

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

Date of decision: 22.03.2017

CWP No.25030 of 2016

M/s Café Coffee Day

...Petitioner

Vs.

Presiding Officer, Industrial Tribunal -cum- Labour Court-I, Gurgaon & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Bipin Kalappa & Mr. Vikas Bhardwaj, Advocates,
for the petitioner.

Mr. Madhu Ranjan, Advocate, for respondent No.2.

RAJIV NARAIN RAINA, J.

Notice of motion was issued in this case on 05.12.2016. When this matter came up before me on 16.01.2017, I passed the following order:

“Mr. Kalappa draws the attention of this Court to the order dated 05.10.2016 passed by the Presiding Officer, Labour Court-I, Gurgaon which reads as follows:

“Present: Sh. Bipin Kalappa AR for
Applicant/Management.
Sh. Satender Kumar Verma AR for
Workman/Respondent.

The AR for applicant/management made a statement regarding settlement with the workman and withdrawing his application for setting aside ex-parte Award dated 03.06.2015.

The workman made a statement accepting the terms of settlement. The workman also made a statement that the Award dated 03.06.2015 in his favour stands fully satisfied.

Accordingly, the application of applicant/management for setting aside ex-parte Award is hereby dismissed as withdrawn.

Case file be consigned to the Record Room.

*P.O., L.C.-I, GGN
05.10.2016”*

Draws the attention of this Court at Annex P-5 at page 50 of the paper book. The workman has signed in satisfaction of his claim to settle the matter on payment of Rs.1,12,000/-. The amount has been paid to the workman.

This petition is directed against a complaint filed by the Labour Inspector, Circle-10, Gurgaon against the management under Section 29 and 31 read with Section 32 of the Industrial Disputes Act, 1947 sanctioning prosecution of the management for failure to implement the award of the Labour Court. This order was passed on 03.06.2015 and much water has flowed thereafter since the dispute has come to rest before the Labour Court on 05.10.2016.

Learned counsel submits that if this order is not set aside it will lead to criminal prosecution even when the workman is satisfied and the award stands implemented. The purpose of the complaint has been served and it would seem rather harsh if the sanction order leads to trial in a criminal Court as the workman has compromised and settled the matter on receiving the amount, which has accepted as just and fair after which he remains out of the picture since he has no personal axe left to grind and stands outside the proceedings.

Mr. Kalappa states that the compromise was reached on 05.10.2016 when the Managing Director of the company was summoned by the Criminal Court on 6.10.2016 i.e., the next date of hearing fixed before the trial Court, Gurgaon in case No.229/1/3/2016 titled Labour Inspector v. V.J. Sidharatha, MD which now has been adjourned to 18.01.2017. This is where the matter rests. The management is before the Court to prevent criminal proceedings since the award stands implemented with the base of the dispute removed.

List on 28.02.2017.

In the meanwhile, proceedings in the criminal case noted above shall remain stayed till further orders.”

By that time, the service had not been effected on the 2nd respondent. Parties put in appearance on 28.02.2017 and were heard at length and the following order was passed in the presence of the counsel for 2nd respondent:

“Learned counsel for the petitioner has produced a transfer letter dated 14.10.2016, which is a document existing prior to the filing of the writ petition. The same is taken on record as mark 'A'.

By this transfer letter, the petitioner has been transferred to Jalandhar and nothing more than the name and contact of the Reporting Officer is recorded in the letter without indicating at which outlet of the chain. He was asked to report on 21.10.2016 i.e. rather a long time back but on the assurance of learned counsel for the petitioner on instructions of his client, the Company will allow respondent No.2 to join employment of the company at the Cafe at Jalandhar within a period of one week.

Mr. Vikas Sisodia, whose contact number is 9988828218, will contact the respondent by Monday i.e. 06.03.2017 where the respondent is to report for duty. When respondent No.2 reports to the designated Café Coffee Day outlet, he will be handed over a letter in writing supplementary to the transfer letter dated 14.10.2016 to make it current from the date of joining.

Learned counsel for the respondent has made statement before this Court that because of the termination order his reputation has taken a hit in the employment market and is unable to find a job due to the stigma he carries due to termination. He further states that his client is ready to join at Jalandhar so that his honour is vindicated. This Court has no doubt that in this arrangement the party will respect each others' positions.

Compliance report be submitted by the learned counsel for the petitioner on 22.03.2017.”

When the matter came up on the adjourned date i.e. today, Mr. Kalappa appearing for the petitioner – M/s Café Coffee Day produced a letter dated 04.03.2017, which reads as follows:

“To

Joginder Singh (A37549)
Brew Master – Level-1

Subject: Absent Without Information

Dear Joginder,

It has been brought to Company’s notice that you have not been reporting to your assigned outlet without any information.

We hereby call upon you to report to following Café as earliest as possible:

Café Coffee Day
Viva Collage Mall
NH-1, Jalandhar-Phagwarha Highway,
Jalandhar Cantt., Punjab – 144001

Reporting to:- Sanjeev Kumar
City manager (Operations)
Phone:-9876009503

Yours truly,
For Coffee Day Global Limited

Sd/-
Authorized Signatory”

The letter dated 04.05.2017 produced by Mr. Kalappa is taken on record as Mark – ‘B’.

There is serious dispute on facts regarding things done in the wake of order dated 28.02.2017. The Management alleges that the 2nd respondent has not been reporting to the assigned Outlet without information. Learned counsel for the workman on instructions states at the bar that the letter dated 04.03.2017 is face saving device and the Management has no real intention to take the 2nd respondent back into service as Brew Master Level-I.

