

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

CWP-23296-2012 (O&M)
Date of decision : 12.09.2023

VARINDER DHINGRA

...Petitioner

Versus

THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL
-CUM-LABOUR COURT, U.T., CHANDIGARH AND ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Davinder Lubana, Advocate
for the petitioner.

Respondents no.2 and 3 *ex-parte*.

HARSH BUNGER, J. (ORAL)

Petitioner (Varinder Dhangra) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking quashing of order dated 16.02.2012 (Annexure P-1); dismissing, an application filed by him, for restoration of application (LCA No.37 of 2004) filed under Section 33-C(2) of the Industrial Disputes Act, 1947 (here-in-after referred to as 'the Act, 1947') which was dismissed in default by the learned Labour Court, U.T., Chandigarh vide its order dated 21.07.2006 (Annexure P-6).

2. Briefly, the petitioner filed an application under Section 33-C of the Act, 1947, seeking recovery of arrears of salary to the tune of Rs.91,000/- i.e. from April-2002 to April-2003 plus incentive of that period before the learned Labour Court, U.T., Chandigarh, which came to be registered as ***LCA No.37 of 2004***. The said application was dismissed in

default by the learned Labour Court, U.T. Chandigarh vide its order dated 21.07.2006, by observing as under :-

“No evidence of the workman is present. In fact none has put in appearance on behalf of workman, though the case has been called several times since morning. It is 3.40 p.m. I have no other option but to dismiss the present application. Hence the present application of the applicant/workman under Section 33-C(2) of the I.D. Act is dismissed in default. File be consigned.”

3. Thereafter, the present petitioner filed an application (Annexure P-4) for restoration of application (**LCA No.37 of 2004**) filed under Section 33-C(2) of the Act, 1947, which was accompanied by an application (Annexure P-5) seeking condonation of delay in filing the said application for restoration.

4. The learned Labour Court, U.T. Chandigarh, vide impugned order dated 16.02.2012 dismissed the afore-said applications (Annexures P-4 and P-5) by holding that the petitioner had failed to explain the delay of one year and three months in filing the application for restoration of main application.

5. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition before this Court.

6. Notice of motion was issued in this case. However, the contesting respondents No.2 and 3 did not appear and accordingly they were ordered to be proceeded against *ex-parte* vide order dated 26.07.2022, passed by the Co-ordinate Bench of this Court.

7. Learned counsel for the petitioner submits that the application under Section 33-C of the Act, 1947 filed by the petitioner was pending

consideration before the learned Labour Court, U.T., Chandigarh; however, on 21.07.2006, due to some un-avoidable circumstances, his representative could not put in appearance before the Labour Court below as he had met with an accident and he also did not inform the petitioner in that regard; accordingly, the afore-said application under Section 33-C of the Act, 1947 came to be dismissed in default on that very day. It is the pleaded case of the petitioner that he came to know about the afore-said order dated 21.07.2006 about a week prior to the date when he filed an application for restoration, by submitting that he had visited Chandigarh and went to the learned Labour Court, U.T. Chandigarh, so as to confirm regarding the status of his case and then, he was surprised to notice that his petition/application had been dismissed in default on 21.07.2006. Thereafter, the petitioner is stated to have approached his representative, who informed that since he had met with road accident and was confined to bed for a considerable period, accordingly, he could not appear in the case and also could not intimate the status of the case to the petitioner. Learned counsel for the petitioner submits that there were sufficient grounds for the representative of the petitioner for not appearing before the learned Labour Court, U.T. Chandigarh, on the date fixed i.e. 21.07.2006 as he had met with an accident.

