

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

CWP-3427-2013

Date of decision : 06.10.2015

M/s J.V. & Company

... Petitioner

Vs

Presiding Officer, Industrial Tribunal-cum-Labour Court-1,
Gurgaon & Anr.

...Respondents

Coram : Hon'ble Mr. Justice Rajiv Narain Raina

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Sachin Mittal, Advocate
for the petitioner.

Mr. Narender Yadav, Advocate
for respondent No.2.

Rajiv Narain Raina, J. (oral)

Heard learned counsel for the parties at length.

The services of the workman were terminated on 03.02.2007. The dispute led to conciliation proceedings. During conciliation, the management undertook to take back the workman into service and proceedings under Section 12(3) of the Industrial Disputes Act, 1947 (for short 'the Act') were closed. The Management did not honour the settlement and did not take back the workman in service which led to the reference of the dispute to the Labour Court-I, Gurgaon in Reference No.416 of 2008. The Labour Court issued notice to the Management and they appeared to contest the case. The written statement was filed. Thereafter, the Management failed to appear on

01.10.2010 and they were proceeded against *ex parte*. However, they filed an application for setting aside the *ex parte* proceedings and the Labour Court accepted the request and the Management re-entered the contest, only to commit the same fault again when they did not cause appearance on 21.01.2011, the Labour Court proceeded *ex parte* against the Management and an *ex parte* award was rendered on 30.03.2011 awarding reinstatement of the workman with 50% back wages. Though reinstatement was awarded but no continuity of service was expressly decreed.

Be that as it may, the stand of the Management in the preliminary objection was noticed where the plea of abandonment of services was the defence taken but in absence of evidence produced by the Management, being *ex parte*, the un rebutted evidence of the workman was accepted as true and correct and a reasoned award was pronounced. The jurisdictional facts required for granting relief were satisfied.

On a review of the material on record, the Labour Court came to the conclusion that the workman had put in 4 years of service from March, 2003 till the date of termination which were continuous and uninterrupted and well beyond 240 days in the calendar year preceding the date of termination.

Since the Management had pleaded the defence of abandonment of service, they could not plead the self destructive plea that they were not required to comply with the

provisions of Section 25-F of the Act. These two defences are inconsistent with each other. There was breach of the provisions of section 25F of the Act. On these premises the award was answered in favour of the workman as the termination was illegally brought about illegally without serving show cause notice, charge-sheet and holding a domestic enquiry when the case of abandonment was the charge and the motive and reason for termination, which means willful absence from duty without prior permission, which is a species of misconduct.

The Management did not file an application for review of the order within 30 days of the award and moved an application subsequently on 08.06.2011 belatedly which has been dismissed by the Labour Court on the ground that it had become *functus officio*. It is in this background that the Management has approached this Court under Article 226/227 of the Constitution praying for setting aside the award and the impugned order proceeding ex parte against them.

Mr. Sachin Mittal, Advocate, appearing for the Management is not in a position to dispute that the Management had entered appearance and contested the case by filing its written statement taking all their defence pleas as were available to them on the facts and in law. No justification or sufficient cause has been shown in the application or even in this petition as to why the ex parte proceedings should be set aside when there is singular lack of explanation for the default

pleaded and proved by *ex facie* material. As a result of the default of the Management in failing to pursue the case with due diligence, no sympathy can be shown in exercise of the supervisory jurisdiction by this Court provided under Article 226 of the Constitution to lend its hand when the order proceeding *ex parte* Management on 21.01.2011 is otherwise perfectly legal and valid, then this Court would not set about tearing apart the impugned award on principles of compassion, sympathy etc. Not even equitable considerations would come into play to interfere in this matter as no substantial injustice has been done by the Labour Court in the impugned award which is self invited by the petitioner. It is well settled that an *ex parte* order or award is as good as one which is passed after contest. No ground for interference is made out in the dispensation handed down by the Court *a quo* or in the body of this writ petition and accordingly the writ petition is found without any substance and is ordered to stand dismissed.

(RAJIV NARAIN RAINA)
JUDGE

06.10.2015
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