

112

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-15399-CWP-2023 and
CWP-7310-2023 (O/M)
Date of decision : 14.09.2023

M/s Blue Stampings and Forgings Limited

..... Petitioner

Versus

Rajiv Mandal and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Sanjay Jain, Advocate
for the petitioner.

-. -

-. -

HARSH BUNGER, J.

1. Petitioner (M/s Blue Stampings and Forgings Limited) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of certiorari for quashing the impugned order dated 17.01.2023 (Annexure P-1), dismissing the application filed by petitioner-Company seeking setting aside of ex-parte proceedings dated 21.03.2017 against it (petitioner-Company herein) as well as quashing the ex-parte Award dated 10.08.2017 (Annexure P-2), passed by the Industrial Tribunal, Labour Court-III, Faridabad (respondent No. 2 herein). It is apposite to state here that vide ex-parte Award dated 10.08.2017, the reference was answered ex-parte in favour of respondent No. 1-workman herein and he was held entitled to reinstatement in service with continuity of service with 50% back wages as per last drawn salary.

2. Briefly, respondent No. 1-workman herein raised an industrial dispute regarding illegal termination of his services, which was referred to the Industrial Tribunal-cum-Labour Court-III, Faridabad (hereinafter referred to as 'the Tribunal below') for adjudication.

Respondent No. 1-workman herein filed his claim petition claiming that he was appointed as a Press Man in the year 2004 and later on, he was asked to perform the duties of Dori Man and thereafter, he was designated as a Hammer Man and his last drawn salary was Rs. 12,000/- per month.

As per respondent No. 1-workman herein, he was having his provident fund account duly sanctioned by the concerned department being a regular employee and his work and conduct was satisfactory during his service tenure. Respondent No. 1-workman claimed that his services were terminated on 17.02.2015 without any prior notice or intimation and in violation of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') as neither one month notice nor any pay in lieu thereof and retrenchment compensation was paid to him at the time of termination of his services. Accordingly, respondent No. 1-workman prayed that he be reinstated with continuity of service and full back wages.

3. The petitioner-Company was proceeded against ex-parte, vide order dated 21.03.2017, passed by Tribunal below.

4. Respondent No. 1-workman in support of his claim before the learned Tribunal below, examined himself as WW1 and also examined his co-workers, namely, Topesh Mandal as WW2 and Harcharan Kumar as WW3.

5. Since ex-parte evidence led by respondent No. 1-workman herein

had gone unrebutted and unchallenged, accordingly, the learned Tribunal below relied upon the same and, vide impugned Award dated 10.08.2017 (Annexure P-2), it held as follows :-

“7. In view of the ex parte evidence led by the workman, this Court is convinced that the workman had been continuously working with the respondent-management since the year 2004 upto 17.2.2015 when his services were terminated in violation of Section 25-F of the Act inasmuch as neither one month's notice was given to him nor any pay in lieu thereof and retrenchment compensation was paid to him. His last drawn salary was Rs. 12,000/- p.m.

8. Accordingly, the reference is answered ex-parte in favour of the workman holding therein that he is entitled to be reinstated in service with continuity of service with 50% back wages to be calculated on his last drawn salary. Copies of the award be sent to the authorities concerned and the file be consigned to records after due compliance.”

6. It appears that subsequently, the petitioner-Company herein filed an application for setting aside of ex-parte proceedings dated 21.03.2017 as well as ex-parte Award dated 10.08.2017 (Annexure P-2) wherein the following averments were made :-

“2. That on 21.03.2017, the Hon'ble Court proceeded ex-parte proceedings against the applicant management on the basis of postal receipt. As per the record, the Hon'ble Court sent notice for appearance to the respondent through

registered post vide registered receipt dated 14.02.2017. As per the General Clauses Act Section 27 presumption of delivery of registered post deemed to be delivered after completion of 30 days in the present case. The Hon'ble Court without verifying the track report or consider general clauses act. The Hon'ble Court proceeded ex-parte proceeding dated 21.03.2017 in violation of principle of natural justice. The notice for proceeding dated 21.03.2017 never received to the applicant management therefore management could not appear before the Hon'ble Court.

