

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3824 of 2017

Date of Decision: 28.02.2017

Manager M/s Rational Business
Corporation Pvt. Ltd.

... Petitioner

Versus

Presiding Officer, Industrial Tribunal-
Cum-Labour Court, Panipat and another

... Respondents

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

Present: Mr. Aditya Sanghi, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.(Oral)

1. The management appeared before the Labour Court in Industrial Reference No.136 of 2013 when it was referred for adjudication by the labour department exercising power under Section 2 (a) (ii) read with Section 10 of the Industrial Disputes Act, 1947 (for short 'the Act'). On appearance, the trial started. The workman's evidence was recorded and concluded. On August 20, 2014 the management was expected to produce its defence witnesses etc. But it did not appear on August 20, 2014 or be represented either through its own employee or through its authorized representative on the date fixed and consequently the Labour Court proceeded against the management ex parte. The ex parte award was announced on October 01, 2014 which has gone against the management and in favour of the workman awarding relief of reinstatement etc.

2. Thereupon, the management filed an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 for setting aside the ex parte award with a prayer to reopen the case on merits and permit the

management to lead evidence in support of its case to deny relief claimed by the workman. The Labour Court has decided that application on merits and declined it after summary trial and has returned a finding positively disbelieving the story of the management of its non-appearance on August 20, 2014 on the stock plea that the counsel had noted the wrong date in his daily cause diary.

3. The factum of non-appearance, or I may hazard to say, calculated avoidance of proceedings is a well worn doctrine of managements' defence of its lawyer's absence on the date fixed which has become such a common occurrence in pleadings that if ex parte orders and awards are recalled at the drop of the hat it might lead to emasculating the system of passing a contested award in the hope that on a future date the lacuna might lead to setting aside the impugned award and reopening the award to give an unfair advantage to the management to waylay the workman in his search for speedy justice against wrongful action. Besides this, management must remember that an Advocate is not permitted to appear before Labour Courts by virtue of the injunction in Section 36 of the Act and can be represented only through authorized representative. Therefore, the escape doctrine would not apply since the authorized representative of a party before the Labour Court is a dedicated agent of the party and is not expected to have a practice like an Advocate/Lawyer may have.

4. I would thus find no cogent reason to disagree with the order passed by the Labour Court declining its benign jurisdiction to set aside the ex parte award and, therefore, I would not like to interfere with the order or

the main award which appears *ex facie* to be in consonance with law and tandem with the effect of flagrant breach of the provisions of Section 25-F of the 1947 Act which ordinarily lead to reinstatement to service of a management which is as the saying goes-penny wise and pound foolish. The psychology of the small, medium and large managements, in cases of compliances and non-compliances of the rigid law in the ID Act is testing providence to far and manifestly penny pinching despite being reminded time and again by the Courts of the aftermath of violations which have cost dearly with what presently composes two thirds of the labour law in action in Chapter VA of the Act and managements not giving two hoots to the law. The attitude of caring two costs to the law costs pretty much of money often ordered by way of monetary compensation for wrongful and illegal actions of the employer which may be many times over the package deal in Section 25F (b) of the Act in terms of present value of Indian Rupees.

5. The deleterious consequences of non-compliance of the law at the time of retrenchment/termination to settle terms in Section 25F of the Act are well known to the law of industrial disputes with devastating consequences in terms of relief, which if awarded, may tend to antagonize the management to resort to unfair means of depriving entitlements under awards with another order bad order of termination despite the implementation. If the petitioner-management is not still prepared to learn its lessons handed down in 1947 to scrupulously abide by the mandatory law in the industrial rights in the ID Act and still expect to carry on its business remaining obviously blind to the procedural safeguards in the labour laws; then the terrible consequences will follow suit without any remorse or

sympathy of the court reviewing the work of the labour court. In 1947 wages were far too marginal to have any serious impact on relief but with the years rolling by the quantum of upward spiralling wages have exponentially magnified the relief to money with such magnitude that the Court, as might the management think, may shy away by the sheer arithmetic of huge arrears of salary in case reinstatement is contemplated and granted with continuity of service with full back wages to boot.

6. Management may feel cocooned happily thinking that the costs of going willingly ex parte before the labour court may ultimately be pardoned in the interest of justice by the courts of law, the costs of result of litigation being free or completely disproportionate to the injury caused to the worker because of delay in finalization of his case against arbitrary and illegal termination of livelihood and not just service. The effort of the management is more or less to buy time at low cost before the labour court at the expense of the workman who is sitting idle with nothing more than to be fodder for them. However, and needless to say, the constitutional court has not forgotten its duty to balance the law in a scales of the dispute ever remaining alive to its commitment on oath to do justice and in this endeavour it will not falter or trip in so easily to the trap laid by a vagrant management when it expects the court to set aside the ex parte proceedings on the ground that a case is best decided on merits after contest.

7. Besides all above said, the Labour Court has been kind enough to award only 50% of the back wages from the date of demand notice i.e. May 29, 2013 till payment. May remind the petitioner of its 'Rational Business' of the simplicity in Rule 22 of the Industrial Disputes (Central)

Rules, 1957 which permits Labour Courts to proceed ex parte against litigants before it when they do not appear despite notice as though they had appeared by the deeming fiction of the law.

8. Not even an iota of a conceivable ground of challenge is made out to fortify interference on the asking of a dubious management and it would be rather ir-“rational' to do so amidst the humdrum 'Business' of the Court wizened over years by the tactics employed by managements to go ex parte and expect to bounce back and play the game again after the final award is announced to the parties and the public.

9. For these reasons, the petition fails to tempt providence or entice me to intercede by a rescue act and set aside the ex parte proceedings. Exercise of extraordinary jurisdiction in this case in favour of the petitioner is refused and the petition is accordingly dismissed without issuing notice to the respondent workman, which if it were ordered, would occasion injustice to an innocent party, a victim of protracted litigation. The object of jurisprudence is that litigation must come to an end. Here it does, by making the award enforceable.

(RAJIV NARAIN RAINA)
JUDGE

28.02.2017

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Whether speaking/reasoned Yes

Whether reportable Yes