IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 08.05.2017

CWP No.27400 of 2016

M/s Maharaja Travels

…Petitioner

Vs.

Presiding Officer, Industrial Tribunal, Amritsar & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Animesh Sharma, Advocate, for the petitioner.

Mr. Amarjit Singh, Advocate, for respondent No.2.

RAJIV NARAIN RAINA, J.

1. Challenge in this petition is to an ex parte order passed by the Presiding Officer, Industrial Tribunal, Amritsar on an application presented under Section 33C(2) of the Industrial Disputes Act, 1947 claiming gratuity by a retired workman. The claim has been allowed by the impugned order dated October 19, 2016.

2. The petitioner raises issue of maintainability through its counsel Mr. Animesh Sharma arguing that the Industrial Tribunal could not have granted gratuity as that claim fell within the exclusive jurisdiction of the Controlling Authority under the Payment of Gratuity Act, 1972. The argument was noticed in the interim order dated January 09, 2017 and in order to do substantial justice, a direction was issued for depositing half the decretal amount before the learned Registrar General of this Court. The order dated January 09, 2017 reads as follows:

"Even though, the order passed by the Labour Court is without jurisdiction for the reason that an application claiming gratuity would lie not before the Labour Court but before the Controlling Authority under the Payment of Gratuity Act, 1972 it is ex parte (management). Even though the objection of want of jurisdiction has not been raised by the management for setting aside the ex parte award, but it should not have escaped the mind of the Labour court that he had no inherent jurisdiction to entertain the application and decide but the application under Section 33C (2) of the ID Act has been allowed.

However, when asked whether the petitioner-management disclaims the employment relationship between respondent No.2 and the petitioner, the learned counsel for the petitioner is unable to deny this fact. There may be a case where an order is found illegal, but the right to payment of gratuity might subsist and deserves to be paid to the respondent No.2.

In order to do substantial justice, I deem it fit to issue notice to the workman and call upon the petitioner-management to show cause as to why it should not be compelled to pay the gratuity amount due to a retired workman despite the impugned order being bad for lack of jurisdiction.

Notice of motion returnable by 20.02.2017.

Notice re: stay.

In the meantime, petitioner-management would deposit half of the amount awarded before the Registrar General of this Court, to be put into fixed deposit account subject to outcome of this case. In the circumstances, the balance amount is stayed and will not be disbursed until further orders.

Liberty to serve the workman through authorised representative before the Labour Court is granted.

Process Dasti as well.

Service on respondent No.1 is dispensed with."

3. Today, when the matter is called on for hearing I have heard Mr. Animesh Sharma, learned counsel appearing for the petitioner – management and Mr. Amarjit Singh, learned counsel representing respondent No.2 – workman on the issue in dispute on maintainability of the application. As far as the maintainability of the application presented under Section 33C (2) of the ID Act is concerned there can be no doubt that application could not have been entertained by the Industrial Tribunal for which see the law settled in State of Punjab Vs. Presiding Officer Labour Court, Jullunder, (1980) 1 SCC 4. The Supreme Court held that the Payment of Gratuity Act, 1972 is a self-contained code, and its provisions impliedly exclude recourse to any other statute for payment of gratuity. An application for payment of gratuity does not lie under Section 33 C (2) of the ID Act. It was thus the bounden duty of the Tribunal in a case arising from withholding of gratuity to have in the beginning warned the applicant on maintainability and his claim application and asked him to withdraw the same for filing in the designated forum.

4. However, the trial continued unabated in blissful ignorance of the law. Since the management failed to appear and be represented at the hearing, the Industrial Tribunal proceeded ex parte against the management and passed the order directing payment of gratuity, which is one of the two orders impugned in the instant writ petition.

5. Mr. Sharma submits that the stand point of substantial justice should not be made to override the law on relief based jurisdiction. For want of jurisdiction, no Court or Authority can proceed to pass binding orders.

6. The contention has been noticed and accepted by me in the first interim order bowing to the settled legal position, but which intervention was based on a query put by Court; whether management did or did not owe

gratuity to the workman-respondent to start with. Mr. Sharma can give no positive answer on this. Therefore, a right may exist, but the remedy would lie elsewhere.

