

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-49-2016 (O&M)

Date of Decision: September 18, 2018

M/s L.N.M.Auto Industries Pvt.Ltd.

.....Appellant

Versus

Ravi Kumar and another

.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present: Mr.A.P.Bhandari, Advocate for the appellant.

Mr.Deepak Sonak, Advocate for respondent No.1.

.....

SURYA KANT, J.(ORAL)

This *Intra Court* appeal challenges the order dated 06.10.2015 whereby the learned Single Judge upheld the Award passed by the Labour Court-II, Faridabad, vide which claim of the respondent-workman under Section 33-C(2) of the Industrial Disputes Act, 1947 (for brevity,'the 1947 Act') for recovery of a sum of ₹1,06,977.26 alongwith interest @ 18% per annum has been accepted.

[2] The facts may be briefly noticed:-

[3] The respondent-workman was engaged by the appellant. He was statedly retrenched in the year 2002 without complying with the provisions of the 1947 Act. 'Industrial dispute' was raised and during conciliation proceedings, a settlement took place in terms whereof the workman was to be reinstated. The Management, however, did not reinstate

the workman which prompted him to file application under Section 33-C (2)

of the 1947 Act.

[3] It is not seriously in dispute that the counsel engaged by the Management unfortunately passed away in the year 2007. It did not engage other counsel as according to the appellant, the factum of death of the previous counsel came to its knowledge at a belated stage. The Management was, thus, proceeded ex parte and the Award was passed on 04.08.2010.

[4] The challenge to the Award has been turned down by the learned Single Judge observing that there was no justification for the Management for not appearing before the Labour Court.

[5] We have heard learned counsel for the parties at a considerable length and gone through the record. The non-appearance of the Management or initiation of ex parte proceedings against it are directly relatable to the unfortunate demise of the counsel, who had been engaged. There is no doubt that the Management was negligent in not following up the matter with the counsel. Had they done it, the factum of death of its counsel would have been in their knowledge immediately and thus an alternative arrangement could be made. Nevertheless, it appears in the interest of justice to give one reasonable opportunity to the Management to lead its evidence, more so when the workman can be suitably compensated with cost for the delay and his interest can be otherwise duly protected.

[6] For the reasons aforesaid, the appeal is allowed. The order under appeal is set aside and the Award dated 04.08.2010 passed by the Labour Court-II, Faridabad is modified to the extent that let further proceedings be started from the stage the Management was proceeded against ex parte. The learned Labour Court shall grant only two effective

opportunities to the appellant-Management to lead its evidence. One effective opportunity thereafter may be granted to the respondent-workman to lead evidence in rebuttal, if so required. The learned Labour Court shall decide the matter on merits before 31.01.2019.

[7] The appellant-Management is directed to deposit a sum of ₹2.00 lacs by way of FDR with the Labour Court-II, Faridabad on the first date of appearance so that if claim of the respondent-workman is finally accepted, the due amount can be released to him forthwith. In case the Management does not do so, the ex parte Award shall be deemed to have been upheld. The respondent-workman shall also be entitled to cost of ₹25,000/- which shall be paid to him on the first date of appearance before the Labour Court.

[8] The parties are directed to appear before the Labour Court on 04.10.2018.

**(SURYA KANT)
JUDGE**

September 18, 2018
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**(SUDIP AHLUWALIA)
JUDGE**

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|---------------------------------------|---------------|
| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |