

CWP No. 27170 of 2013 & CWP No. 27174-2013 -1-

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

**CWP No. 27170 of 2013
Date of Decision: 20.01.2015**

M/s Safe and Secure Logistics Pvt. Ltd. and another

...Petitioners

Vs.

The Presiding Officer, Labour Court, Ambala and another

...Respondents

2. CWP No. 27174-2013

M/s Safe and Secure Logistics Pvt. Ltd. and another

...Petitioners

Vs.

The Presiding Officer, Labour Court, Ambala and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Arun Takhi, Advocate,
for the petitioners.

Mr. ADS Jattana, Advocate,
for respondent No. 2.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (ORAL)

This order disposes of CWP No.27170 of 2013 and CWP No. 27174 of 2013 as the point in issue is common in both the cases. Facts are being extracted from CWP No.27170 of 2013.

Industrial Reference No. 47/2013 under Section 10 (1) (c) read with Section 2A of the Industrial Disputes Act, 1947 was endorsed by the

appropriate government in Haryana State on 14 December 2012 to the Presiding Officer, Labour Court, Ambala, for adjudicating the industrial dispute arising between the petitioner and the respondent Management with respect to termination. The reference was received in the labour court on 2nd January 2013 and summons to appear were issued to the respondents, the present petitioners, for 7th February 2013.

On 7th February 2013, the Presiding Officer, Labour Court, Ambala, unfortunately passed the following order:-

“Present:- Workman in person.

None for the Management.

The direction was given to the parties by the Government to appear in the Court on 07.02.2013. However, no one has appeared on behalf of the management. Therefore, the management is proceeded ex-parte.

To come up on 15.03.2013 at Panthkula camp Court for filing of claim statement.”

On the first date itself, the management was proceeded ex-parte. Thereafter, the workman took two dates but failed to file his claim statement which was ultimately filed on the third date i.e. 26th April 2013. On the two dates ahead, the workman failed to lead his evidence in support of his claim. Thereafter, on 2nd August 2013, the evidence of the workman was recorded and closed by order, on the same day, when the impugned award was passed by a separate order. The court *a quo* has awarded reinstatement with 50 per cent back wages against the ex-parte management. In the process of execution of the award, the management learnt of the ex parte award passed against it upon a notice sent by the Labour Inspector, Panchkula, to the management to satisfy the award in

execution.

The Management is before this Court complaining that it was proceeded ex parte illegally without notice or summons served on it. They complain that they were wrongly proceeded ex parte on the first date and no notice of the further proceedings was issued even when they are a going concern still functioning in the State of Maharashtra where they run a factory as well. This has culminated in adverse civil consequences to the management and in this has been denied the right to contest the case on merits.

Suffice it to say that it is the bounden duty of the labour court to strike a proper balance between the rights of the employer and the employee to settle a dispute which has arisen between the parties in order to restore peace and harmony in industry. In order to do justice, neither party is required to be shown any favour by improper exercise of procedural safeguards. It is not that the labour court cannot proceed ex parte and pass ex parte order and awards but it must do so properly on the basis of sufficient indication to suggest that the management is playing games and evading service despite summons issued to it. There is not a word in the awards as to the exact fate of the summons sent or whether they were received back served or otherwise etc. It is not its business to proceed ex parte on the first date of appearance when the reference is received from the State Government and is registered in the labour court or to do so without adequate notice of the proceedings and that too at the drop of the hat. Summons issued by it cannot be presumed to have been served by the next date unless there is refusal, which is not the case. The entire superstructure built on the principles of natural justice and the rule of *audi alteram partem*

depend on notice and hearing both sides in a fair and reasonable manner. The labour court in the present case has not done well in jumping to the conclusion that management should be proceeded ex parte without any material to support it on the court file duly noticed and dealt with. Labour courts must never be seen to be acting in a hurry without unnecessarily inviting disapprobation of the litigating public before it; half of whom come from poorer sections of society, the other half representing the 'haves'. There is, therefore, greater need to do justice and to see it done while holding the scales of justice in a balance for all to notice that indeed ends of justice were met in a case.

In the circumstances, the labour court could have resorted to substituted service on forming an adequate and reasonable opinion that non-appearance of the management on 7th February 2013 was in avoidance of litigation and to prevent or delay an adjudication. The absence of reasonable procedure adopted in service of summons vitiates the proceedings and the award. This has caused serious prejudice to the petitioner management.

Therefore, the labour court award cannot be sustained in the eyes of law. To maintain the award would result in serious injustice to the petitioners as they will not be able to contest the cases before the labour court on merits. Accordingly, both the impugned awards dated 2nd August 2013 have to be set aside as illegal, perverse and passed in grossly improper exercise of jurisdiction and one which no labour court should ever contemplate or pass without inviting disapproval. Cases are meant to be decided on merits and not to be casually disposed of as one would discharge a burden by a short-cut method. The manner in which these two cases have been dealt with leaves serious doubt in the mind of the Court as to the

capacity and ability to do justice by the labour court. Consequently, the case has to be remanded to the court *a quo*. The labour court would have to pass a fresh award after hearing both sides and after receiving written statements of the petitioners and permitting parties in an adequate position to lead their evidence to establish their respective cases. Sorry to say, but so much time of two courts has been squandered for achieving really nothing and only to return to square one of IDR 47/2013 and IDR 52/2013 which need not have been spent if some judicial patience was shown on 7th February 2013 by the court *a quo*.

Resultantly, the parties are directed to appear before the labour court on 2nd February 2015. The examination-in-chief of the workmen respondent already recorded or of any of their witnesses produced will stand preserved and would not be recorded again and such witnesses would be subjected to cross-examination alone by the management. However, the workmen would remain free to add to the examination-in-chief by way of an additional affidavit, if advised, but they will not be allowed to repeat anything therein that have been already traversed or deposed to and depending on the defence of the management set up. However, regular procedure will be followed for any other witnesses the workmen might like to produce in their support in the light of the defence of the management pleaded in the written statement to be let in.

The labour court would take up the matters in right earnest and endeavour to decide them as expeditiously as possible.

The petitions are disposed of, accordingly.

(RAJIV NARAIN RAINA)
JUDGE

January 20, 2015
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