

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

Date of decision:26.11 2015

CWP No.24494 of 2015

M/s Jagdamba Electrical Factory

... Petitioner

Versus

The Authority under the Payment of
Wages Act 1936, Circle-2, Sonapat & anr.

... Respondents

CWP No.24500 of 2015

M/s Jagdamba Electrical Factory

... Petitioner

Versus

The Authority under the Payment of
Wages Act 1936, Circle-2, Sonapat & anr.

... Respondents

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

Present: Mr. Surender Saini, Advocate,
for the petitioner.

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

RAJIV NARAIN RAINA, J.(Oral)

1. This order will dispose of writ petitions bearing No.24494 and 24500 of 2015 as common questions of law and facts are involved in them which can conveniently be decided by a common order.

2. The petitioner has approached this Court against the ex parte order passed by the authority under the Payment of Wages Act, 1936, Circle-2, Sonapat. The claim of the workman has been allowed and the amount determined has been ordered to be due and payable to the workman as forming part of unpaid wages for the period in dispute and under consideration. The application for setting aside the ex parte order and proceedings has been dismissed. Aggrieved by both the orders, the

management is before this Court praying for setting aside the orders and remanding the case for fresh hearing on merits from the stage the proceedings were taken ex parte.

3. The sole question which arises before this Court is whether there was any truth in the statement made by the management before the authority in the application for setting aside the proceedings that they have not been served with the summons issued by the authority and therefore the further proceedings stood vitiated. If summons were not issued or received by the management, there can be no doubt that the work of the authority has to be undone. However, if the statement made to obtain favourable orders from the authority is found not to be true then setting aside of ex parte proceedings would not follow automatically and interference on principles of equity can be denied. The finding of fact returned by the authority from the scrutiny of the case file is that the notice issued through registered post to the petitioner management was received back unserved with the postal remarks "refused to take". Therefore, the authority was well within its jurisdiction to proceed ex parte management.

4. Rule 8 of the rules framed under the Payment of Wages Act, 1936 (for short 'the rules') governs the procedure for appearance of parties. If an application is entertained, the authority has to call upon the employer by a notice informing it to appear before him on a specified date together with all the documents and witnesses, if any, and shall inform the applicant of the date fixed, if any specified. Sub Rule 2 of Rule 8 of the Act provides that if the employee or his representatives fails to appear on the specified date the authority may proceed to hear ex parte.

The Proviso to rule 8 prescribes that if the authority has passed an order under sub rule 2, it may be set aside and the application be heard on “good cause” being shown within one month of the date of the order.

5. In the present case, the authority has found no good cause in non-appearance of the petitioner-management when the attempt to serve it through the Indian Postal Department failed on refusal by the [respondent] management to accept the notice/summons issued by the Authority. No allegations are/were levelled against the postman or postal authority that there was remissness in performance of their duties or that the postman has been suborned over by the management. This part of the story has not been found to be trustworthy and has been disbelieved. There is not even a whisper in the written statement presented by the management as to these facts. Service through the postal department bears a presumption of truth which can be rebutted only by unimpeachable evidence adduced on record. In this, the management singularly failed and therefore, this Court finds nothing wrong or illegal in the exercise of jurisdiction by the Authority inclining itself to dismiss the application for setting aside the ex parte order and proceedings. Findings of fact and appreciation of evidence is the exclusive domain of the Authority/Tribunal which calls for no interference in the supervisory jurisdiction of this Court provided under Article 226 of the Constitution of India.

6. The feeble attempt made by the petitioner to reopen proceedings is not only without any firm and factual foundations but what was offered for consideration of the Authority lacks in bona fides.

Their story to show good cause of non-appearance has been belied and

good cause was not shown to persuade the Authority to set aside the ex parte order when service of notice/summons were sent in the prescribed mode but were refused. No attempt was made to produce the postman. No ground is made out to upset the impugned order. The Authority has not acted perversely or irrationally in making the impugned orders. Thus, both the petitions are found without substance and are ordered to stand dismissed.

(RAJIV NARAIN RAINA)
JUDGE

26.11.2015
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