

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

CWP No.15407 of 2019

Date of decision: 27.08.2019

M/s Chairman of IND-Swift Ltd, Chandigarh
and others

.....Petitioners

versus

The Ld. Additional Distt. & Session Judge, Ambala
and others

....Respondents

Coram: **Hon'ble Mr. Justice B.S. Walia**

Present: Ms. Seema Pasricha, Advocate for the petitioners.

B.S. Walia, J.

[1] Writ petition has been filed under Articles 226 & 227 of the Constitution of India, praying for the issuance of a writ of Certiorari for quashing/setting aside Order (Annexure P-22) dated 10.04.2019, passed by the learned Additional District Judge, Ambala, as Appellate Authority under Section 17 of the Payment of Wages Act, 1936 (hereinafter referred to as the Act), upholding Order (Annexure P-20) dated 25.11.2016, passed by the Authority constituted under Section 15 of the Act.

[2] Brief facts of the case, leading to the filing of the writ petition are that respondent No.3 filed a claim petition against the petitioner-Company under Section 15(2) of the Act (Annexure P-12), claiming salary for the period July, 2014 to September, 2014, monthly travelling allowance from December, 2013 to September, 2014, as also bonus for the year 2013-2014. The same was decided *ex-parte* against the petitioner vide Order (Annexure P-14) dated 29.06.2015 and the petitioners were directed to jointly or

severally deposit Rs.1,22,683/- in Court within 30 days for payment to respondent No.3.

[3] That it would be relevant to mention here that vide order (Annexure P-15) dated 18.02.2015, the Authority under the Act, recorded that the case was fixed for filing of written statement by the petitioner but none was present on behalf of the petitioner despite the case having been called out thrice at 10.30 a.m., 12.30 p.m. and 3.00 p.m., therefore, the petitioner was being proceeded against *ex parte* and next date of hearing was fixed for *ex parte* evidence of respondent No.3 i.e. 11.03.2015. As has been noted above, eventually, ex parte order (Annexure P-14) dated 29.06.2015 was passed.

[4] The petitioners challenged ex parte order dated 29.06.2015 on 05.08.2015 by filing CWP No.16449 of 2015 but the same was dismissed by the High Court. Thereafter, the petitioners claim that they came to know about the dismissal of the writ petition by the High Court vide Order Annexure P-17 dated 10.12.2015 where after, application (Annexure P-18) was filed before the Authority under the Act on 08.06.2016 for setting aside ex parte order dated 29.06.2015.

[5] That it needs noticing here that the petitioners filed application (Annexure P-18) for setting aside order dated 18.02.2015 proceeding ex parte against the petitioners as well as *ex parte* Order (Annexure P-14) dated 29.06.2015. However, the said application was dismissed by the Authority under the Act, vide Order (Annexure P-20) dated 25.11.2016. Order (Annexure P-20) dated 25.11.2016 was challenged by filing appeal (Annexure P-21) before the learned Additional District Judge, Ambala. However, the appeal was dismissed by the learned Additional District Judge as Appellate Authority under the Act, vide Order (Annexure P-22) dated 10.04.2019 by

observing that the petitioners had put in appearance before the Authority under the Act on 18.12.2014 and sought time to file reply whereupon, the case was adjourned to 23.12.2014, 20.01.2015 and 18.02.2015 but none appeared on behalf of the petitioners. Consequently, on 18.02.2015, the petitioners were proceeded against *ex parte*.

[6] The Appellate Authority rejected the argument of the petitioner that its representative had gone to the office of the Authority but the Presiding Officer was not holding Court and the Reader of the Authority had refused to take the written statement on file as there was nothing on the record to substantiate the claim of the petitioners. The Appellate Authority observed that it was apparent that the petitioners had levelled false and baseless allegations that the written statement was filed, but not taken on record by the Reader. The Appellate Authority also took into account the submission that the Reader had told the representative of the petitioner-Company that he would inform them regarding the next date of hearing but no such information was allegedly sent to the company by the Reader but rejected the aforementioned submission on the ground that it was the duty of the representative of the petitioners to note down the date and not the duty of the Reader of the Authority to inform the party regarding the adjourned date and otherwise also even if the version of the petitioners was accepted that the Reader of the Authority had told the representative of the petitioners that he would inform him about the next date of hearing, still the petitioners could not be absolved of their liability to pursue their case diligently and in fact the stand of the petitioners from the very beginning was careless and negligent as was clear from the fact that CWP No. 16449/2015 for setting aside Order dated 18.02.2015 and 29.06.2015 was dismissed by the High Court on

10.12.2015 by observing that despite taking various adjournments, the petitioners had failed to produce on record documents in support of the case.

