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

CWP-11819-2022

Date of Decision: 27.05.2022

Manveer Singh

..... Petitioner

Versus

M/s Swastic Auto Mech. Pvt. Limited and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. A.P.Bhandari, Advocate,
for the petitioner.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Articles 226/227 of the Constitution of India seeking issuance of a writ of certiorari for quashing of the order dated 25.03.2022 (Annexure P-6) passed by respondent No.2, as the same is not in accordance with law and thus, deserves to be set aside and the petitioner is entitled for all the wages as per award passed on 16.03.2018 by respondent No.2.

It is submitted by the learned counsel for the petitioner that the service of the petitioner was wrongly terminated on 02.08.2016. Regarding the said fact, the petitioner had sought a reference to the Labour Court. The Labour Court had passed an ex-parte award on 16.03.2018. However, the said award has been set aside by the Labour Court, vide order dated 25.03.2022. Hence, there has been an inordinate delay in restoring the proceedings before the Labour Court. Despite that the cost imposed by the Labour Court upon the other side is a meager amount of Rs.5,000/-. If at all

the ex-parte order was to be set aside and the matter was to be taken up again by the Labour Court, after such a long time, the petitioner-workman should have been adequately compensated by the Labour Court by awarding cost of an amount of Rs.3,00,000/-. Learned counsel has further submitted that this demand of exemplary cost would be justified because after passing of the award, the petitioner-workman had become entitled to back wages. Therefore, the back wages for the period elapsed between the date of passing of the ex-parte award till the date of setting aside of the same has to be paid to the petitioner-workman. Carrying forward his argument, learned counsel for the petitioner has submitted that even the setting aside of the ex-parte award is not justified on the facts of this case. The respondent-employer was duly served. Not only that, even its counsel had appeared before the Labour Court. Therefore, it was fault of the respondent-employer only, who deliberately avoided the appearance before the Court. Hence, the Labour Court should not have set aside the ex-parte award.

Having heard learned counsel for the petitioner, this Court does not find any substance in the argument of the learned counsel for the petitioner. So far as the setting aside of the ex-parte award is concerned, the record shows that the respondent-employer had appeared before the Labour Court. As per the assertion of the respondent-employer, they had engaged a counsel named in the order and was given authority to appear before the Labour Court. However, on 28.11.2017 he omitted his appearance. Accordingly, the respondent-employer was proceeded ex-parte and the Labour Court proceeded to pass ex-parte award against the respondent-

employer on 16.03.2018. When the proceedings of execution were initiated, the respondent-employer had filed an application for setting aside the ex-parte award on 18.05.2018 itself. This shows that there has not been any inordinate delay in seeking setting aside of the ex-parte award. The promptness in moving the application for setting aside the ex-parte award also lends credence to the assertion of the respondent-employer that their advocate before the Labour Court had not only not appeared before that Court, but had also not even informed them qua the proceedings of the Labour Court or the decision thereof. In view of this factual situation, the respondent-employer was fully justified in seeking setting aside of the ex-parte award. This Court also finds that there exists a sufficient justification for setting aside of the ex-parte award. The emphasis has to be to ensure hearing to all parties and not to exclude anyone. The Labour Court has not committed any illegality in passing the order of setting aside the ex-parte award.

Although, learned counsel for the petitioner has submitted that that the compensation awarded to the petitioner-workman for the time consumed in decision on an application moved for setting aside the ex-parte award is too meager an amount; and that it should be enhanced proportionate to the back wages to which the petitioner would have been entitled for the said duration, however, this Court does not find any force in this argument as well. The cost to be awarded in case of an order being passed by the Court is in discretion of the Labour Court. The petitioner-workman cannot claim any cost as a matter of right. Otherwise also, the Labour Court has

sufficiently compensated the petitioner-workman by awarding an amount of Rs.5,000/- as a cost. The argument of the learned counsel for the petitioner to make the cost as relatable to the possible payment of the back wages is totally misconceived. The assertion of the petitioner-workman that since the ex-parte award had actually come in existence, therefore, the petitioner-workman had got a right to get the back wages for the said period, is totally non-sustainable. Once the ex-parte award is set aside, the same relates back to the date of passing of the ex-parte award. The rights of the party; which might have accrued to it on account of passing of the ex-parte award, are rendered nonest on setting aside of the said award. Hence, the petitioner-workman does not get any benefit, as such, out of the award which already stands set aside. Needless to say; that as an end-result of the litigation, the petitioner-workman may or may not even be found entitled to anything. Therefore, it would be totally unjustified to punish the respondent-employer, at this stage; by imposing a liability upon them only because of the time consumed in the process of the Labour Court.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

(RAJBIR SEHRAWAT)
JUDGE

27.05.2022
adhikari

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No