3. That the applicant never served any summon from this Hon'ble Court for 21.03.2017.

4. That on 19.12.2017 the Management visited in the office of the Labour Inspector and came to know about the ex-parte award. Thereafter management engaged Sh. P.L. Sharma and authorized him to appear and inspect the court file. Sh. P.L. Sharma applied certified copy of the proceeding. After the reading of the certified copies management came to know that the management proceeded ex-parte proceeding vide order dated 21.03.2017 and Hon'ble Court passed an ex-parte award vide award dated 10.08.2017.

5. That the management never received any summon before this Hon'ble Court till date therefore management could not appear before this Hon'ble Court.”

With the aforesaid averments, the petitioner-Company herein sought setting aside of the ex-parte proceedings dated 21.03.2017 as well as

ex-parte Award dated 10.08.2017 (Annexure P-2).

7. The learned Tribunal below, vide impugned order dated 17.01.2023 (Annexure P-1), dismissed the application (Annexure P-3), seeking setting aside of the ex-parte proceedings and also the ex-parte award, by holding as under :-

“8. In the present application, it has been mentioned that the respondent-management never received any summon from this Court for 21.03.2017. It has also been pleaded that on 19.12.2017 management visited the office of Labour Inspector and then came to know about ex-parte award. However, the averments made in the application have not been supported by any affidavit of the concerned person of the respondent-management. Even, it is not specifically mentioned in the application that who had visited the office of Labour Inspector on 19.12.2017 and came to know about the ex-parte award passed by the Labour Court in this case. Applicant-respondent has failed to show any justified reason for non appearance of respondent on 21.03.2017. Though it has been alleged by the respondent that the notice for the proceeding dated 21.03.2017 was never received by the respondent but nothing has been brought on record which could rebut the presumption of service of notice upon the respondent. Hence this Court finds no merit in the application and same is hereby dismissed. There is no order as to costs.”

8. In the aforementioned circumstances, the petitioner-Company herein has filed the instant writ petition before this Court.

9. Learned counsel for the petitioner-Company herein contends that it (petitioner-Company herein) was wrongly proceeded against ex-parte, vide order dated 21.03.2017 by presuming the service after the lapse of 30 days. It is submitted that the learned Tribunal below has failed to appreciate that the petitioner-Company herein had never received any notice/summons from the learned Tribunal below. Accordingly, it is prayed that the impugned order dated 17.01.2023 (Annexure P-1) as well as impugned Award dated 10.08.2017 (Annexure P-2) be set aside.

10. I have heard learned counsel for the petitioner-Company and have perused the paper book with his able assistance.

11. Concededly, respondent No. 1-workman herein had raised an industrial dispute, which was referred to the learned Tribunal below for adjudication, wherein notice/summons was sent to the petitioner-Company herein.

12. A perusal of the impugned order dated 17.01.2023 (Annexure P-1) would reveal that the learned Tribunal below had sent notice/summons to petitioner-Company herein for appearance, vide registered post (Postal receipt dated 14.02.2017) and the petitioner-Company herein was proceeded against ex-parte on 21.03.2017 by the learned Tribunal below by passing the following order :-

*“AR for workman has placed on record
postal receipt dated 14.02.2017 which shows that
the summons had been sent to the respondent by*

registered post. However, the postal article containing the summons has not been received back by this Court. A period of 30 days from the date of issue of the summons has already expired. Therefore, it is hereby declared that the summons had been duly served on the respondent as envisaged under Order 5 Rule 9 (5) CPC.

Case has been called several times since morning. But none has appeared on behalf of the respondent. Sufficient wait has been made. It is already 2.30 P.M. No further wait is justified. Therefore, the respondent is proceeded against ex-parte. Now, the case is adjourned to 18.04.2017 for ex-parte evidence of workman.”

