April 01, 2007, that is, retrospectively. Assuming that R-3 qualifies as workman then the letter dated June 23, 2008 terminating the contract of employment is defective inasmuch as retrenchment compensation was not paid. If the view of the management is accepted that a Customer Manager falls on the managerial side then compliance of section 25-F of the Act would not be necessary.

6. The most material document on the file is the written statement filed on behalf of the management before the Tribunal. These pleadings are dated April 24, 2009. It is not pleaded therein that R-3 was not a workman because he belongs to the management side. The written statement does not even mention the respondent's appointment as a Customer Manager and there is not even a whisper in the written statement of the existence of the letter dated August 13, 2007 and the stand taken in this petition is clearly an

afterthought and cannot be entertained for the first time in writ proceedings.

7. Mr. Thatai has not been able to wriggle out of the written statement where respondent No.3 is referred to as "workman". It is well settled that plea not taken before the Labour Court is not open to be taken for the first time in writ proceedings as reaffirmed by the Supreme Court in **Harjinder Singh vs. Punjab State Warehousing Corporation**, (2010) 3 SCC 192.

8. No sufficient cause has been shown for the management abandoning the litigation after contesting the case by filing the written statement and then letting it go ex parte. The petitioner is a public limited company and has the entire wherewithal to defend itself as it must be assumed to have access to the best legal advice. It is not believable that a company would be so gullible and be taken in by the advice of the authorized representative that the matter is of a civil nature and therefore they need not bother, meaning thereby, that the lis does not fall within the jurisdiction of the Labour Court. If their authorized representative before the Labour Court let them down and failed to contest the case properly on behalf of the management then on a query put to Mr. Thatai, no complaint has been made by the management to the Bar Council against the authorized representative in case he is a lawyer. In case, he is not, the petitioners are always at liberty to seek remedies against their counsel and claim relief against him for rendering bad advice. This Court finds no cogent or valid reason to interfere either with the ex parte award or with the order dismissing the application for setting aside the ex parte proceedings and the ex parte award. There is no fundamental flaw of law or fact in the work of

the tribunal nor is there any error of jurisdiction or an error apparent on the face of the record. It is not for this court to re-appreciate the evidence and reach a different conclusion as the jurisdiction provided by Constitution is not appellate but only supervisory. Consequently, the petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

03.11.2015
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