

126-A

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

CRM-M-12877-2022

Date of decision: 28.03.2022

LT GEN RAJENDRA SINGH KADYAN

...Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Vaneet Soni, Advocate
for the petitioner.

Mr. Pradeep Prakash Chahar, DAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. A dispute arose amongst the workman, and, the management/employer, resulting in the appropriate government, making a reference bearing No.47 of 2014, to the Industrial Tribunal-cum-Labour Court concerned. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Circle-1, Faridabad, upon reference bearing No.47 of 2014 made a decision on 01.03.2016. Through, the afore verdict, the Industrial Tribunal-cum-Labour Court proceeded to allow the workman's claim for reinstatement in service, and, also proceeded to grant him benefit of continuity in service alongwith full back wages. The management/ employer became aggrieved from the afore award, and, cast a challenge thereto through its instituting CWP No.14649-2016 before this Court.

2. However, it is fairly stated at the bar, by the learned counsels appearing for the contesting litigants, that though, notice of motion became issued to the respondent concerned therein, however, this Court did not proceed to stay the execution or the implementation of the award (supra), as became

pronounced qua the workman by the Industrial Tribunal-cum-Labour Court concerned. It is also not disputed amongst the litigants, that the award, as carried in Annexure P-5 became published in the official gazette, and, hence became amenable for implementation, and, enforcement by the management/employer concerned.

3. Therefore, it appears that the learned Inspector concerned, proceeded in the face of this, Court, not staying the operation of the award carried in Annexure P-5, drew sustenance from Section 29 of the Industrial Disputes Act, 1947, provisions whereof become extracted hereinafter, and, hence after obtaining the requisite sanction, instituted a complaint carried in Annexure P-9, before the learned Chief Judicial Magistrate, Faridabad.

“29. Penalty for breach of settlement or award. - Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with 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 realised from him shall be paid by way of compensation, to any person who, in its opinion, has been injured by such breach.”

4. However, the complaint as instituted by the Inspector concerned, before the learned Chief Judicial Magistrate, Faridabad becomes, as contended by the learned counsel for the petitioner, to be amenable for being quashed, and, set aside. The afore contention is accepted. The reason being that though, this Court had not, after institution of a writ petition before it, by the aggrieved management/employer, against the award of the Industrial Tribunal-cum-Labour

Court concerned, and, as becomes comprised in Annexure P-5, rather stayed the execution or enforcement of the award concerned, yet thereupon alone, the Inspector concerned, could not forthwith draw sustenance from Section 29 of the Act (supra), as in the face of the challenge to the award made by the aggrieved management/employer rather succeeding in the writ petition concerned. Thereupon, the effect thereof would definitely impinge, upon the criminal prosecution launched against the management/employer concerned. Moreover, in case there was delay, if any, in the making of an affirmative order, upon, the writ petition by this Court, and, its resulting in the award comprised in Annexure P-5 becoming quashed, and, annulled, whereas, rather the prosecution launched against the management/employer before the learned Chief Judicial Magistrate concerned, becoming affirmatively fructified, and, may be obviously resulting in a verdict of conviction becoming pronounced against the management/employer concerned. Resultantly, the afore launching of prosecution, and, its resulting in a verdict of conviction becoming made upon the management/employer, would obviously result, in severe humiliation, and, harassment becoming encumbered, upon the management/ employer concerned. Consequently, also the factum of facings of trial, by the management/employer would also cause unnecessary harassment, and, humiliation to the management/employer concerned. All the afore require(s) becoming obviated. Moreover also when the apposite verdict of conviction, may have been undone by this Court, through the accepting of the challenge to Annexure P-5, through naturally its making an affirmative decision thereons, rather post the verdict of conviction, therefore, merely on account of some delay being made by this Court, in adjudicating, upon the challenge to the award made by the aggrieved management/ employer concerned, the apposite *mens-rea* may not become

aroused. Preponderantly also with the mere factum of the apposite lis being *sub-judice* before the Court, becoming the apposite relenting factor.

5. Be that as it may, since as revealed by Annexure P-7, hence made on 07.03.2019, this Court had disposed of the writ petition concerned, given the award as comprised in Annexure P-5 becoming implemented, and, enforced. Consequently, it appears that there was never any actionable *mens-rea* on the part of the management/employer, to *de-hors*, no stay being granted by this Court in contemporaneity to the institution of writ petition No.14649-2016, rather against the enforcing or implementation of the award, as made by the Industrial Tribunal-cum-Labour Court concerned, and, as is carried in Annexure P-5, rather infer qua the inculpability comprised in Section 29 (*supra*) becoming attracted qua it.

6. The provisions carried in Section 29 of the Act (*supra*), are amenable for recouring, only if there is candid, and, apparent actionable *mens-rea*, on the part of the management/employer concerned, and, the gathering of the afore actionable *mens-rea*, is to be made from the attending circumstances, inasmuch as, despite the award concerned, becoming affirmed even by the Hon'ble Apex Court, yet there being deliberate, and, intentional delays, on the part of the management/ employer, to yet make the apposite promptest implementation, and, that too without any tangible reason. Even on the afore parameter(s), and, especially when for the reasons (*surpa*), all the relevant attending circumstances, post the making of the award, as become comprised in Annexure P-5, do not reveal, that there was any active actionable *mens-rea*, on the part of the management/employer to, without any valid reasons deliberately omit to promptly execute the award, as comprised in Annexure P-5. Moreover, when before the learned Chief Judicial Magistrate concerned, the workman has

made a statement that he does not want to proceed further with the complaint concerned. Consequently, this Court does not deem it fit and proper to issue notice upon the workman concerned.

7. In summa, there is merit in this petition, and, the same is allowed. The complaint drawn against the petitioner herein, and, as becomes embodied in Annexure P-9 is quashed, and, set aside, and, also all consequential proceedings as arise therefrom are quashed, and, set aside.

28.03.2022	(SURESHWAR THAKUR)
<i>ithlesh</i>	JUDGE
Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No