13. I have gone through the contents of application (Annexure P-3), seeking setting aside of order dated 21.03.2017 whereby the petitioner-Company was proceeded ex-parte as well as the ex-parte award. A perusal of the same would manifest that only general averments have been made therein about the date on which the petitioner-Company herein came to know about the ex-parte award. From the reading of para 4 of application, even the name of the person who visited the office of Labour Inspector on 19.12.2017, is not forthcoming. Infact, the application filed by petitioner-Company herein, seeking setting aside of ex-parte proceedings and ex-parte award, was not even supported by the affidavit of the authorized person of petitioner-Company herein.

14. The Petitioner-Company has brought nothing on record of this case (*except its mere assertion*) to show that the notice/summon issued by the Tribunal below was never received by it.

15. In ***Gujarat Electricity Board and Anr. v. Atmaram Sungomal Poshani, AIR 1989 Supreme Court 1433***, Hon'ble the Supreme Court examined the issue regarding the presumption of service of letter sent by registered post under Section 27 of the General Clauses Act, 1897 and held as under :

"There is a presumption of service of a letter sent under registered cover.... No doubt the presumption is rebuttable and it is open to the party concerned to place evidence before the court to rebut the presumption by showing that the address mentioned on the cover was incorrect or that the postal authorities never tendered the registered letter to him.....The burden to rebut the presumption lies on the party challenging the factum of service." (Emphasis added)

In ***M/s. Madan and Co. v. Wazir Jaivir Chand, 1988 (2) RCR (Rent) 654***, Hon'ble the Apex Court observed as under: -

"6. We are of opinion that the conclusion arrived at by the courts below is correct and should be upheld. It is true that the proviso to (i) of section 11(1) and the proviso to section 12(3) are intended for the protection of the tenant. Nevertheless it will be easy to see that too strict and literal a compliance of their language would be impractical and unworkable. The proviso insists that before any amount of rent can be said to be in arrears, a notice has to be served through posts. All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgement due or otherwise) containing the

tenant's correct address. Once he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the addressee under Section 27 of the General Clauses Act. Under the rules of the post office, the letter is to be delivered to the addressee or a person authorised by him. Such a person may either accept the letter or decline to accept it. In either case, there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by, the addressee. The difficulty is where the postman calls at the address mentioned and is unable to contact the addressee or a person authorised to receive the letter. All that he can then do is to return it to the sender. The Indian Post Office Rules do not prescribe any detailed procedure regarding the delivery of such registered letters. When the postman is unable to deliver it on his first visit, the general practice is for the postman to attempt to deliver it on the next one or two days also before returning it to the sender. However, he has neither the power nor the time to make enquiries regarding the whereabouts of the addressee; he is not expected to detain the letter until the addressee chooses to return and accept it; and he is not authorised to affix the letter on the premises because of the assessee's absence. His responsibilities cannot, therefore, be equated to those of a process server entrusted with the responsibilities of serving the summons of a Court under Order 5 of the C.P.C. The statutory provision has to be interpreted in the context of this difficulty

and in the light of the very limited role that the post office can play in such a task. If we interpret the provision as requiring that the letter must have been actually delivered to the addressee, we would be virtually rendering it a dead letter. The letter cannot be served where, as in this case, the tenant is away from the premises for some considerable time. Also, an addressee can easily avoid receiving the letter addressed to him without specifically refusing to receive it. He can so manipulate matters that it gets returned to the sender with vague endorsements such as "not found", "not in station", "addressee has left" and so on. It is suggested that a landlord, knowing that the tenant is away from station for some reasons, could go through the motions of posting a letter to him which he knows will not be served. Such a possibility cannot be excluded. But, as against this, if a registered letter addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has gone or to deliver them to some other person authorised by him. In this situation, we have to choose the more reasonable, effective, equitable and practical interpretation and

that would be to read the words "served" as "sent by post", correctly and properly addressed to the tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation, we think, will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by, the tenant."

