

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

Civil Writ Petition No.5166 of 2013

Date of decision: 15.10.2015

Sonu

... Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Diwan S.Adlakha, Advocate,
for the petitioner.
None for the respondent.

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

RAJIV NARAIN RAINA, J. (Oral)

The case has been called on for hearing at its item number. No one appears for the respondent despite service and prior appearance. The respondents are proceeded *ex parte*.

2. Heard Mr.Adlakha on the correctness of the award dated 19th April, 2012 passed by the Presiding Officer, Labour Court, Ambala in Reference No.125 of 2010 under section 10 (1) (c) read with 2A of the Industrial Disputes Act, 1947.

3. On notice and appearance, the reference was contested by the respondent school by filing a statement of claim. The issues were framed on

21th April, 2011 arising in the *lis*. The evidence of the petitioner was in progress and he had tendered his affidavit on 5th October, 2011 by way of examination-in-chief as Ex. WW1/A. The authorized representative for the management sought an adjournment to cross-examine the workman appearing as his own witness. The request was not opposed by the workman and the labour court adjourned the case to 8th November, 2011. On 8th November, 2011, the workman was present for cross-examination but his authorized representative sought an adjournment on the ground that he was not feeling well and he wanted to be present at the time of cross-examination. The request was not opposed by the management and the case was adjourned to 7th December, 2011. On the adjourned date, the witness was present but the authorized representative for the management was not available for cross-examination which led to an adjournment for evidence by way of cross-examination of the workman. The next date fixed was 11th January, 2012. However, the Presiding Officer, Labour Court, Ambala took up the file in advance as he was to proceed on special casual leave from 9th January, 2012 to 13th January, 2012. Consequently, the case was adjourned in advance to 14th February, 2012 for the purpose already fixed. The office was directed to inform the parties.

4. There was failure of the workman to present himself for cross-examination on 14th February, 2012 and an adjournment was requested on his behalf. The request was opposed by the management. However, in the interest of justice, one more opportunity was granted to the workman to lead his evidence, failing which, the evidence of the workman would be deemed to be closed on the next date of hearing. The case was adjourned to 27th

March, 2012. It may be noted that the words, “despite last opportunity” have been recorded in the zimni order dated 14th February, 2012 but such a thing is not forthcoming in any of the zimni orders from 5th October, 2011 noticed above which are collectively annexed as P-3. If it was so recorded on any previous date it is not known. However, even assuming if it were a fact it would hardly make any material difference to the order proposed to be passed by this Court.

5. To return to the reading of the order sheet; be it stated that on 22nd March, 2012, the labour court made a repeat performance of taking special casual leave as before and adjourned the case to 19th April, 2012 for the purpose already fixed and directed that the parties be informed accordingly.

6. On 19th April, 2012, the Presiding Officer shut the case by recording the following order : -

“WW-1 is not present for cross-examination. Adjournment requested. Opposed. In view of the zimni order dated 14.02.2012 the evidence of the Workman is hereby closed by order of court. The AR for the management closed the evidence vide his separate statement. Arguments heard. Vide my separate detailed award the reference stands dismissed. The reference stands answered accordingly. File be consigned.”

7. The evidence of the workman was closed and on the same day, the labour court proceeded to dismiss the reference without making any allowance to determine the case after contest and on the merits. A combined reading of the zimni orders noticed above and the award passed leave much to be desired in the shoddy work of the labour court which is most

unsatisfactory and cannot be regarded by this Court in judicial review as one which need a pat on the back for good work done. The labour Court is meant to dispense justice on principles of social policy and not to dispense with justice.

8. When this petition came up for hearing for the first time on 13th March, 2013, I was then the roster Judge and issued notice of motion to the respondent 2, returnable on the contention of the Mr. Adlakha that only because the workman could not appear on 19th April, 2012 to be cross-examined, the labour court instead of deferring the matter in the interest of justice to another date proceeded to close the evidence of the workman and pronounced the award on that date itself. The case has returned back to me today and I have little else to do except to set aside the award.

9. The labour courts and tribunals are designed to bring peace and harmony in industrial relations which have been disturbed as in this case by a termination order. The parties were and are disputing. It is the bounden duty of the labour Court to decide disputes on merits and not devise ways and means to dispose them of as quickly as possible and sacrifice justice at the altar of units of disposal. This is not a good reaction in a subordinate judge and does not show equanimity of judicial discipline and character, probity, repose and disinterestedness in the cause before it. After all, justice hurried is justice buried. In the present case the court *a quo* did not dispense justice hurriedly because it did not do any justice at all. Hurriedly also takes time but what the court *a quo* inflicted upon a hapless workman was sudden death play-off.

10. There is nothing to suggest that the workman was at serious

fault in not appearing on one fine morning to face cross-examination when the events of the previous dates do not even remotely suggest that he was deliberately avoiding appearance or attempting to protract the litigation unfairly. He was not even put in a position to explain his absence and show sufficient cause. A short adjournment would not have cost anything. The workman could have been imposed token costs. There were many options open that a good judicial officer manning a labour court could have devised to do justice and to avoid doing injustice. Justice is not only to be done but seen to be done. Justice in labour courts and tribunals is not dispensed as it is in civil courts which are hidebound by procedure. The labour courts enjoy greater freedom. The labour court should not have forgotten to read the lighthouse judgment of the Supreme Court when all 9 Hon'ble Judges [Full Court] deliberated to crack the labour code and navigate the scheme and philosophy in the Industrial Disputes Act, 1947 in **The Bharat Bank Ltd, Delhi v. Employees of Bharat Bank**, AIR 1950 Supreme Court 188: 1950 SCR 459 guiding Courts ever since. It is not a judicial labour court. It remains guided mostly by the provisions of the Act and the valuable and cherished principles of natural justice which every man deserves to be dealt with by. The labour court is not a court but has only the trappings of a court. The labour court has a sacred duty to balance the interests of both managements and workers in a fair and just manner. The respondent would not have suffered by an adjournment to accommodate the cross-examination of the workman. But the labour court did not care two hoots in closing the evidence so abruptly leaving the workman in a lurch to take recourse to his expensive remedies to try and undo the injustice fallen upon him which he

could have ill afforded. That is the background in which the poor workman has been compelled to knock at the door of this Court demanding justice which was his right. What a waste of time and energy all this has been. Every effort should be made to answer references on merits.

11. I have no doubt that the award wreaks grave injustice for which reasons, it deserves to be quashed. I have no hesitation in setting aside the impugned award and to remand the case to the labour court by restoring the reference to its original number to be decided on merits after permitting both the sides to lead their evidence in support of their respective cases and to answer the reference on merits.

12. Parties are directed to appear before the labour court on 16th November, 2015.

13. A copy of this order be sent to the management since the counsel has not appeared and it has been proceeded *ex parte* in default of appearance, a situation similar to the one which has been impugned in this Court before the labour court. If the workman was proceeded *ex parte* by the labour court, this Court has proceeded *ex parte* against the management for good and sufficient cause.

14. A copy of this order be also sent by the office to the author of the award as a reminder that courts of law and labour courts and tribunals are not geared to be party to miscarriage of justice.

(RAJIV NARAIN RAINA)
JUDGE

October 15, 2015
Paritosh Kumar