

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

Date of decision: 29.03.2017

CWP No.19014 of 2016

M/s PASCOS & another

...Petitioners

Vs.

Rajbir & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Munish Mittal, Advocate, for
Mr. Raju Vijay, Advocate, for the petitioners.

None for the respondents.

RAJIV NARAIN RAINA, J.

Challenge in this petition is to an ex parte award dated 07.04.2016 passed by the Presiding Officer, Industrial Tribunal -cum- Labour Court, Panipat, whereby the reference has been allowed and the petitioner directed to reinstate the 1st respondent with continuity of service and payment of 50% of the arrears of back wages from the date of demand notice i.e. 17.07.2012.

The workman claimed that he was a Helper employed by the Management on 01.10.1990 drawing a salary of ₹750/- per month. The last drawn salary over period of service rose to about ₹12,550/-. He worked up to 21.06.2012 after which he was not allowed to enter the premises which gave rise to the dispute. Petitioner says that he reported for duty everyday in the morning but was made to wait outside the premises and when work was not offered he returned home in the evening. This continued till he resigned himself to retrenchment and thereby raised the dispute by a demand notice

which led to reference to the Labour Court for adjudication whether the termination was justified.

The dispute could not be settled in conciliation and when the failure report was submitted, the matter was referred for adjudication to the Labour Court. The Management appeared and filed its reply. They pleaded that for the last about 3 years the workman had been committing great irregularities and never performed his duty sincerely, punctually and honestly. He was working as Helper (Mechanic) and was in the habit of stealing diesel from diesel tanks of the vehicles coming for service and mechanical check-ups. He was given to removing spare parts of vehicles to “fulfill his lust of wine”. He was caught red handed two or three times while stealing motor parts and diesel, but he did not change his ways and habits and “mostly remained in alcoholic condition”. He also quarreled and used filthy language with the other employees. He also stole money of his colleagues from their clothes kept in the dressing room during duty hours. He often created nuisance and polluted the atmosphere at the work place. On 20.06.2012, he stole a mobile phone of a mechanic.

He may have been a terrible man, but still he had to be dealt with by law under the provisions of the Industrial Disputes Act, 1947. Either the Management should have held an enquiry into the spate of misconducts allegedly committed and to dismiss him from service, but the management tolerated him for the last 3 years in a service starting since 1990. If they did not wish to hold an enquiry, then they could have retrenched his service by paying him retrenchment compensation, but the Management penny-pinched and tried to save money and fell into the whirlpool of Section 25-F of the Act. The teeth of Section 25-F of the Act were as sharp and terrible, as was the imputed behavior of the workman

taken in the written statement but which was not documented by warning, explanation calls and reporting the crimes to the police. But this is all very well if the Management had contested the case in Reference No.1 of 2013, which was the first case of the year on the board of the Labour Court. When they choose not to appear for personal reasons, they were proceeded against ex parte by the Labour Court for good and sufficient reason and rightly permitted the workman to lead his ex parte evidence as it could not await appearance of the opposite party after its disappearance. Taking cognizance of the story propounded by the Management in the written statement which is unsubstantiated by oral testimony on oath the pleadings did not qualify as legal evidence, which could not be taken cognizance of without proof. A request was not made by the management in its written statement for permission to lead evidence for the first time to establish guilt of the workman of the much misconduct attributed to him behind his back in defence of the reference.

The workman examined himself as his own witness as WW-1 on the same lines of assertions made by him in his claim statement/demand notice that his work and conduct was satisfactory. He produced a large number of documents and also produced a co-worker as his witness, namely, Satpal as WW-2, who deposed that the workman had served as Helper since 01.10.1990. He deposed that he was working with the respondent-Management as Senior Mechanic since 01.01.1983 and his services were also terminated by the respondent by making false allegations. Even if, one does not attach weight to the evidence of the ex co-workman, the fact remains that there are serious charges of misconduct in the written statement, which could only have been leveled by way of a charge-sheet and established establish guilt of the workman in an enquiry for the truth to have

been revealed on paper. All the acts of the workman as made in the written statement amount to criminal acts which may have necessitated filing of FIR/s, but that was not done. And neither did the Management rely on warning letters asking the workman to be cautious in future or any show cause notice asking his explanation on such serious matters which if proved would justify dismissal from service. These are just bald allegations not supported by evidence and, therefore, cannot be considered as truthful and thus were rightly not taken into consideration by the Labour Court. The Labour Court was conscious of the rule that suspicion cannot take place of proof by unsubstantiated pleadings not tested legal evidence. Mere pleading in a written statement was not sufficient and to prove those pleas. The Management by its act of proceeding and declared ex parte and failing to lead even an iota of oral or documentary evidence to prove such plea has distanced itself from legal rebuttal. The Labour Court rather appropriately fell on the conduct of the Management observing that its act in not leading evidence and making vague pleas in the written statement, needs to be deprecated in the strongest possible words, to which I would add that the written statement is part of the permanent record of the Labour Court and forever casts stigma on the character of the workman. Anyone reading them would think he was a thief. I would say that this amounts to character assassination and I too would deprecate the Management in talking fast and loose defence in its pleadings before it went ex parte.

All other jurisdictional facts necessary to bring relief home under the Act were satisfied. The workman had put in 240 days of service during the relevant period; the provisions of Section 25-F of the Act were not complied with since neither notice nor one months' salary nor

retrenchment compensation was paid at the time of termination, which renders the termination illegal and *ab initio void*.

The Labour Court did not err in believing the statement of the workman and concluding that the termination was wrongful and an act of victimization by the management. The Labour Court then apprized itself to the issue of relief which the workman should be held entitled to in the face of violation of Section 25-F of the Act. The Labour Court relied on case law and in the totality of circumstances held the petitioner entitled to reinstatement with continuity of service and 50% back wages from the date of demand notice i.e. 17.07.2012.

I have no reason to distinguish the views of the Labour Court expressed in the Award, which I support as legally sound and would endorse as the correct statement of law on the facts presented which any other labour court would have taken. There is no gainsaying that an ex parte award is as good as a contested award, when management fails to appear after appearing and putting in its written statement and thereafter abandoning the case. Very often, managements let cases go ex parte in the hope that someday a superior court will apply the principle of substantial justice and set aside ex parte award. In this method, the management gainer by passing time considerably reducing chances of appropriate relief of back wages by breaking the backbone of the poor worker. This ploy has to be put to an end and cases of ex parte awards should not lightly be interfered with unless there is strong evidence that proceeding ex parte itself was not justified.

Accordingly, this petition is dismissed.

However, in order to serve the ends of justice, a small modification is made in the ex parte award to the effect that interest on 50%

back wages will run from 07.04.2016 at the rate of 9% per annum till payment.

29.03.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>