In ***C.C. Alavi Haji v. Palapetty Muhammed and Anr., 2007(3)***

RCR (Criminal) 185, Hon'ble the Apex Court held that Section 27 of General Clauses Act, 1897 and Section 114 [illustration (f)] of the Evidence Act, give rise to a presumption that the service of a notice has been effected when it is sent to the correct address by registered post. It was held as under :-

"13. According to Section 114 of the Act, read with illustration (f) thereunder, when it appears to the Court that the common course of business renders it probable that a thing would happen, the Court may draw presumption that the thing would have happened, unless there are circumstances in a particular case to show that the common course of business was not followed. Thus, Section 114 enables the Court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Consequently, the court can presume that the common course of business has been followed in particular cases. When applied to communications sent by post, Section 114 enables the Court to

presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. But the presumption that is raised under Section 27 of the G.C. Act is a far stronger presumption. Further, while Section 114 of Evidence Act refers to a general presumption, Section 27 refers to a specific presumption. For the sake of ready reference, Section 27 of G.C. Act is extracted below :

"27. Meaning of service by post. - Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post".

14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of

business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement "refused" or "not available in the house" or "house locked" or "shop closed" or "addressee not in station", due service has to be presumed. [Vide Jagdish Singh v. Natthu Singh, AIR 1992 Supreme Court 1604; State of M.P. v. Hiralal and Ors., (1996)7 SCC 523 and V. Raja Kumari v. P.Subbarama Naidu and Anr. 2004(4) RCR (Criminal) 933 : 2005(1) Apex Criminal 58 : (2004)8 SCC 774]... ”

16. In view of the above, it was the responsibility of the Petitioner-Company to prove by adducing evidence of the official of the concerned Post Office that the said letter had not been delivered to them. However, for the reasons best known to the Petitioner-Company, such an exercise has not been undertaken. It has also not shown by the Petitioner-Company that the address of the Petitioner-Company was wrongly mentioned on the registered post or office of the Petitioner-Company had shifted.

17. In the absence of any material to dislodge the presumption of service of notice/summon upon the Petitioner-Company, the order dated 21.03.2017 whereby Petitioner-Company was proceeded against ex-parte cannot be set aside on mere assertion of the petitioner-company that it never received the notice/summon.

18. Since the Petitioner-Company has failed to show that the Tribunal below was wrong in proceeding ex-parte against it, consequently no interference is required to be made in the ex-parte Award dated 10.08.2017 (Annexure P-2).

19. It is required to be noticed here that Petitioner-Company has filed an application (C.M. No. 15399 of 2023) in the instant writ petition for placing on record Annexures P-4 to P-14. Annexures P-4 to P-11 are true copies of member profile EPF Portal, UAN Status, Form-19 of EPF withdrawal, Form-10C of EPS Withdrawal, member profile proof of joining GD Associate, Form 13 PF Transfer, Form 31 for Loan, Employer certificate, respectively; regarding person named Rajesh/Rajeev Mandal and Annexure P-12 is e-pehchan card of Rajiv Mandal. Annexure P-13 is a call letter dated 18.08.2023 written to Rajesh alias Rajeev Mandal sent by Petitioner-Company herein calling upon him to join duty and Annexure P-14 is a photocopy of registered post. It is observed here that the Annexures P-4 to P-12 were required to be produced and proved in accordance with law by petitioner-Company in its evidence before the Tribunal below, however petitioner-company failed to appear before the Tribunal below and was proceeded against ex-parte. Further, Annexure P-13 which is a call letter dated 18.08.2023 written to Rajesh alias Rajeev Mandal sent by Petitioner-Company, calling upon him to join duty; would show that during the pendency of the application seeking setting aside ex-parte proceedings/ex-parte Award before the Tribunal below, the petitioner-company had called upon the respondent-workman to join duty in terms of ex-parte Award dated 10.08.2017 (Annexure P-2). Infact the letter dated 18.08.2023 would show that the petitioner-company has accepted the ex-parte Award dated 10.08.2017 (Annexure P-2). Thus, the aforesaid Annexures P-4 to P-14 also do not advance the case of the petitioner-Company, accordingly the application

(CM-15399-CWP-2023) for placing on record Annexures P-4 to P-14 in the instant writ petition is dismissed.

20. In view of the above discussion, I do not find any merit in the instant writ petition and the same is dismissed.

21. All pending application(s), if any, shall stand closed.

(HARSH BUNGER)
JUDGE

14.09.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No