

CWP-22771-2017 (O&M)

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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP-22771-2017 (O&M)
Date of Decision: March 27, 2019

Nirbhai Singh and others

... Petitioners

Versus

Presiding Officer, Industrial Tribunal, Patiala and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Aakash Singla, Advocate,
for the petitioners.

Mr. Ravi Gakhar, Advocate,
for respondent No.2.

RAJIV NARAIN RAINA, J. (ORAL)

1. The petitioners seriously dispute their postal addresses in the memo of parties in the application filed under Section 33-C(2) of the Industrial Disputes Act, 1947 by the private respondent as described in paragraphs 6 and 7 of the writ petition.

2. Registered notices were sent by the court staff of the Labour Court to the three petitioners, who were respondents in the application, under one registered cover which is procedure contrary to Rule 18 of the Industrial Disputes (Punjab) Rules, 1958. When the combined registered letter was not received back served or otherwise, the Labour Court without making another attempt fell back on the presumption of service, and

thereby, proceeded *ex parte* against the petitioners behind their back. As per Rule 18, any summon issued by the Labour Court may be served personally or by registered post and in the event of refusal by the party concerned to accept, the same shall be resent again under certificate of posting. Accordingly, a legal and valid presumption could not be drawn by the court *a quo* in the absence of adherence of procedural safeguards in the matter of service of summons in terms of rule 18 of the rules.

3. The present petition has been filed challenging the validity of the *ex parte* order and the final determination of a sum of Rs.94,830/- along with interest accepting it to be money due. In any case, this is a mixed question of law and fact which can be determined by the Tribunal in the first instance and, in the circumstances, this Court need not express any final opinion on the *factum* of due and proper service.

4. Mr. Aakash Singla appearing for the petitioners has also questioned the maintainability of the application, apart from defective service of summons. This is also a question for the Tribunal to consider in case the *ex parte* order is set aside and the matter remitted for fresh trial. No useful purpose will be served in keeping the petition pending on a matter which may require some evidence of proper service to establish whether the Court was right or wrong in proceeding *ex parte* against the petitioners. Mr. Gakhar has no objection to the proposed line of action.

5 Accordingly, the petition is partly allowed, the impugned orders dated 12.10.2016 (Annex. P/2) and dated 05.05.2017 (Annex. P/3) are set aside and the case is remanded with the direction that both the issues will be decided independently by the Tribunal without being influenced by anything said in this order, which is limited in purpose to afford a fair

opportunity to the petitioners to file an application for setting aside the *ex parte* decision dated 12.10.2016 and the final order dated 05.05.2017 and to contest the case on merits.

6. To fulfill the object of this order and to obviate any further delay, the petitioners are directed to file an appropriate application before the Industrial Tribunal for recall of the order on the date fixed for appearance.

7. On filing of the application, the Tribunal is requested to fix a date for reply, if any, to be filed and, thereafter, collect evidence including oral testimonies, if found necessary, or is produced by the parties and then proceed to pass final orders as expeditiously as possible addressing itself first to the objection on maintainability of the claim application raised by the defendants in the claim application. However, till such time the fresh decision is not taken, the execution proceedings pending before the revenue authorities for recovery of money in execution of the *ex parte* orders are kept in abeyance to await the final result.

8. The parties are at liberty to revive the execution proceedings or apply for dropping them depending on the outcome of the remand proceedings.

9. Parties are directed to appear before the Industrial Tribunal-cum-Labour Court, Patiala, on 22.04.2019.

March 27, 2019
vkd/Vimal

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking / reasoned : Yes / No

Whether reportable : Yes / No