

(243) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.15528 of 2017
Date of decision : 23.07.2019

Punjab State Warehousing Corporation and anr. Petitioners

Versus

P.O., Industrial Tribunal, Patiala and anr. Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. S.S. Bedi, Advocate for the petitioners.
Mr. Vivek Sharma Vashisht, Advocate for respondent No2.

B.S. WALIA, J.,

[1] Prayer in the writ petition is for the issuance of a writ in the nature of Certiorari for quashing order Annexure P-8 dated 08.05.2017 passed by respondent No.1 dismissing application, Annexure P-7 dated 28.04.2014 filed by the petitioners for setting aside ex parte award, Annexure P-6 dated 28.04.2014 as also for setting aside ex parte award, Annexure P-6 dated 28.04.2014. Prayer is also for remand of the matter to respondent No.1 to decide the case on merits after granting opportunity of hearing to the petitioners as also to lead evidence after setting aside ex parte award, Annexure P-6 dated 28.04.2014.

[2] Brief facts of the case leading to the filing of the writ petition are that case set up by respondent No.2/workman before the Industrial Tribunal, Patiala (hereinafter referred to as 'the Tribunal') was that he was engaged as Chowkidar at Lehragaga, District Sangrur under the petitioners/Management w.e.f. 01.06.1995 and continued working as such till 30.06.2007 on a salary of ₹ 2200/- per month after which his services

reply denying that respondent No.2/workman had completed 240 days in 12 months preceding the date of his alleged termination, consequently of his not being entitled for reinstatement.

[3] On 28.07.2011 Authorized Representative of the petitioners/Management did not put in appearance before respondent No.1/Tribunal, consequently, the petitioners were proceeded against ex parte vide order Annexure P-3. The petitioners/Management filed application, Annexure P-4 for setting aside ex parte order dated 28.07.2011 on 06.06.2012. The same was allowed on the same day vide order Annexure P-5 on the statement of Authorized Representative of respondent No.2/workman that he had no objection if the ex parte proceedings dated 28.07.2011 were set aside subject to payment of costs. Accordingly, in view of statement of Authorized Representative of respondent No.2/workman, ex parte proceedings dated 28.07.2011 against the petitioners/Management were set aside subject to payment of costs of ₹ 300/-. The case was adjourned to 13.06.2012 for payments of costs and evidence of respondent No.2/workman. On 13.06.2012, costs awarded were paid and cross-examination of respondent No.2/workman was completed and the case adjourned to 07.11.2012 for further evidence of respondent No.2/workman. Thereafter, on 19.12.2012, the case was adjourned to 07.02.2013 for reply/record by the petitioners/Management.

[4] That, on 07.02.2013, none appeared on behalf of the petitioners/Management, consequently, the petitioners/Management was again proceeded against ex parte. On 23.07.2013, Authorized Representative of respondent No.2/workman closed ex parte evidence and the case was thereafter adjourned from time to time for ex parte arguments and eventually

[5] Thereafter, the petitioners/ management filed application Annexure P/7 on the same day of passing of ex parte award for setting aside of the ex parte award Annexure P/6 dated 28.04.2014. On consideration of the application for setting aside ex parte award, the learned Tribunal observed that subsequently had neither been pleaded nor proved. So much so there was no mention of order dated 07.02.2013 proceeding ex parte against the petitioners/management in the application Annexure P/7 for setting aside of ex parte award dated 28.04.2014, instead, mention was made therein of petitioners/ management having been proceeded ex parte on 28.07.2011 which had already been set aside on 06.06.2012 on no objection by the Authorized Representative of respondent No.2/workman. Besides, no affidavit was filed along with the application. The learned Tribunal observed that in the circumstances, it was apparent that the petitioners/Management had failed to plead and prove sufficient cause for non-appearance in the case on 07.02.2013 and subsequently and as such no case was made out for setting aside of ex parte order dated 07.02.2013 and ex parte award dated 28.04.2014.

[6] A perusal of the award, Annexure P-6 dated 28.04.2014 reveals the stand of respondent No.2/workman of his having worked as Chowkidar at Lehragaga, District Sangrur under the petitioners/Management w.e.f. 01.06.1995 to 30.06.2007 against monthly salary of ₹ 2200/- per month and of his services having been illegally terminated on 01.07.2007 without any charge-sheet, enquiry or any compensation while retaining junior employees and despite his having completed 240 days in the last calendar year. Plea was also of unfair labour practice besides violation of the provisions of Sections 25-H, 25-G and 25-F of the Industrial Disputes Act, 1947.

