

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

CWP No.7085 of 2018 (O&M)
Date of Decision:1.3.2019

M/s Ezspend Prepaid Payment Solutions Pvt. Ltd. ... Petitioners

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour
Court-II and another ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Lakshay Mehta, Advocate for the petitioners

Mr.Ajay Bhardwaj, Advocate for
Ms.Madhu Ranjan, Advocate for respondent no.2

RAJIV NARAIN RAINA, J. (Oral)

1. On the previous date, when the case was taken up at the end of the day on a mention made by the learned counsel for the petitioner-Company, this Court framed the issue involved for determination in this petition, by order dated 22.2.2019. Since counsel for respondent/workman was not present , the case was adjourned for today for the learned counsel for respondent/workman to show cause why the order proceeding ex-parte against the Company should not be set aside. The order dated 22.2.2019 is reproduced:-

"Office to notify Mr. Ajay Bhardwaj and Ms.Madhu Ranjan counsel for respondent No.2 that this matter will be taken up in the urgent list on 01.03.2019 for final disposal since the award is *exparte* and there is sufficient evidence on record to suggest that the Labour Court was entirely wrong in presuming due service on the petitioner as even 30 days had not lapsed from the

date of issue of registered AD/notice/summons issued on 16.02.2017 since the month of February has only 28 days. Even otherwise, the *exparte* award was passed on 02.11.2017, endorsed on 03.11.2017 and published on 17.11.2017.

On 15.02.2018, when the petitioner came to know of the passing of the impugned *exparte* award, the time was spent to collect the record of the Labour Court and papers for purpose of filing application.

The application for setting aside the *exparte* proceedings was moved on 15.03.2018, when the petitioner came to know of the execution proceedings.

Not only the petitioner was proceeded *exparte* with undue haste and improper consideration, there was also a legal question of territorial jurisdiction involved. It is argued that the Gurgaon Court had no jurisdiction in the face of Clause 16 of the letter of appointment of the respondent-Workman dated 22.09.2014 (Annexure P4). Clause 16 says that if there is any dispute arising between the workman and the company in connection with the terms and conditions of employment, the Court at New Delhi had the jurisdiction to try the dispute. (Page 87)

Accordingly, it is argued that the appropriate government would set at Delhi which would have exclusive jurisdiction over the subject matter, though the workman was employed in the Gurgaon office. The petitioner company has an office in Delhi and Gurgaon. The respondent workman is employed as a Back Office Executive in the Gurgaon office. The Gurgaon office shifted to Delhi to be accommodated in the Delhi Office on 01.06.2016. There is a lease deed in support, see Annexure P11 at page 137. The lease was from 01.06.2016 to 30.04.2017 which was renewed.

When sufficient cause for non appearance has prima facie been shown then the law in **M/s Haryana Suraj Malting Ltd. vs. Phool Chand, AIR, 2018 SC 2670** would apply in dealing with an *ex parte* award.

It is further argued that Rule 18 of the Industrial Disputes (Central Rules), 1958 was violated by the Labour Court. Not only service was required to be effected either personally or by registered post, then, failing which, notice/summons, process was required to be served by affixing a copy thereof on the outer door or some other conspicuous part of the house or the place where the party upon whom service is to be effected, ordinarily resides or carries on business or personally work for gain shall be served. He relies on the decision of the Division Bench of this Court in this regard in **Vikas Metal, Jalandhar vs. The Presiding Officer, Labour Court, Jalandhar and others, PLR (2007) 145 P&H 506**. He also relies on the single Bench of this Court in **State Transport Commissioner, Punjab vs. Bhajan Singh and another, (1992) 5 SLR 763 (P&H)** (paras 7 and 8) on the mode of service.

In absence of compliance of Rule 18, the Labour Court erred in proceeding *ex parte* against the petitioner.

To come up on 01.03.2019 in urgent list.”

2. Heard learned counsel for both the parties.
3. Further to the order reproduced above, it has been pointed out that the application moved by the workman for summoning petitioner-company though had in the form filled by the workman contained the correct address and the Pin Code number, but the Tribunal in its office, while issuing summons to the respondent made a mistake in sending the

registered letter to the address at Delhi, but with wrong postal Pin Code i.e. 110 001 while it should have been 110 074.

4. In view of this grave shortcoming, this Court is of the considered opinion that the Tribunal has committed a patent error in presuming service upon the petitioner-Company. For several reasons, including and without doubt the fact that notice was short of 30 days [as recorded in the order proceeding ex parte against the management] since only 28 days have lapsed in the month of February [which has only 28 days], presumption of service could not be inferred short by two days. Since the ex-parte award was passed and came to the notice of the petitioner-Company only on 15.2.2018 as alleged by the management, the 30 days period prescribed in Section 17 of the Industrial Disputes Act, 1947 for the award becoming enforceable had lapsed the Tribunal had become functus officio as the law then stood, which disabled the petitioner Company to move an application for setting aside the ex-parte award, interference is certainly called for because they were not served to attend proceedings. Since this Court is convinced that the Tribunal erroneously presumed service and proceeded to pass the order dated 17.3.2017 proceeding ex-parte against the petitioner-Company resulting in ex-parte award dated 2.11.2017, the same deserves to be set aside for a fresh decision on the merits of the dispute.

5. Accordingly, this petition is allowed and the ex-parte award dated 2.11.2017 passed by the Tribunal is quashed. The matter is remanded to the Industrial-cum-Labour Court-II, Gurugram.

6. Parties are directed to appear before the Labour Court-II, Gurugram on 22.04.2019. The learned Tribunal would first pay its attention to the issue of territorial jurisdiction as per Clause 16 of the

appointment letter on the question of maintainability and only after satisfying itself that it has jurisdiction, it may proceed to decide the dispute on merits. Opinion is not expressed on the merits of the case or on the question of maintainability of the reference by the “appropriate government” in the State of Haryana.

1.3.2019
MFK/Vimal

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes/No