

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

219(5)

CWP No.13473 of 2017 (O&M)
DATE OF DECISION: 03rd AUGUST, 2022

Anil Kumar

.... **Petitioner**

Versus

State of Haryana and others

.... **Respondents**

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Rajeev Sharma, Advocate,
for the petitioner.

Mr. Harish Rathree, Deputy Advocate General, Haryana.

Mr. Hitesh Pandit, Advocate
for respondent No.4.

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RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing the award dated 16.05.2016 (Annexure P-1).

While referring to the order passed by the Labour Court, learned counsel for the petitioner has submitted that, in the first instance the petitioner was proceeded against ex-parte by the Labour Court; without effecting proper service upon the petitioner. When the petitioner came to know about the ex-parte award, an application for setting aside the order of ex-parte proceedings against the petitioner and the consequent award, was made before the Labour Court. However, the same has been rejected by observing that after the passing of the award,

the Labour Court has become *functus officio* and could not have entertained the application. Learned counsel has relied upon the reference made to a larger Bench by Hon'ble the Supreme Court in the case of ***M/s Haryana Suraj Malting Ltd. Versus Phool Chand, (2012) 8 SCC 579***, and contended that the aforesaid proposition of law of the Labour Court becoming *functus officio* has been further considered and clarified by Hon'ble the Supreme Court in a larger Bench judgment rendered in ***M/s Haryana Suraj Malting Ltd. Versus Phool Chand, Civil Appeal No.5650 of 2018 (arising out of SLP (C) No.6091 of 2010), decided on 18.05.2018***, and it has been held that the Labour Court does not become *functus officio*, even beyond 30 days of the publication of its award as far as the setting aside of the ex-parte award is concerned. Despite the award passed by the Labour Court having become enforceable, it has the power to set aside the ex-parte award. Accordingly, it is submitted that the order passed by the Labour Court deserves to be set aside and the Labour Court deserves to be directed to consider the application of the petitioner for setting aside the ex-parte award; on merits.

On the other hand, learned counsel for the respondents has submitted that the application has rightly been rejected by the Labour Court. No interference by this Court is called for.

Having heard the counsel for the parties, this Court finds substance in the arguments raised by the counsel for the petitioner. The aspect whether the Labour Court become *functus officio* after the award become enforceable has been specifically considered by Hon'ble the Supreme Court in the case of ***M/s Haryana Suraj Malting Ltd. (supra)*** and it has been held that the Labour Court does not become *functus*

officio; so far as the jurisdiction for setting aside the ex-parte proceedings/award is concerned. Therefore, in view of the clarification of the law point by Hon'ble the Supreme Court, the Labour Court is required to apply its mind and to consider on merit the application moved by the petitioner for setting aside the ex-parte proceedings/award. For that purpose, the impugned order passed by the Labour Court deserves to be set aside.

In view of the above, the impugned order is set aside. The matter is remanded to the Labour Court concerned for considering the application moved by the petitioner for setting aside the ex-parte proceedings/award on merits.

The parties may appear before the Labour Court concerned on 30.11.2022.

Disposed of in the above said terms.

The pending miscellaneous application, if any, is also disposed of as such.

03rd AUGUST, 2022
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(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>