On hearing both the learned counsel, it appears to this Court that the factual dispute arising out of the previous order cannot be resolved

in writ jurisdiction without evidence which exercise is impermissible. Therefore, I have considered the Award passed by the Labour Court-I, Gurgaon in Ref. No.153 of 2014 under Section 10(1)(C) read with Section 2-A of the Industrial Disputes Act, 1947 whether it is in order, for which a few facts have to be noticed.

The workman joined the Company w.e.f. 11.02.2012 as 'Team Member Level-1 Operations' and was promoted as 'Brew Master Level-1'. The dispute between the parties arose from a transfer letter posting the workman from Gurgaon to Faridabad. However, the Management had not mentioned the location at which he had to join in the transfer letter. The workman contacted the Management on 14.12.2013 at Gurgaon office, but the Management did not give any response. The Management sent a second transfer letter directing him to report for duty at Okhla Office at Delhi, but the Okhla Office refused to allow the workman to join. This led to termination of employment on 24.12.2013, which in turn gave rise to the dispute and the ex parte award dated 03.06.2015. None appeared before the Labour Court on behalf of the Management despite service of notice and it was accordingly proceeded against ex parte. Ex parte evidence of the workman was recorded, when he examined himself as PW-1 as his own witness and tendered documents Ex.PW-1/1 to Ex.PW-1/5 in evidence in support of his case by deposing to facts in the pleading.

The Labour Court found existence of the jurisdictional facts satisfied to consider relief. The statement Ex.PW-1/5 was a copy of the failure report prepared by Labour-cum- Conciliation Officer, Circle-4, Gurgaon which contained the necessary recipe for establishing industrial rights. The statement made by the workman has obviously gone unrebutted on the file and there is no valid reason as to why his statement on oath

should not be believed. In the Award dated 03.06.2015, the Labour Court has granted reinstatement with continuity of service, but restricted the back wages to 40% on the basis of last drawn salary holding that his services were terminated illegally.

The events happening after passing of the award are significant and deserve to be noticed briefly. On 23.07.2015, an application was moved before the Labour Court on behalf of the Management for setting aside the ex parte award in which notice was issued to the respondent – workman. The Management failed to appear on 12.07.2016, when the Labour Court dismissed the application for want of prosecution. A unsatisfactory stock explanation has been given by the Management in the application that their “counsel” [not authorized representative] could not appear due to illness. Be that as it may, the application was declined by a reasoned order. On 17.07.2016, the petitioner moved another application to restore the application for setting aside the order dated 12.07.2016. However, the application for setting aside the ex parte award filed before the Labour Court, Gurgaon was withdrawn by the petitioner on payment of a sum of ₹1,12,000/- purporting to be a settlement since the Management agreed to reinstate the 2nd respondent into service. The application was withdrawn on 05.10.2016. The translated statements are at Annex P-5. There is no dispute that the amount has been received by the 2nd respondent in satisfaction of the Award. Both the Statements are dated 05.10.2016. However, the withdrawal of the application was on the promise not only of money paid, but for reinstatement. On these statements, the Presiding Officer, Labour Court-I, Gurgaon passed an order on 05.10.2016 dismissing the application as withdrawn, which is reproduced in the interim order dated 16.01.2017.

If the parties have settled, the award stands satisfied. It is the

events which have arisen after 05.10.2016 that give rise to complicated questions of fact, which are disputed by either side at the hearing and, therefore, cannot be resolved in writ proceedings since this Court cannot accept evidence and examine witnesses.

The effort made by this Court on 28.02.2017 to bring the dispute to an end harmoniously, I am afraid to say, has not been taken seriously by the Management, when it has created further complication and dispute on 04.03.2017 by the letter Mark – ‘B’ on the subject ‘Absent Without Information’. It is a letter written from Jalandhar, where in the light of the order dated 28.02.2017, the workman was offered joining in Café Coffee Day, Viva Collage Mall, NH-1, Jalandhar-Phagwara Highway, Jalandhar Cantt, Punjab. These disputes can be sorted out in some other proceeding or in execution of the Award, which I have no reason to disturb or set aside since both the parties agree to reinstatement.

This is one side of the coin. The other is what has accelerated the Management to approach this Court. The Labour Department, Haryana has initiated criminal proceedings against the Management under Section 29/31 read with Section 32 of the Industrial Disputes Act, 1947 in case titled ‘State through Labour Inspector, Circle-10, Gurgaon Vs. Mr. V.J.Sidharatha (MD) M/s Café Coffee Day Spaze IT park, Tower-B, Sohana Road, Gurgaon’ for violation of the Award and its non-implementation which is an offence triable by the criminal court. The complaint of the Inspector is addressed to the Chief Judicial Magistrate, Gurgaon praying that the accused may be punished according to law. The second prayer in this petition is that complaint case No.229 dated 01.03.2016 be quashed in view of statement dated 05.10.2016 made before the Labour Court. There are two prayers in this petition i.e. one is for setting aside of the ex parte award dated

03.06.2015 and the second is for quashing the complaint. As far as ex parte award is concerned, I say nothing more than what is said above. So far as the criminal complaint is concerned, the prayer is declined as not maintainable in writ jurisdiction and for that the petitioner may take legal recourse to remedy provided by law.

Consequently, this petition is dismissed. However, the petitioner is granted liberty to approach the appropriate Court of law for quashing of the complaint, if advised.

22.03.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*