[7] The Appellate Authority further observed that under Section 17 of the Act, appeal against the impugned orders could have been filed within 30 days but the same was filed after a delay of 344 days. No doubt, the petitioners had filed writ petition in the High Court but the writ petition was dismissed on 10.12.2015 but the petitioners filed application (wrongly recorded as instant appeal) for setting aside Order dated 18.02.2015 and 29.06.2015 on 08.06.2016 i.e. after a delay of more than 06 months after dismissal of the writ petition.

[8] The Appellate Authority held that the explanation given for delay in filing the application for setting aside Order dated 18.02.2015 and 29.06.2015 i.e. of non intimation by counsel of the dismissal of the writ petition also went to show that in order to cover up their own negligence, the petitioners had levelled false and baseless allegations personally against the Reader of the Authority and thereafter against their counsel, whereas it was their duty to remain in touch with their counsel.

[9] Learned counsel for the petitioners has contended that the impugned orders are liable to be set aside and the case be remanded for adjudication on merits, since the petitioners had been proceeded *ex parte* without giving due opportunity to put forth their case and the petitioners were proceeded *ex parte* because the Reader of the Authority had informed the representative of the petitioners that intimation of date of hearing would be given by post, but the same was not given.

[10] I have considered the submissions of learned counsel for the petitioners.

[11] Admittedly, the petitioners had put in appearance before the Authority on 18.12.2014 and sought time to file reply whereupon, the case was adjourned to 23.12.2014, 20.01.2015 and 18.02.2015 but on account of none appearing on behalf of the petitioners, the petitioners were proceeded against *ex parte*. There is nothing on the record to substantiate the claim of the petitioners that they had gone to the Court of the Authority under the Act, but the learned Presiding Officer was not holding Court and the Reader of the Authority had refused to take the written statement on file and had told them instead that he would inform them regarding the next date of hearing. However, as has been noted by the learned Appellate Authority, there is no force in the submission, as it was the duty of the representative to note down the date or to have made efforts shortly thereafter to ascertain the date and it is not the duty of the Reader of the Authority to send intimation to a party regarding the adjourned date. Even if the version of the petitioners be accepted that the Reader had informed the representative of the petitioners that he would inform him about the next date of hearing, still the petitioners cannot be absolved of their liability to pursue their case diligently and it was incumbent upon the representative of the petitioners to have ascertained the adjourned date from the Authority under the Payment of Wages Act, 1936 on the date, it is claimed that the petitioners representative went to the office of the Authority under the Payment of Wages Act, 1936 or shortly thereafter, but the facts of the case go to show that the petitioner's representative claims to have gone to the office of the Authority on 20.01.2015 along with written statement but the Authority was not holding Court whereupon the Reader had refused to accept the written statement and told that next date would be informed later on by post. However, the petitioners were proceeded *ex parte*

on 18.02.2015, whereas the *ex parte* order was passed on 29.06.2015, which as per the stand of the petitioners was received on 08.07.2015. In other words, from 20.01.2015 till 08.07.2015, the petitioners or their representative did not bother to ascertain the outcome of the proceedings before the Authority. The stand of the petitioners that they were waiting for intimation from the Reader of the Court under the Payment of Wages Act is to naïve and unworthy of acceptance. No prudent person would wait for a period of 06 months to ascertain a date and would make attempts not only on the date he had appeared to ascertain the date for which the case had been adjourned or shortly thereafter and not wait for a period of 06 months.

[12] Accordingly, I do not find any grounds whatsoever to interfere with the well reasoned Order dated 10.04.2019 passed by the learned Appellate Authority, upholding the order dated 25.11.2016 passed by the Authority under the 'Act', dismissing the application for setting aside order dated 18.02.2015 proceeding *ex parte* against the petitioners or for that matter *ex parte* order dated 29.06.2015. Resultantly, the writ petition being devoid of merit is ***dismissed*** in limine. However, there shall be no order as to costs.

(B.S. Walia)
Judge

August 27, 2019
'Rajneesh'

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No