

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

CWP No.23450 of 2016
Date of Decision: 27.4.2017

M/s Budha Dal Public School, Lower Mall, Patiala through its Principal

... Petitioner

Versus

Presiding Officer, Industrial Tribunal, Patiala and another

... Respondents

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

Present: Mr.Vijay Sharma, Advocate for the petitioner

Mr.Ravi Gakhar, Advocate for respondent no.2

RAJIV NARAIN RAINA, J. (Oral)

1. Mr.Ravi Gakhar appears for the 2nd respondent, despite notice not served. This is waiver of official service of summons issued by the Court. He has filed Memo of Appearance which is taken on record. He is prepared with his arguments to address. Therefore, I have proceeded to hear the learned counsel for the parties.

2. This petition has been filed questioning the correctness of an award dated 7th October, 2011 passed by the Presiding Officer, Industrial Tribunal, Patiala reinstating the workman with continuity of service with 50% back wages. The award is *ex parte* against the petitioner-Management. The reference was made in 2006 to adjudicate the dispute as to the termination of the service of the workman and whether it is illegal or justified and if so, what relief is the workman entitled to.

3. The facts as culled out from the award and the writ petition are that the respondent-workman was employed as Driver-cum-Conductor with the petitioner-Management from 1st April, 1997 to 20th October, 2004. His services were illegally terminated by the petitioner on 20th October, 2004 without serving notice and without conducting any enquiry upon a charge-sheet or payment of retrenchment compensation. The workman was drawing salary at the rate of ₹ 2910/- per month at the time of termination. The petitioning school was covered by the provisions of Industrial Employment (Standing Orders) Act, 1946.

4. On notice of the reference, one H.S.Tiwana and one Gurinder Vir Singh appeared before the Tribunal on behalf of the Management and the case was fixed for filing of written statement. On 10th November, 2010, there was default of appearance of the respondent-Management and it was proceeded against *ex parte*.

5. The workman appeared in the witness box as WW1 and deposed as per terms of statement of claim. He proved his demand notice as Ex. W1 and statement of claim as Ex.W2 and tendered documents Mark-1 to Mark-4 and closed his evidence. As the evidence led by the workman remained without rebuttal and unchallenged, the facts pleaded by the workman were accepted as correct by the learned Tribunal. Workman had put in service of more than 240 days in the last 12 calendar months preceding the date of termination. This was *ex facie* a case of violation of Section 25F of the Industrial Disputes Act, 1947 (for short “the Act”) and the termination was held to be illegal. There was evidence of the workman that after his termination, he had failed to get any job. In the circumstances, the learned Tribunal held the

workman entitled to 50% of the back wages and reinstated him in service with continuity from the date of termination.

6. The Management resisted the case without demonstrating due diligence having once appeared before the Tribunal and this was proof of knowledge of the litigation. They abandoned the litigation and woke up on 24th January, 2013 to apply to the Tribunal for setting aside the award. In the application dated 24th January, 2013 (Annex. P-5), the Management propounded a rather queer story. They pleaded that the workman without awaiting pronouncement of award from the Tribunal, joined his duties with the Management on 11th December, 2009 during the pendency of the dispute. In his joining report, the workman stated that he has withdrawn his case from the Tribunal and is fully satisfied with his reinstatement. He even took a loan of ₹ 40,000/- to meet expenses on account of suffering an industrial accident with an undertaking to return the same in installments. This document dated 10th December, 2009 has been placed on record of this petition as Annex. P-2. The Management asserted in the application that his salary was increased from ₹ 2910 to 3200 per month with effect from 11th December, 2009. In the light of the joining report of the workman, the Management says that it addressed a letter bearing BDPS/CC/09 dated 11th December, 2009 and posted it from the letter box addressed to the Presiding Officer, Industrial Tribunal, Patiala requesting it to close the case at the earliest. They attached the joining letter from the respondent-Balbir Singh, in proof of action taken. The letter has been placed on record of this petition as Annex. P-3.

7. There is another twist in the tale in the application for setting aside the award wherein it is asserted that the respondent

workman having rejoined duty on 11th December, 2009, he continued to serve the petitioner management upto February, 2011 and thereafter he went absent without any intimation to the Management. In this way, the workman had served for a total period of 1 year 9 months and 26 days prior to the passing of the award with salary increased from ₹ 2910 to ₹ 3200 per month. Besides, workman had availed loan of ₹ 40,000/- with the undertaking to return the amount of loan in installments. Therefore, the Management believed that the case had been closed.

8. On notice of the application issued for setting aside the *ex parte* award the workman put in appearance and filed his reply to the application. The reply was filed by one Karamjit Singh, representing the workman and on reading the document it is revealed that the same has no verification clause at the foot. He asserted that nobody on behalf of the Management came present in the Tribunal on the day when it was proceeded against *ex parte*. The Management was negligent in pursuing its case in defence and hence deserves no relief. In the reply, it was also stated that the application of the Management is not maintainable on merits. The award has been published on 24th December, 2012 and after more than a year and a quarter of the passing of the award, the application was been moved by the Management and hence the Management deserves no relief.

