

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-4687-2017 (O&M)
Date of decision: 22.01.2020

Anil Kumar

.....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: Hon'ble Mr. Justice Girish Agnihotri

Present: Mr. K.S. Sodhi, Advocate
for the petitioner.

Ms. Safia Gupta, AAG, Haryana.

Mrs. Abha Rathore, Advocate
for respondent No.3.

Mr. G.B.S. Gill, Advocate for
Mr. Gaurav Dhir, Advocate for respondent No.4.

GIRISH AGNIHOTRI, J. (Oral)

The present writ petition has been filed by the petitioner-Anil Kumar *inter alia* praying for a writ in the nature of certiorari for quashing of the award dated 16.05.2016 (Annexure P-1).

Vide award dated 16.05.2016, the Labour Court has ordered that the reference is decided in favour of the workman to the effect that he is entitled to reinstatement with continuity of service and 50% backwages from the date of demand notice i.e. 28.02.2005 from respondent No.2/Contractor and award was passed accordingly.

Learned counsel for the petitioner then submits that an application was filed by Anil Kumar (petitioner herein), for setting aside *ex*

parte order dated 19.10.2015 and *ex parte* award dated 16.05.2016. It was the case of the applicant before the Labour Court that he neither received any notice nor he was aware about pendency of the present case. This application was decided vide order dated 03.01.2017 (Annexure P-3). The application was dismissed by observing that the Labour Court had become *functus officio* on expiry of 30 days after the date of publication of the award.

Learned counsel for respondent No.3 has brought to the notice of this Court the judgment passed by the Hon'ble Supreme Court in “***M/s Haryana Suraj Malting Ltd. vs. Phool Chand, 2018(3) SCT 97***”. She specifically relies on Para 35 of the said judgment, which is reproduced as under:-

“35. Merely because an award has become enforceable, does not necessarily mean that it has become binding. For an award to become binding, it should be passed in compliance with the principles of natural justice. An award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being nullity. An award which is a nullity cannot be and shall not be a binding award. In case a party is able to show sufficient cause within a reasonable time for its non-appearance in the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal is bound to consider such an application and the application cannot be rejected on the ground that it was filed after the award had become enforceable. The Labour Court/Tribunal is not functus officio after the award has become enforceable as far as

setting aside an ex parte award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. It needs to be restated that the [Industrial Disputes Act, 1947](#) is a welfare legislation intended to maintain industrial peace. In that view of the matter, certain powers to do justice have to be conceded to the Labour Court/Tribunal, whether we call it ancillary, incidental or inherent.”

In view of the judgment passed by the Hon'ble Supreme Court of India, this Court is of the view that the order dated 03.01.2017 (Annexure P-3), deserves to be set aside. The matter is remanded back to the Labour Court to decide the application for setting aside the *ex parte* order dated 19.10.2015 and *ex parte* award dated 16.05.2016 afresh, in accordance with law on merits.

The present writ petition is disposed of accordingly.

(GIRISH AGNIHOTRI)
JUDGE

22.01.2020
anju rani

Whether speaking/ reasoned:	Yes/No
Whether Reportable:	Yes/No