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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.26961 of 2015

Date of decision: January 07, 2016

Cryobanks International India Pvt. Ltd.

.....Petitioner

Versus

The Presiding Officer and another

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE SABINA**

**Present:** Mr. Harsh Aggarwal, Advocate  
for the petitioner.

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**SABINA, J**

Petitioner has filed this petition under Article 226 of the Constitution of India seeking writ in the nature of certiorari for quashing the *ex parte* award dated 01.06.2015 (Annexure P-5) and order dated 02.11.2015 (Annexure P-8).

Learned counsel for the petitioner has submitted that in fact, respondent No.2 was not an employee of the petitioner. Rather, respondent No.2 was employee of M/s Prashar Staffing and Security (P) Limited. Petitioner be granted opportunity to enable it to lead its evidence in support of its case.

Respondent No.2 raised an Industrial dispute by submitting demand notice. The appropriate Government referred the dispute to Industrial Tribunal-cum-Labour Court, Gurgaon for adjudication.

The case of respondent No.2 was that he had been appointed with the petitioner on casual basis from 18.04.2005 to 05.01.2006. Thereafter, respondent No.2 was confirmed on permanent basis w.e.f. 06.01.2006. Services of respondent No.2 were terminated on 27.03.2010 without issuance of any notice

and in violation of provisions of Industrial Disputes Act, 1947 (hereinafter referred to as 'I.D. Act').

Petitioner filed its written statement and denied the contents of the claim submitted by respondent No.2. A perusal of the reply Annexure P-4 submitted by the petitioner before the Industrial Tribunal-cum-Labour Court reveals that the petitioner had not taken any plea therein that in fact, respondent No.2 was an employee of M/s Prashar Staffing and Security (P) Limited in terms of agreement Annexure P-1.

On the pleadings of the parties, following issues were framed by the Industrial Tribunal-cum-Labour Court:-

- “1. Whether the termination of the services of the workman is illegal and unjustified, if so to what effect?OPW*
- 2. Whether the workman is not covered under the definition of 'workman' under I.D. Act?OPM*
- 3. Relief.”*

Respondent No.2 led his evidence in support of his case. Petitioner was proceeded *ex parte*. In order to prove his case, respondent No.2 had led oral as well as documentary evidence. From the documents proved on record, the Industrial Tribunal-cum-Labour Court held that it was duly established that respondent No.2 was an employee of the petitioner. Learned counsel for the petitioner during the course of arguments has submitted that respondent No.2 was not the employee of the petitioner, which appears to be an afterthought because no such plea was taken by the petitioner in its written statement Annexure P-4. The Industrial Tribunal-cum-Labour Court passed the award dated 01.06.2015 (Annexure P-5) in favour of

respondent No.2 as his services were held to have been terminated in violation of provisions of Section 25-F of the I.D. Act.

Thereafter, petitioner moved an application under Order 9 Rule 13 of Code of Civil Procedure, 1908 ('CPC' for short) for setting aside the *ex parte* award. The said application was dismissed by the Industrial Tribunal-cum-Labour Court vide the impugned order dated 02.11.2015 (Annexure P-8). A perusal of the said order reveals that it has been noticed by the Industrial Tribunal-cum-Labour Court that initially, petitioner had appeared through its representative K.K. Aggarwal and had filed its written statement. However, petitioner was proceeded *ex parte* on 13.01.2014. Thereafter, an application was moved for setting aside the *ex parte* proceedings against the petitioner. However, the said application was dismissed-in-default on 23.04.2014. On 14.05.2014, petitioner again moved an application for restoration of application for setting aside the *ex parte* proceedings against it through authorised representative Lalit Kumar Verma. *Ex parte* proceedings against the petitioner were set aside vide order dated 28.05.2014, subject to payment of ₹500/- as costs. Lalit Kumar Verma representative of the petitioner appeared before the Court and cross-examined respondent No.2. However, petitioner failed to pursue its case thereafter, and was proceeded *ex parte* on 09.03.2015. Thereafter, the impugned award Annexure P-5 was passed.

Thus, from the above facts, it is evident that the petitioner was in the knowledge of the proceedings pending against it, but had not proceeded with due diligence. Award

Annexure P-5 was published in the gazette on 15.06.2015. However, the application dated 04.08.2015 (Annexure P-6) under Order 9 Rule 13 CPC was moved after a period of 30 days. In these circumstances, the Industrial Tribunal-cum-Labour Court had thus, rightly dismissed the application under Order 9 Rule 13 CPC moved by the petitioner for setting aside the *ex parte* award.

No ground for interference by this Court, is made out.

Dismissed.

(SABINA)  
JUDGE

January 07, 2016  
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