9. The Presiding Officer, Industrial Tribunal, Patiala by order dated 25th August, 2015 has dismissed the application of the Management since it was filed after expiry of 30 days of the publication of the award. The Tribunal had become *functus officio*. I asked from Mr. Vijay Sharma, appearing for the petitioner-Management as to what was the Management doing after the announcement of the award on 7th

October, 2011 and what reasons had occasioned the delay in approaching this Court belatedly in the present petition which was filed on 4th November, 2016 i.e. after 1 year of the passing of the order dated 25th August, 2015 dismissing the application of the Management. There was hardly any explanation for the negligence in approaching this Court after an inordinate delay.

10. The question to be decided in this case is really one touching upon the conduct of the lazy Management. Summons was issued by the labour court which was received by the Management and they had put in appearance before the Tribunal and defended the reference till they were proceeded against *ex parte* and the *ex parte* award was made on 7th October, 2011. Such managements believe that *ex parte* proceedings will tire out the weak workman and one fine day the High Court will come to their rescue to do substantial justice by undoing *ex parte* proceedings and calling for a decision on merits citing case law. The High Court is not a moot court given to theoretical debate while it deals with real people with real problems with real laws and not hypothetical niceties that law affords to luxury litigation in social beneficial legislation as the Industrial Disputes Act sub-serves.

11. If the story of the Management is to be believed, then the Management should have like any prudent person not written the letter dated 11th December, 2009 to the Presiding Officer, Industrial Tribunal, Patiala, but should have to protect their interest sent its authorized representative to the Tribunal to inform the court of the changed circumstances with a request to close the case. The Tribunal/Labour Court is not a post office to receive letters directly from litigants as it is not ordinarily geared to process such responses.

The Management has treated the Tribunal with disrespect by not sending its authorized representative to inform the Tribunal as the proper forum by moving an application that the dispute has been compromised and accordingly to obtain order in the presence of the workman that the lis stands settled. It is trite that an out of court settlement has to be in made in writing before it can be enforced. The Management tested providence for which it could not be held innocent and the Court cannot come in aid of it. If the workman remained absent since February, 2011, then it could have easily issued him a charge-sheet and held an *ex-parte* enquiry and on proof of wilful absence without permission, they could have dismissed him from service.

12. The Management waited from February, 2011 to 24th January, 2013 to present an application for setting aside the *ex parte* award. As I read the application in paragraph 6, I find that the Management despite workman remaining wilfully absent from duty for the last two years from the material date counted from January, 2013, has still given an undertaking to the Court that it would take a very lenient and sympathetic view and welcome the workman to absorb him into service of the school.

13. The question is; when it is held out as appropriate to absorb the workman, then should not they be bound down to their word? But they have not taken any steps to honour the commitment after 24th January, 2013 by writing to the workman at his known address or informing him that he should still come forward and join duty on the promise that they would absorb him in service. There are many contradictions in the conduct of the Management that no reasonable person might to utter and be bound by the words. The negligence in

pursuing its defence of the case before the Tribunal on the innocent plea that the workman had joined service, is not enough evidence of its intention being *bona fide*. No person facing litigation would discard its right of defence, its right to inform the Area Labour Inspector in accordance with the rules that the Management has taken back the services of the workman despite pending litigation or offered to do so unequivocally. The story of the accident is also rather odd as per the admission of the Management (Annex. P-3) that it happened on 20th January, 2004 for which the workman is said to have taken loan from the Management for his treatment. I am convinced that the Management should not be permitted to approach this Court for setting aside the award passed in 2011 by filing this petition in 2016.

14. I have considered the arguments advanced by the two sides and the equities of the case. The predominant feature of labour disputes is that they must be settled on merits. The untruthfulness of the story and the fact that the Management is still prepared to absorb the workman in service, I would find no justifiable reason to interfere in the impugned award in exercise of discretionary and supervisory jurisdiction under Articles 226/227 of the Constitution of India. The ex parte award is as good as an award on merits when there is hardly any sufficient cause for non-appearance or what I may call disappearance. The Ostrich theory is good for the Ostrich but not for defendant/respondent in a case in a court of law. The conduct of the Management does not deserve interference even if the story is believed for a single moment. The Tribunal has ordered reinstatement to which Management has acceded in para. 6 of the application for setting aside the ex parte award, that it is still ready and willing to absorb the

workman into permanent service. Let them honour their word. The workman may follow suit.

15. For the foregoing reasons, I find no merit in this petition since neither the award nor the order proceeding ex parte against the management suffer from any error apparent on the face of the award or the order and therefore, the petition fails and is accordingly dismissed.

27.4.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No