8. Learned counsel for the petitioner, while referring to para 9 of the impugned order dated 16.02.2012 passed by the learned Presiding Officer, Industrial Tribunal and Labour Court, Union Territory, Chandigarh, submits that the factum of injuries received by Sh. Anirudh Kush, representative of the petitioner before the learned Labour Court, U.T., Chandigarh, was established from the affidavit of the

petitioner supported by the copy of F.I.R (Exhibit W-1) and also the copy of the Award dated 17.03.2007 passed by the Motor Accident Claims Tribunal, Panchkula and submitted that sufficient ground was made out for condonation of delay in filing the application for restoration of main application under Section 33-C of the Act, 1947 and also for restoration of the case. It is submitted by the counsel for the petitioner that non-appearance of representative of the petitioner before Labour Court was wholly un-intentional and not in any case to derive any undue benefit. It is submitted that the Labour Court below has erred in law in exercising its jurisdiction and by ignoring the well settled position in law that case should be decided on merits rather than mere technicalities. Accordingly, it is prayed that the instant writ petition may be allowed and impugned order dated 16.02.2012 (Annexure P-1) and also the order dated 21.07.2006 (Annexure P-6) passed by learned Labour Court, U.T. Chandigarh be set aside and the matter be remitted to the learned Labour Court, U.T. Chandigarh, for deciding the same afresh on merits in accordance with law.

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

10. A perusal of the paper book would reveal that the application under Section 33-C of the Act, 1947 filed by the petitioner came to be dismissed in default on 21.07.2006 (Annexure P-6) on account of non-appearance of the representative of the petitioner before the Labour Court below. The reason for non-appearance of Authorized Representative of the petitioner is stated that said Authorized Representative of petitioner had met with an accident and was thus confined to bed. It is the case of the petitioner that he was solely dependent upon the advise of his representative

as regards the progress of the case and since, his representative had met with an accident, accordingly Authorized Representative of the petitioner could not appear before the Labour Court. The factum of accident was duly proved before the learned Labour Court below by way of submitting an affidavit of the petitioner himself along with copy of the FIR (Ex. W-1) and also the copy of the Award passed by learned Motor Accident Claims Tribunal, Panchkula. Accordingly, I am of the considered view that the petitioner had shown sufficient grounds for the non-appearance of his representative before the learned Labour Court, U.T. Chandigarh, on the date fixed i.e. 21.07.2006 and also the delay in filing the application, seeking restoration of the case.

11. It is the settled proposition of law that every Court of law must make an endeavour to decide the *lis* between the parties on its merits instead of technicalities, including the delay etc., so as to do a complete and substantial justice between the parties. The *lis* has to be decided on merits, but only after granting reasonable opportunities to both the parties.

12. In ***Laxmibai v. Bhagwantbuva, 2013(1) RCR (Civil) 895***, Hon'ble Supreme Court made the following observation:

“...When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred and the courts may in the larger interests of administration of justice may excuse or overlook a mere irregularity or a trivial breach of law for doing real and substantial justice to the parties and pass orders which will serve the interest of justice best...”

13. In view of the afore-mentioned facts and circumstances, the present petition is allowed and impugned order 21.07.2006 (Annexure P-6) passed by learned Labour Court, U.T. Chandigarh as well as order dated

16.02.2012 (Annexure P-1) passed by learned Presiding Officer, Industrial Tribunal and Labour Court, Union Territory, Chandigarh, are hereby quashed and the delay in filing application for restoration is condoned and the application (LCA No.37 of 2004) is ordered to be restored to its original number and status. The matter is thus remitted to learned Labour Court, U.T. Chandigarh, for deciding the same afresh on merits in accordance with law after affording due opportunity of hearing to the parties concerned. Parties are accordingly directed to appear before the concerned Labour Court/Tribunal on 29.09.2023 or any other date as may be fixed by it.

14. A copy of this order be also sent to respondents No.2 and 3 i.e. *M.S. High Tech Buildcare, 50, Industrial Area, Phase-II, Chandigarh, through proprietor Smt. Meenakshi Bhardwaj* and *V.S.M. India sister concern of M.S. Buildcare, 869, Sector 21-A, Panchkula through Smt. Meenakshi Bhardwaj*, respectively.

15. The petition is disposed of in the afore-stated terms.

16. All pending application/s, if any, shall also stand closed.

September 12th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No