

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

223

CWP No.20138 of 2017 (O&M)
DATE OF DECISION : 13th MAY, 2022

Ishwar Singh

.... **Petitioner**

Versus

Presiding Officer, Labour Court, Ambala & others

.... **Respondents**

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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Present : Mr. Ishan Cooner, Advocate for
 Mr. J. S. Cooner, Advocate the petitioner.

Mr. A. S. Virk, Advocate for respondents No.2 &3.

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RAJBIR SEHRAWAT, J. (Oral)

The petitioner has filed this petition under Articles 226/227 of the Constitution of India, praying for issuance of a writ in the nature of certiorari for quashing the impugned award dated 09.02.2012 (Annexure P-1) passed by Labour Court, Ambala and for issuance of writ in the nature of mandamus directing the Labour Court to decide the industrial dispute on merits; along with certain other prayers.

It is submitted by counsel for the petitioner that the reference has been answered against the petitioner in his absence. However, the decision of the reference in his absence was not justified by any means. Referring to the daily orders passed by the Labour Court; the counsel for the petitioner has submitted that after framing of the issues the case was fixed for 24.11.2011 but the file was taken up by the Presiding Officer of the court on 09.11.2011 because he was to proceed on leave. The case was adjourned for 12.01.2012. Again the case was

taken up by the Presiding Officer in absence of the parties on 06.01.2012 because he was to proceed on leave. This case was again taken up in absence of the parties and the case was adjourned to 09.02.2012. The petitioner was not informed about this date by any means of communication. On 09.02.2012 the court took up the file and dismissed the case for want of prosecution, while answering the reference against the petitioner-workman.

The counsel for the respondent has not been able to dispute the above said factual situation.

Dehors the merits of the case, this court is of the considered opinion that the petitioner has not been granted an appropriate opportunity of hearing while dismissing his case for want of prosecution and answering the reference against him. Perusal of the *zimini* orders passed by the Labour Court shows that the case was taken up for hearing only on one date; even that; after the case was adjourned in absence of the parties. The order passed by the Labour Court does not even specifically say that the petitioner was absent despite having been informed about the date of hearing fixed for that date. By any means, the petitioner deserves to be granted effective opportunity of putting on record the material in support of his case, which has been denied to him on account of some preoccupations on the part of the Presiding Officer of the Labour Court. Hence, it would be appropriate that the matter is remanded to the Labour Court for decision of the matter, on merits, after granting opportunity of hearing to both the sides, but in accordance with law.

The counsel for the respondent has also pointed out that although the award was passed on 09.12.2012, but the present petition has been filed only in the year 2017, therefore, there is delay on the part of the petitioner in raising issue . However, pursuant to previous order

passed by this court the petitioner has already filed affidavit which explains the reason for not approaching the court in time. Therefore, while the petitioner cannot be put to disadvantage only for coming late to this court, yet the respondent also deserves to be protected qua any consequences for the period which the petitioner consumed before approaching this court after the award.

In view of the above, the matter is remanded back to the Labour Court for adjudication of the same on merits, after affording opportunity of hearing to both the parties.

However, it is clarified that if the Labour Court finds merit in the case of the petitioner after due adjudication and the petitioner is found entitled to any relief, then the Labour Court would be free to take into consideration the aspect of the delay qua any relief to be granted after adjudication of the dispute in accordance with law.

Disposed of.

The parties are directed to appear before the Labour Court on 19.07.2022.

All the pending applications, if any, stand disposed of accordingly.

13th MAY, 2022
'raj'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

No

Whether Reportable:

Yes

No