

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

Date of decision: 19.03.2019

CWP No.27904 of 2018

M/s Superior Industries Limited ...Petitioner

Vs.

Dhaniram & another ...Respondents

CWP No.27950 of 2018

M/s Superior Industries Limited ...Petitioner

Vs.

Dinesh Sharma & another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. S.K.Garg Narwana, Senior Advocate, with
 Mr. Japjit Singh Johal, Advocate, for the petitioner(s).

RAJIV NARAIN RAINA, J.

1. This order shall dispose of aforementioned two writ petitions i.e. (i) CWP No.27904 of 2018 challenging the award dated 27.04.2016 passed by the Industrial Tribunal -cum- Labour Court, Circle-I, Faridabad, whereby reference was answered in favour of the workman/respondent No.1 (Dhaniram) holding him entitled to reinstatement with continuity in service with 50% back wages; and (ii) CWP No.27950 of 2018 challenging the separate award of even date, whereby reference was answered in favour of the workman/respondent No.1 (Dinesh Sharma) holding him entitled to reinstatement with continuity in service with 100% back wages for six months from the date of termination i.e. 31.08.2005 and for remaining period till implementation of award, the workman would get 90% of back wages.

Challenge is also to the order/s dated 06.10.2006 passed by the Deputy Labour Commissioner, Faridabad, whereby the petitioner/establishment has been directed to appear for compliance of the award or else it has been directed to send an approval for filing challan against the petitioner/establishment under Section 29 of the Industrial Disputes Act, 1947.

2. The Industrial Tribunal in the both the references set aside the illegal termination as null and void. The inquiry was held to be sham and not trustworthy. The management has been satisfied with the awards over the years and approached this Court in March, 2017. However, by way of present petition, the action is actually against the order dated 06.10.2016 passed by the Deputy Labour Commissioner, Faridabad, whereby the petitioner/management have been directed to appear in his office for compliance of the award else it has been directed that approval for filing of challan under Section 29 of the Industrial Disputes Act, 1947 will be approved on the basis of the report of the Labour Commissioner and proceedings taken out.

3. Now for the first time, two documents have been placed on record i.e. letters dated 01.05.2016 and 01.06.2016 (Annex P-7 and P-8 respectively in CWP No.27904 of 2018) disclosing that manufacturing work has stopped since 31.05.2016 and the workers will be retrenched on payment of closure compensation. The petitioner is a limited company and can only act through resolution/s. No such resolution has been placed on record. Therefore, the closure itself is a seriously disputed question of fact, which cannot be determined in proceedings under Article 226 of the Constitution for the first time. This Court harbours serious doubt on the

alleged closure after allegedly following the procedure in Section 25FFF of the Act.

4. It may be mentioned here that in CWP No.27904 of 2018, the office put an objection that ‘a certificate stating therein that all proceedings annexed with this petition have been available with the P.O. record should be filed’. Though an affidavit has been filed to the effect that “... all the proceedings before the Presiding Officer available with the petitioner have been annexed with the present civil writ petition”, but it is not clarified that the documents (Annex P-6 & P-7) are on the record of the Tribunal and the petition has been listed for hearing. On the other hand, in the accompanying petition, there is neither any objection nor any report, but the same have been listed together.

5. Obviously, these petitions have been filed casually even while the notice to appear before the Deputy Labour Commissioner, Faridabad was issued on 06.10.2016. Realistically speaking, I would impute a delay of about three years in pressing the petitions before this Court for the first time. By passage of time, the respondent/workmen have acquired rights under the awards, which are not open to be disturbed lightly.

6. I find no reason to interfere in the awards belatedly only because the petitioners are facing notice of proceedings under Section 29 of the Act for implementation of the awards, which are of criminal nature and writ proceedings are not the appropriate forum for penalty for breach of settlement or award, which carries punishment of imprisonment for a term which may extend to six months, or with fine, or with both, and where the breach is a continuing one, with a further fine which may

extend to two hundred rupees for every day during which the breach continues after the conviction for the first, and the court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realized from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach. For this, the petitioner can seek other legal remedies as available in law, if advised.

7. As far as these petitions are concerned, the awards are affirmed, as I find no error apparent on the face of record therein. The reliance placed on Neeta Kaplish Vs. Presiding Officer, Labour Court, 1999 (1) SCC 517 is of no help. The management did not make any request before the Tribunal to justify the dismissal by leading fresh evidence. No evidence of real closure has been produced by the management, which is a public limited company governed not only by the provisions of the Industrial Disputes Act, but of the company law. These papers without a legal and proper trail cannot be relied on as conclusive evidence of closure within the meaning of the ID Act. There is a lot more of it needed to convince a Court.

8. I would, therefore, not entertain these petitions in exercise of extraordinary and discretionary jurisdiction under Article 226 of the Constitution and would dismiss them.

19.03.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>