

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 5583 of 2010

1. State Of Chhattisgarh, Department of Forest, Conservator of Forest, Forest Circle Bilaspur through Divisional Forest Officer Raigarh, Tehsil & District Raigarh (C.G.)
2. The Divisional Forest Officer, Forest Division Raigarh (Cg)

---- Petitioner

Versus

- Ramtej S/o Parasnath Dwivedi, aged about 46 years, Occupation Wireless Operator (Daily-wages) R/o Near Poultry Farm, Chhote Atarmuda, Raigarh, Tehsil and Distt. Raigarh (Cg)

---- Respondent

For Petitioners/State
For Respondent

Shri Shashank Thakur, GA
Shri K.P.S. Gandhi, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

09/05/2016

1. Challenge in this petition is to the order dated 16.11.2009 passed by the labour Court, Raigarh and the ex parte order dated 23.01.2008, whereby the labour Court has allowed the claim of the respondent workman and directed the petitioners to pay wages from November, 1996 to March, 2003 totaling Rs.1,62,008/-. The said award being an ex parte award, an application under Order 9 Rule 13 CPC was moved for setting aside the award, which has been dismissed by the labour Court on 16.01.2009.

2. It appears, the respondent workman was working in the Forest Department from 1986 to 28.10.1989 and his services were put to an end for which an industrial dispute was raised and was referred to the labour Court for adjudication. The labour Court allowed the claim and directed the petitioners to reinstate the respondent workman with full back wages. The respondent was paid back wages and was also paid the wages for October, 1996, however, according to him, he was not paid wages from November 96 to 10.03.2003.
3. The respondent workman again moved an application before the labour Court for payment of the wages for the above stated period. Notice of the second proceedings was sent to the petitioners by registered post, however, without discussing the service report the labour Court, in its order dated 23.01.2008, treated that the notice being sent by registered post, it is deemed to be served on the petitioners. The labour Court thereafter proceeded to allow the claim ex parte and directed the petitioners to pay salary/wages for the above said period. When the Revenue Recovery Certificate was issued, the petitioners immediately preferred an application under Order 9 Rule 13 CPC for setting aside the ex parte award, which has been dismissed by the impugned order on 16.11.2009 on the ground that provisions contained in Order 9 Rule 13 CPC are not applicable to the labour Court.
4. Having heard learned counsel for the parties, it would appear that before proceeding ex parte against the petitioners, the labour

Court has not referred to any such rule, wherein the notice issued by the labour Court to any party by registered post is deemed to be served on the party on expiry of certain period of time. It also does not appear that the envelop containing the registered notice was refused to be accepted by the petitioners or that even after receipt of notice, the petitioners failed to appear before the labour Court. In absence of any such eventuality, the labour Court ought not to have treated service of notice on the petitioners and proceeded to decide the matter ex parte. It should always be the endeavor of the Courts and Tribunals to hear the parties before proceeding to decide the matter finally. It is only when a party does not appear before the Court despite service of notice, an ex parte order would be justified, however, when there is no proof of service of notice, proceedings ex parte may not be appropriate.

5. In the case at hand, it was the specific stand of the petitioners that the notice issued by the labour Court was never served upon the petitioners or any of its employee. When such ground has been raised in the application for setting aside the ex parte order, the labour Court should have enquired from the Postal Department about the service of notice, however, without doing so, the labour Court has dismissed the application as not maintainable.
6. The above discussion would clearly establish that while passing the ex parte award/order the labour Court has wrongly proceeded ex parte against the petitioners, therefore, there being violation of principles of natural justice, the impugned order is not sustainable.

7. For all the aforesaid reasons, the impugned ex parte order dated 16.11.2009 is set aside. Let the labour Court decide the matter afresh after giving opportunity to the petitioners to submit reply to the statement of claim and thereafter to record evidence of both the parties and decide the matter finally on its own merits.

Sd/-

JUDGE
PRASHANT KUMAR MISHRA

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