

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP No.22930 of 2015(O&M)
DECIDED ON : 18.02.2020

M/s Sumit Engineering Company

...Petitioner

versus

Presiding Officer, Labour Court-II Faridabad and another

...Respondents

CORAM : HON'BLE MR. JUSTICE GIRISH AGNIHOTRI

Present : Ms. Abha Rathore, Advocate for the petitioner.

Mr. A.P. Bhandari, Advocate for respondent No.2.

GIRISH AGNIHOTRI, J. (ORAL)

The present petition has been filed by petitioner-M/s Sumit Engineering Company, *inter alia*, praying for setting aside the award of the Labour Court dated 26.02.2010 (Annexure P1) and also the order dated 05.06.2013 (Annexure P-4).

The case of the workman as noticed in the initial award dated 26.02.2010 (Annexure P-5) was that the workman was appointed by the petitioner on 05.04.2000.

This Court for the reasons to be recorded hereinunder finds it a fit case to allow the writ petition subject to the following observations:-

Since the matter is being remanded back before the Labour Court to decide the matter afresh on merits, after examining the facts least it may prejudice the interest of either party before the Labour Court.

Facts other than the merits of the case which needs to be noticed are that the workman had raised a demand notice on 24.12.2008. On 19.10.2009, Haryana Government had referred the dispute to the Labour

Court. The Labour Commissioner/Labour Department issued letter directing the parties to appear before the Labour Court on 07.12.2009. On 07.12.2009, the petitioner-Management was proceeded against ex-parte by the Labour Court. On 26.02.2010, the award was passed in favour of the workman ordering reinstatement with continuity of service and 50% back wages from the date of demand notice. On 09.06.2010, application for setting aside the ex-parte award was filed by the petitioner. Reply to the said application was submitted by the workman on 09.02.2011. However on 05.06.2013, the Labour Court had dismissed the application for setting aside exparte award dated 26.02.2010. The order dated 05.06.2013 broadly assigns two reasons for not accepting the application, firstly, it has been observed that the application for setting aside is not maintainable because Labour Court becomes *functus officio*. It is relevant to mention here that Hon'ble Supreme Court in the latest judgment '*M/s Haryana Suraj Malting Ltd. Vs. Phool Chand, 2018 (3) S.C.T. 97*' has held that the Labour Court does not become *functus officio* and therefore, this part of the reasoning deserves to be rejected.

The second ground taken by the Labour Court is that the letter directing the parties to appear before the Labour Court for 07.12.2009 would have been delivered at the correct address.

Learned counsel for the petitioner regarding the second ground has submitted that the rules which would be applicable in the present case governing the service on the respondent would be called as Industrial Disputes (Punjab) Rules, 1958, Rule 18 of which is reproduced hereunder for ready reference:-

“18. Service of summons or notice:-Subject

to the provisions contained in rule 20, any notice, summons, process or order issued by a Board, Court, Labour Court, Tribunal, or an Arbitrator, empowered to issue such notices, summons, process or order may be served either personally or by registered post and in the event of refusal by the party concerned to accept the said notice, summons, process, or order, the same shall be sent again under certificate of posting.”

Learned counsel by making reference of above rule submits that it was obligatory for the Labour Court to issue notice/summons to be served either personally or by registered post upon the parties. In the present case it is not the case of either of the parties that the notice was issued by the Labour Court. It is also not the case of any of the parties that the letter/notice was sent by registered post. She therefore, submits that there is complete violation of Rule 18.

In view of the above, this Court deems it appropriate to set aside the impugned order dated 05.06.2013 and also the initial award dated 26.02.2010.

However, it needs to be noticed that the application filed by the Management/petitioner was dismissed by the Labour Court on 05.06.2013. Thereafter it is the case of the workman that he had filed application under Section 33-C (2) and it is also the matter of fact that the present writ petition has been filed in this Court on 18.10.2015. The case pleaded and as noticed in the initial award was that the workman was appointed in the petitioner company as Grinder Man at the monthly salary of Rs.2600/-, which as per the learned counsel for the respondent-workman was lesser than the rate of minimum wages as revised by the Haryana Government.

Be that as it may, this Court deems it appropriate to record that

there is unexplained delay on the part of the petitioner in approaching this

Court from June 2013 to October 2015. The delay is taken to be of two years (i.e. 24 months) which if multiplied by 2600 comes to Rs.62,400/-.

Writ petition is disposed of with the following directions:-

i) The order dated 05.06.2013 (Annexure P-4) and the award dated 26.02.2010 (Annexure P-1) are set aside.

ii) The Labour Court is directed to decide the matter afresh on merits.

Considering the fact that the demand notice in this case was issued on 24.10.2008, the Labour Court is directed to expedite the hearing of the case. It may grant three effective opportunities each to the parties to produce their evidence. Thereafter one effective opportunity each to the parties to make their arguments. In any case, the award be finally decided/passed within a period of one year from the date of receipt of the certified copy of the order.

iii) The petitioner shall pay an amount of Rs.62,400/- to the workman within three weeks from today or on the first date of hearing when both the parties shall appear before the Labour Court whichever is earlier.

iv) Let the parties appear before the Labour Court on 12.03.2020.

v) In case the aforementioned amount is not paid within the time prescribed, the orders impugned herein shall remain in tact.

(GIRISH AGNIHOTRI)
JUDGE

February 18, 2020
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Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO