

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

CWP-18772-2021

Date of decision : 25.04.2023

Premier Motor Garage

...Petitioner

Vs.

Ram Bali Yadav and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Vikas Singh, Advocate for the petitioner.

MANOJ BAJAJ, J.

Petitioner-management has filed this writ petition under Article 226 Constitution of India seeking a writ of certiorari for setting aside an *ex parte* award dated 28.02.2018 (Annexure P-3) passed by respondent No.2, whereby workman/respondent No.1 has been reinstated in service with continuity along with 40 % back-wages. Further, the order dated 15.11.2019 (Annexure P-7) passed by respondent No.2 has been challenged, whereby the application by the petitioner for setting aside the *ex parte* award has been dismissed.

Learned counsel submits that the respondent No.1-Ram Bali Yadav was engaged as Helper in the petitioner's garage, who without any authorization drove a vehicle down from a ramp in workshop meant for washing the vehicles and hit another car as well as the wall, resulting in loss to the petitioner-management, therefore, for this misconduct, a departmental inquiry was conducted against him, wherein charge against him was proved. Learned counsel submits that as a punishment, the services of respondent No.1 were terminated and recovery of Rs.1,40,000/- from his dues was also ordered. He submits that the workman raised an industrial dispute, which led the parties

to the Labour Court-cum-Industrial Tribunal, U.T.Chandigarh and through the ex parte award dated 28.02.2018, workman has been ordered to be reinstated in service with 40% backwages. Learned counsel has argued that the ex parte award dated 28.02.2018 came to the knowledge of the petitioner only in June-July, 2018 when notice in the execution proceeding was received, so an application was moved on 25.02.2019 before the Industrial Tribunal for setting aside the order dated 05.09.2017 ordering ex parte proceedings against management, as well as the ex parte award dated 28.02.2018, but the same has also been dismissed vide order dated 15.11.2019. He submits that the inquiry conducted against the workman was fair and proper and the charge against him was proved by examination of witnesses, however, the Labour Court, while answering the reference in favour of the workman has erroneously held the inquiry to be improper. Learned counsel argued that during inquiry, no suggestion was put to the management-witnesses that he drove the vehicle under the instructions of the workshop Manager. He submits that in case the ex parte award is set aside and the petitioner is allowed to adduce its evidence, it will not result in any miscarriage of justice to the workman. He prays that the writ petition be allowed and the impugned decisions be set aside.

During the course of hearing, it is not disputed by learned counsel that pursuant to the impugned award dated 28.02.2018, the workman was never reinstated, who has now attained the age of superannuation, but according to Mr. Vikas Singh, learned counsel in the execution proceedings, an amount of Rs.1,33,608/- towards the relief of backwages stands paid to the workman.

After hearing learned counsel and analyzing the material on record, this Court finds that pursuant to the notice in the reference, the

authorized representative on behalf of petitioner/management appeared before the Labour Court on 17.12.2015, and thereafter, the case was adjourned repeatedly for the purpose of filing written statement. Since no written statement was filed for approximately five consecutive dates of hearing, more time was granted to the petitioner/management on 10.10.2016 subject to payment of costs of Rs.500/-. The management though deposited the costs, but further sought time for filing written statement and the said prayer was also accepted, however, the management kept on buying time by depositing the costs, and never filed its written statement.

Finally, on 05.09.2017 as no one appeared on behalf of the management, therefore, the Labour Court-cum-Industrial Tribunal, U.T.Chandigarh ordered ex parte proceedings against it.

This background makes it abundantly clear that since December 2015, the management had been participating in the proceedings, but it decided to disengage itself with the industrial dispute raised by the workman. Consequently, the Labour Court vide ex parte award answered the reference in favour of the workman. Apart from the above, the management has categorically mentioned in para 20 of the application dated 23.07.2019 that it acquired the knowledge of ex parte award dated 28.02.2018, when summons issued by the executing Court were received in June-July, 2018 and the application for setting aside the ex parte proceedings/award was filed.

Thus, the above dates and events leave no room for any doubt that the petitioner has failed to justify the reason for abandoning the case proceedings before the labour Court, Chandigarh, much less sufficient explanation behind each and every day's delay in seeking intervention of the

Labour Court for setting aside the ex parte award dated 28.02.2018. A careful reading of the order dated 15.11.2019 shows that the Labour Court has minutely examined the conduct of the management by noticing number of adjournments along with dates of hearing while rejecting the application and the decision is based upon correct appreciation of facts and law on the subject. Resultantly, this Court does not find any valid ground to interfere with the impugned order dated 15.11.2019.

Now while examining the case on merits, it comes out that the workman was removed from service pursuant to the inquiry report dated 18.03.2015 (Annexure P-2) holding him guilty of misconduct that he drove down a vehicle from the ramp in the workshop and hit another car and wall, which resulted in loss to the management. Admittedly, in response to the charge sheet dated 18.11.2014, the workman did not dispute the incident, who explained that he drove the vehicle on the instructions of the Works Manager, namely, Hari Krishan and upon examining the statement of Works Manager (MW-1) recorded during the inquiry proceedings, it comes out that this witness clearly stated that the workman was working as service man and to drive the vehicle on the ramp and out from the ramp was not his duty, but he drove out the Ambassador car from ramp and hit it with customer's car make Lancer, which was parked in the workshop. This evidence makes it amply clear that the vehicle was taken on the ramp by some other employee (authorized driver), but the said employee or any other authorized driver did not drive out the vehicle from the ramp to the floor. Thus, in this backdrop, it would be unfair to hold respondent No.1 alone as negligent in causing loss to the petitioner. A perusal of the impugned award shows that the Labour Court has rightly discarded the

inquiry report being improper and unfair on the ground of violation of principles of natural justice as the workman was neither provided any assistance from his co-employee during inquiry proceedings, nor the defence set up by him that he drove on the instructions of Hari Krishan was allowed to be put to the management witnesses during their cross examination.

Resultantly, in view of the above discussion, this Court has no hesitation in holding that the findings arrived at by the Labour Court on the material issues are based upon correct appreciation of evidence on record and the impugned award dated 28.02.2018 does not call for any interference by this Court in writ jurisdiction.

Petition is dismissed.

(MANOJ BAJAJ)
JUDGE

25.04.2023
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No