

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP NO.17045 OF 2014 (O&M)

Date of Decision: 28.3.2017

Vice President, PNB Housing Finance Limited

... Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Pankaj Middha, Advocate for the petitioner

Mr.Harsh Aggarwal, Advocate for respondent no.2

RAJIV NARAIN RAINA, J. (Oral)

1. The PNB Housing Finance Limited has approached this Court by way of this writ petition challenging the ex-parte award dated 23rd April, 2014 in industrial reference.

2. Having heard learned counsel for the parties at some length and perused the paper-book with their assistance, I am satisfied that this case deserves to be remanded to the Labour Court-I, Chandigarh for a decision on merits for the reason that interest of justice would best be served if the reference is decided by making available full and wholesome opportunity to both the parties to produce their respective evidence since the petitioner-Company was ex parte. The Management appeared before the Labour Court and then it is lamented by it that the authorised representative engaged by the petitioner-Company before the Labour Court let them down. He failed to contact the agents of the Company looking after the case on account of shifting of the Headquarters of the Company from an office in Sector 8-C,

Company had no opportunity to file written statement to the claim statement filed by the workman and faces a ex parte award against it. Notwithstanding the submissions on explanation I have disregarded them and taken an overview of the defense of the Management without entering into the technicalities in order to do substantial justice. Contested cases bring peace and harmony to the warring parties. This is the philosophy of industrial adjudication since both parties reconcile to their fate run through the mill of evidence and proof.

3. Therefore, the Labour Court on remand will permit the Management to place its written statement on record within three weeks from the date when the matter is taken up by the Labour Court for the first time as a result of this order. Replication, if any, will be filed in the next two weeks, and thereafter, the witnesses of the workman will be offered for cross-examination by the Management. Due to this order, the workman will be free to adduce further evidence as also the Management will have full opportunity to bring its evidence on record, before the Labour Court embarks on hearing the case finally on pleadings and oral and documentary evidence and answering the reference by making a fresh award.

4. In terms of the interim order dated 12th December, 2016, this Court, on the application filed by the workman under Section 17-B of the Industrial Disputes Act, 1947 directed the petitioning Management to deposit a sum of ₹ 3,00,000/- lakhs in the Registry of this Court with the directions that the same would be disbursed after disposal of the Civil Miscellaneous Application. The needful has been done and the money has been deposited as per the order of this Court. Since this money represents last drawn wages under Section 17-B of the Act in lump sum arrears, the

thereafter the petitioner/Management would draw a Banker's Cheque/Demand Draft drawn in the name of the respondent-workman and pay the amount to him on the first date of hearing in remand before the Labour Court.

5. In view of the nature of the order passed, the impugned award dated 23rd April, 2014 as also the orders (Annex. P-17 and P-18) proceeding *ex parte* against the Management are set aside. The file is restored on the board of the Labour Court-I, Chandigarh at its original reference number. The Labour Court will make an earnest endeavour to decide the reference within a year or so.

6. Mr.Middha, learned counsel appearing for the Management/petitioner submits that the Management should be protected by an indemnity bond furnished by the respondent-workman qua the amount. I have considered the request of the learned counsel. I am constrained not to commend the request of the learned counsel for the petitioner since the order of this Court dated 12th December, 2016 assigned this money to Section 17-B of the Act and therefore, the amount is in the nature of a subsistence allowance and is not refundable, in view of the Supreme Court's leading ruling in Dena Bank vs. Kiritikumar T. Patel, (1999) 2 SCC 106. Even under Section 10-A of the Industrial Employment (Standing Orders) Act, 1946 subsistence allowance is neither refundable nor recoverable irrespective of the result of the enquiry.

7. In view of the legal position, it is ordered that this amount of ₹ 3,00000/- lakhs would be treated as subsistence allowance and also represent and include costs of litigation the respondent has already and will suffer on remand to prosecute his case before the Tribunal and also includes

dispute and for reopening its case for a decision on merits since the Court was not fully convinced by the explanation for non-appearance at the hearing and veered the case to do substantial justice.

8. As far as the relationship of employer and employee is concerned; as objected to by the Management at the hearing to uproot the case, I would say no more than that this issue is a matter of evidence which can be decided by the Labour Court after appreciation of evidence of both the parties yet to find its way on record and, therefore, no comment can be made by this Court at this premature stage since this Court expresses absolutely no opinion on the merits of the case or the objection and nothing said in this order will influence the Labour Court when it applies its mind at the end of the trial to make an award in accordance with law.

9. Parties to appear before the Labour Court on 19.4.2017.

10. This petition is disposed of with the above directions.

(RAJIV NARAIN RAINA)
JUDGE

28.3.2017
MFK

Whether speaking/reasoned

Yes

Whether Reportable

Yes