

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP no.7682 of 2013 (O&M)

Date of Decision : 30.01.2015

Shashi Kumar

....Petitioner

Versus

Mitoya Instruments and another

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

1)Whether reporters of local newspapers 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. Vishal Sodhi, Advocate for the petitioner

None for the respondents

MAHESH GROVER, J.

The petitioner impugns the award Annexure P-3 vide which his reference has been dismissed.

The reference was forwarded to the Labour Court for determination of the question of termination of services of the petitioner without compliance of the provisions of Industrial Disputes Act. During its progress the workman led his evidence and on 19.1.2012 an order was passed by the Labour Court noticing that the witness WW1 was not present for cross-examination. A request for adjournment was made which was opposed but was ultimately granted to fix the proceedings for 10.2.2012. But the petitioner noticed this date wrongly and failed to appear on the said date i.e. 10.2.2012 on which date the Labour Court passed two orders one which is the impugned award (Annexure P-3) and the other a zimni order which is extracted herebelow:-

“Present:- None for the workman

Sh. Jasbir Singh, AR for Management

The workman has not come present for cross examination nor the AR for workman is present. AR for the management has closed the evidence vide his separate statement.

Arguments heard. Vide my separate detailed award the reference in hand stands dismissed. The reference is answered accordingly. File consigned.”

Learned counsel for the petitioner contends that the impugned award is illegal and cannot be sustained in view of the fact that proper procedure has not been followed. Even if the workman was to be proceeded against by closing his evidence an opportunity ought to have been given to the management to adduce its evidence with a further opportunity to the petitioner to cross examine the witnesses produced by the management. Instead the entire process was concluded by the Labour Court on one single date and his rights were shut out altogether. Apart from this it is pleaded that there is a singular default in appearance and thus the impugned orders have resulted in gross injustice to the petitioner.

There has been no representation on behalf of respondent despite service and neither any reply has been filed.

After hearing learned counsel for the petitioner, I am of the view that gross injustice has been done to the petitioner, as is clear from the facts and the procedure followed by the Labour Court in culminating the proceedings on one single date showing undue haste. The fact also remains that the application for recalling of the ex parte order was moved within 11

days of the passing of the award and before its publication. This was not considered by the Court appropriately and rather an erroneous finding was recorded that the application has been filed beyond the period of 30 days of the publication of the award. The application itself would show that it was filed on 21.2.2012. The Labour Court in fact took a hyper technical view by declining the prayer of the petitioner for restoration of the case and for setting aside the award of the Tribunal. In matters such as these the Labour Court should not adopt a hyper technical approach. The workmen more often than not are ill conversant with the legal process and often assisted by representatives untrained in law. Thus a certain amount of indulgence has to be given in their favour. If an application for restoration of the case to its original number had been moved, the larger import of the prayer should have been the focus of consideration of the Labour Court and even if insufficient language was employed leaving some lacunae a liberal interpretation should have been accorded to it.

It is also to be noticed that the workman's default was confined only to a single date and he was prosecuting his case quite diligently.

Thus taking in view the totality of the circumstances I would conclude that the orders passed by the Labour Court need to be set aside with a positive direction that the case of the petitioner be reheard from the stage where it was on 19.1.2012. The impugned orders Annexure P-3 and P-5 are set aside. Matter is remitted back to the Tribunal for decision afresh.

Disposed of.

January 30, 2015
rekha

(MAHESH GROVER)
JUDGE