[7] The petitioners/Management filed reply to the claim statement denying the averments made by respondent No.2/workman whereupon respondent No.2/workman himself stepped into the witness box as WW1 and tendered his affidavit Ex.W1 along with documents Ex.W2 to Ex.W4.

[8] Respondent No.2/workman reiterated the plea of his having worked continuously since 01.06.1995 to 30.06.2007 and of his services having been illegally terminated on 01.07.2007 without any charge-sheet, enquiry or any compensation and of his drawing salary of ₹ 2200/- per month, besides, of his having approached and submitted representation to the Deputy Chief Minister for regularizing his services on 24.05.2006 vide Ex.W2 as also of having submitted representation to the Managing Director Warehousing, Corporation Chandigarh Ex.W3 on 27.11.2006 as well as before the Deputy Chief Minister regarding less payment on 09.09.2004 Ex.W-4, besides, of his having completed 240 days in the last calendar year and the petitioners/Management having retained junior employees while illegally terminating his services.

[9] Examination-in-chief of respondent No.2/workman was recorded on 24.05.2011 whereupon the case was fixed for cross-examination of respondent No.2/workman on 28.07.2011 but on 28.07.2011 none appeared on behalf of the petitioners/Management whereupon the petitioners/Management was proceeded against ex parte and the case was fixed for ex parte evidence of respondent No.2/workman. However, on 06.06.2012, the petitioners/Management moved an application for setting aside ex parte order dated 28.07.2011 and on the statement suffered by the Authorized Representative of respondent No.2/workman regarding no objection to the application, the ex parte proceedings dated 28.07.2011 were

date of hearing where after the case was fixed for entire remaining evidence of respondent No.2/workman. Thereafter, the case was adjourned on 19.12.2012 to 07.02.2013 for filing reply by the petitioners/Management as well as production of record by them. However, on 07.02.2013, none appeared on behalf of the petitioners/Management nor was any reply filed. Accordingly, the petitioner/Management was again proceeded ex parte on 07.02.2013. Thereafter, ex parte evidence of respondent No.2/workman was closed on 23.07.2013 and the case remained pending for ex parte arguments and was eventually decided ex parte on 28.04.2014. Thus, it is clear that the petitioners/Management was evading production of record as sought for before the learned Tribunal. Besides, the petitioners/management was proceeded ex parte not once but twice. Further, despite the case having been adjourned on 19.12.2012 to 07.02.2013 for production of record, not only was the record not produced but none appeared on behalf of the petitioners/Management on 07.02.2013 and absented thereafter till the passing of the ex parte award on 28.04.2014 on which date surprisingly an application was moved for setting aside of ex parte proceedings as well as ex parte award by mentioning wrong dates on which they had been proceeded ex parte i.e. 28.07.2011 instead of mentioning the date 07.02.2013 i.e. the date on which the petitioners/Management had been proceeded ex parte for the second time. Moreover, neither was showing sufficient cause for not having appeared on 07.02.2013 and thereafter pleaded in the application nor proved. Thus in the circumstances, an adverse inference is liable to be drawn against the petitioners/management.

[10] Even before this Court, the petitioners/Management has failed to produce any record to show that the plea of the respondent

factually incorrect. Having absented on the date fixed for production of record i.e. 07.02.2013 and thereafter, having continuously absented till passing of the ex parte award and thereafter moving an application on the same day for setting aside of ex parte award without making out sufficient cause for having absented for the second time on 07.02.2013 i.e. the date on which they were directed to produce the record and thereafter for a period of more than one year till the passing of ex parte award on 28.04.2014, no case whatsoever is made out warranting interference with the order dated 07.02.2013 proceeding ex parte against the petitioners/management for the second time as well as ex parte award, Annexure P-6 dated 28.04.2014 or for that matter order Annexure P-8 dated 08.05.2017 dismissing the application for setting aside ex parte award Annexure P-6 dated 28.04.2014.

[11] In the light of the position as noted above, the writ petition is bereft of merit and is accordingly dismissed as such.

23.07.2019
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(B.S. Walia)
Judge

1. Whether speaking/reasoned: Yes/No.
2. Whether reportable : Yes/No.