7. Notwithstanding the legal position that gratuity cannot be claimed under the ID Act the total amount of gratuity claimed comes to ₹1,65,268/- computed on the number of years of service rendered for about 32 years as a Driver with the petitioner – M/s Maharaja Travels, Amritsar. The respondent ought not to be left despondent and penniless for the moment in a just claim till he is sent to the jurisdictional forum to get adjudication on merits by the statutory authority regarding his claim.

8. The last wages drawn as per the workman was ₹8952/- per month. The workman retired on August 31, 2013. The gratuity has been withheld for 4 years.

9. In the petition, the claim is not seriously disputed, but is said to be exaggerated with respect to the number of years of service as well as the salary drawn. The defence in Para.15(D) of the petition is rather slipshod that the second respondent has never approached the petitioner under the provisions of the Payment of Gratuity Act, 1972 or the Rules framed there under to stake gratuity and, therefore, the claim has not been settled. The defense is on weak foundations. The writ Court is a court of equity and may resort in a given case to do unconventional justice by disregarding barriers, legal obstructions and technicalities of the law of jurisdictions at least partially while at the same time honouring the law and therefore the proposed order is passed for which see the end summing up on relief in paragraphs 13 and 14 below.

10. But before the end of the order is focused it would be in order to examine the reason for management to have been proceeded ex parte

which was that there was change of counsel and the petitioning management was let down, but by then it was too late in the day. When the new counsel appeared on October 06, 2015, he was informed that management had already been proceeded against ex parte by order and despite a request to adjourn the matter the Industrial Tribunal went on to pass the impugned ex parte order.

11. An application was moved on the next day for setting aside the ex parte order. The circumstances of non-appearance of previous counsel were narrated in the application and that previous counsel failed to intimate to the management the status of the matter before the Tribunal as he defaulted in discharge of his duties. Law was cited that absence of counsel should not be at the cost of litigant by placing reliance on the decisions of the Supreme Court in Smt. Lachi & others Vs. Director of Land Records, AIR 1984 SC 41 and Rafiq & another Vs. Munshilal, AIR 1981 SC 140 as well as a decision of this Court in Randhir Singh Vs. State of Haryana, [CWP No.1624 of 2015 decided on 30.01.2015] following the Supreme Court judgments in the above two cases etc.

12. By a separate order, the Tribunal has dismissed the application for setting aside ex parte order vide order dated October 19, 2016, which is an order thrice longer than the main ex parte order. The Tribunal has not believed the story of change of counsel as credible. There may be something to say in defence of this order passed by the Tribunal, but still the basic order was without jurisdiction and the subsequent order has to be declared band for want of inherent jurisdiction. If the Tribunal could not decree the claim, it could not dismiss the application for restoration. This was the second opportunity for the Tribunal to have realized it limitations in the face of the special Act of 1972 and relegated the claimant-respondent to

his remedy before the appropriate Forum. Both the orders suffer from want of jurisdiction and cannot be sustained in law.

13. Accordingly, I would partially allow this petition by setting aside both the impugned orders and grant liberty to the ex-employee to approach the Controlling Authority under the Payment of Gratuity Act, 1972 exercising territorial jurisdiction over the subject matter by an application presented under Rule 7 of the Payment of Gratuity Rules, 1973 to claim his dues.

14. However, in order to do substantial justice and the application remaining in process of determination for too long, and also not forgetting that when the claim is not seriously disputed on merits except for the years of service etc. then I am inclined to think that half of the amount lying deposited with the learned Registrar General of this Court pursuant to interim order dated January 09, 2017, deserves to be released in favour of the ex-employee directly in order to secure the ends of justice and avoid a miscarriage of it by an ex parte management winning on the technicality of maintainability of the action. It is accordingly ordered. For the balance amount, the claim can be determined by the Controlling Authority, if and when it is approached with an appropriate application.

08.05.2017 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

Whether speaking/reasoned: *Yes*
Whether Reportable: *No*