

In the High Court of Punjab and Haryana at Chandigarh

Civil Writ Petition No. 21462 of 2013
Date of Decision: 19.1.2016.

Principal, Govt. Senior Secondary SchoolPetitioner

Versus

Mukesh Kumar and anotherRespondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Gagandeep Singh Wasu, Addl. A.G. Haryana.

None for respondent No. 1.

SABINA, J.

Petitioner has filed this petition under Article 226 of the Constitution of India challenging the ex parte award dated 17.2.2010 (Annexure P-5).

Learned State counsel has submitted that petitioner had not received the summons and due to this reason, none could put in appearance on behalf of the petitioner before the Labour Court. The absence of the petitioner before the Labour Court was not intentional. Learned State counsel has further submitted that petitioner be granted opportunity to enable it to appear before the Labour Court and put up its defence.

None has appeared on behalf of respondent No. 1 despite service.

Respondent No. 1 raised an industrial dispute by serving a demand notice challenging his termination. The dispute

was referred to Industrial Tribunal-cum-Labour Court-III, Faridabad by the appropriate government for adjudication. Petitioner was proceeded *ex parte* vide order dated 20.11.2008 and thereafter *ex pate* award was passed in favour of respondent No. 1 on 17.2.2010 (Annexure P-5). The case of the petitioner is that it could not appear before the Industrial Tribunal-cum-Labour Court as it had not received the summons.

Annexure P-4 is the order passed by the Industrial Tribunal-cum-Labour Court on 20.11.2008 and the same reads as under:-

“Present: Sh. Lachchi Ram, AR for the workman.

Registered notice was sent to the respondent on 19.9.08.

Postal receipt has also been filed by AR for the workman.

However, neither the registered notice has been received back nor the respondent has appeared. Presumption of due service of notice upon the respondent is drawn. As the respondent has failed to appear despite repeated calls. Hence, it is proceeded against exparte. Claim settlement filed. Case is adjourned to 05.02.09 for ex parte evidence of the workman.”

Thus, a perusal of the order dated 20.11.2008 reveals that the petitioner was proceeded *ex parte* as presumption was raised that the due service had been effected on it as the registered notice had not been received back unserved. However, the case of the petitioner is that it had not received the summons and due to this reason, none could appear on its behalf before the Industrial Tribunal-cum-Labour Court. There is no reason to disbelieve the plea put-forth by the petitioner that it had not received the

summons for appearance before the Industrial Tribunal-cum-Labour Court. Hence, in the facts and circumstances of the present case, it would be just and expedient to set aside the *ex parte* award passed by the Industrial Tribunal-cum-Labour Court against the petitioner and direct the Industrial Tribunal-cum-Labour Court to pass a fresh award after affording opportunity to the petitioner to put up its case.

Accordingly, this petition is allowed. Impugned *ex parte* award dated 17.2.2010 (Anneuxre P-5) is set aside. The Industrial Tribunal-cum-Labour Court is directed to pass a fresh award, in accordance with law.

**(SABINA)
JUDGE**

January 19, 2016
Gurpreet