

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

1427

**CWP-13819-2005 (O&M)
Date of decision:08.09.2017**

The Municipal Corporation, Bathinda

....Petitioner

Versus

The Presiding Officer, Labour Court, Patiala and another

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr.R.D.Bawa, Advocate for the petitioner.

Mr. D.D.Bansal, Advocate for respondent No.2.

P.B. Bajanthri, J. (Oral)

In the instant writ petition, petitioner has challenged the validity of the ex-parte award dated 05.10.2004 (Annexure P-3).

2. The respondent-workman is stated to have been appointed as a casual Labourer on 01.07.1982 with the petitioner-the then Municipal Committee now Municipal Corporation,. Respondent-workman stated to have abandoned the services on 20.04.1985. Whereas respondent's version that his services were terminated on 30.05.1987. With these factual aspects the respondent-workman raised an industrial dispute. Learned counsel for the petitioner submitted that during pendency of the reference, he withdrew the dispute on 14.12.1993 on the ground that he be permitted to take fresh course of action by issuing representation or demand notice. Accordingly,

demand notice was issued on 15.12.1993. Therefore second demand notice and reference are all amounts to *res judicata*. It was further submitted that respondent-workman in the 2nd reference admitted that his services were terminated on 20.04.1985. In view of these factual aspects, labour court award is not sustainable. Further due to transfer of the reference from Industrial Tribunal Bathinda to Patiala petitioner could not appear before the Industrial Tribunal, Patiala. Thus, *ex parte* award was passed against the petitioner. Hence the present petition.

3. Per contra, learned counsel for respondent No.2 resisted the claim stating that petitioner's contention that filing of 2nd demand notice reference and deciding such dispute by the Industrial Tribunal amounts to *res judicata* is not tenable for the reasons that petitioner has accepted the 2nd reference. There is no challenge to the 2nd reference. Hence the aforesaid preliminary contention of the petitioner is liable to be set aside. Insofar as *ex parte* award is concerned, the petitioner was aware of the fact that reference and dispute was transferred to Industrial Tribunal Patiala from Bathinda. Therefore, it was bounden duty of the petitioner to appear. Therefore, *ex parte* award cannot be set aside.

4. Heard learned counsel for the parties.

5. The contention of the petitioner that deciding 2nd reference by the Labour court amounts to *res judicata* cannot be accepted for the reasons that petitioner has failed to challenge 2nd reference. As long as 2nd reference is not challenged the contention of the petitioner to the extent of *res judicata* do not sustain. Further if the award is *ex parte* the matter cannot be

remanded to labour court for afresh decision for the reasons that second reference was made in the year 2001 and it was decided on 05.10.2004. Therefore, at this distance of time, remanding matter to the Labour Court while setting aside the *ex parte* award may not be appropriate. Therefore, award dated 05.10.2004 (Annexure P-3) is modified to the extent that respondent-workman is entitled to compensation instead of reinstatement with back wages etc. Therefore, petitioner is hereby directed to pay compensation of Rs.3 Lacs to the respondent-workman in order to give quietus to the litigation. The same shall be paid within a period of 3 months from today failing which the respondent-workman is entitled to interest @ 6% per annum. Accordingly, award of the Labour court dated 05.10.2004 (Annexure P-3) is modified.

6. With this observation, CWP stands disposed of.

08.09.2017

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No