

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

CWP-9797-2012 (O&M)
Date of decision :07.12.2023

OMBIR

...Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, PANIPAT AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Harish Bhardwaj, Advocate
and Mr. Satbir, Advocate
for the petitioner.

Mr. Mayank Garg, Advocate
for respondent No.2.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Ombir) has filed the instant writ petition under Article 226 of the Constitution of India, seeking issuance of a writ in the nature of *certiorari* for setting aside of the Award dated 25.01.2006 (Annexure P-3) passed by the Industrial Tribunal-cum-Labour Court, Panipat (for short 'the Tribunal'); whereby the reference of industrial dispute raised by the petitioner was dismissed in default for want of prosecution.

The petitioner further seeks setting aside of order dated 27.02.2012 (Annexure P-6) passed by learned Tribunal below, whereby an application filed by the petitioner for setting aside of the award dated 25.01.2006 (Annexure P-3) and for restoration of the reference, was dismissed by relying upon the judgment rendered by the Hon'ble Supreme Court in *Sangam Tape Company vs Hans Raj, 2004(iii) CLR 776*, wherein

it was held that once the award becomes enforceable in terms of Section 17-A of the Industrial Disputes Act, 1947 (here-in-after referred to as 'the 1947 Act'), then the Labour Court would become *functus officio*.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services by respondent No.2-Municipal Council, Sonapat (in short 'the respondent-Management') on the plea that he was appointed as a Sweeper on 23.12.1996; however, the appointment letter was given to him on 07.01.1997. Petitioner claimed that on 14.02.1997, his services were orally terminated, which was contrary to the letter of appointment dated 07.01.1997 and also in violation of the provisions of the 1947 Act. The afore-said dispute was referred for adjudication to the Industrial Tribunal-cum-Labour Court, Panipat; wherein the issues were framed, however, on 25.01.2006, on account of non-representation on behalf of the petitioner, the reference was dismissed in default for want of prosecution.

3. The petitioner, thereafter, filed an application for setting aside of the impugned Award dated 25.01.2006 (Annexure P-3) on the following grounds :-

“i) That on 25.1.2006 the above title case was fixed for evidence in this Hon'ble Authority but due to misunderstanding of date the applicant could not appeared before this Hon'ble Authority and on account of non appearance of the applicant on that day the Hon'ble Authority has passed the above said ex-parte order in the above said case.

ii) That orders and award is against the principles of law and natural justice.

2. That the applicant came to know about the facts when he received only on 15-9-06 when his counsel informed his regarding the above said ex-parte order.

3. *That the application is within time from the date of knowledge of orders and necessary court fee is attached.”*

4. The afore-said application for setting aside of Award dated 25.01.2006 (Annexure P-3) and for restoration of reference; was contested by the respondent-Management. The said application for restoration came to be decided by the learned Tribunal below vide order dated 27.02.2012 (Annexure P-6); by relying upon the judgment rendered by Hon’ble the Supreme Court in ***Sangam Tape Company*** case (supra), wherein it was held that once the award becomes enforceable in terms of Section 17-A of the Act, 1947, then the Labour Court would become *functus officio*.

5. Accordingly, the petitioner has filed the instant writ petition before this Court.

6. Learned counsel for the petitioner submits that in terms of judgment rendered by the three Judges’ Bench of Hon’ble the Supreme Court in ***M/s Haryana Suraj Malting Ltd. vs Phool Chand, 2018 SC 2670***, the Labour Court is not *functus officio* after the award has become enforceable.

7. Hon’ble Supreme Court in ***M/s Haryana Suraj Malting Ltd.*** case (supra), held as follows :-

“32. In case a party is in a position to show sufficient cause for its absence before the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal, in exercise of its ancillary or incidental powers, is competent to entertain such an application. That power cannot be circumscribed by limitation. What is the sufficient cause and whether its jurisdiction is invoked within a reasonable time should be left to the judicious discretion of the Labour Court/Tribunal.

33. *It is a matter of natural justice that any party to the judicial proceedings should get an opportunity of being heard, and if such an opportunity has been denied for want of sufficient reason, the Labour Court/Tribunal which denied such an opportunity, being satisfied of the sufficient cause and within a reasonable time, should be in a position to set right its own procedure. Otherwise, as held in Grindlays, an award which may be a nullity will have to be technically enforced. It is difficult to comprehend such a situation under law.*

34. xxx xxx xxx

35. *Merely because an award has become enforceable, does not necessarily mean that it has become binding. For an award to become binding, it should be passed in compliance with the principles of natural justice. An award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being nullity. An award which is a nullity cannot be and shall not be a binding award. In case a party is able to show sufficient cause within a reasonable time for its non-appearance in the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal is bound to consider such an application and the application cannot be rejected on the ground that it was filed after the award had become enforceable. The Labour Court/Tribunal is not functus officio after the award has become enforceable as far as setting aside an ex parte award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. It needs to be restated that the Industrial Disputes Act, 1947 is a welfare legislation intended to maintain industrial peace. In that view of the matter, certain powers to do justice have to be conceded to the Labour Court/Tribunal, whether we call it ancillary, incidental or inherent.”*

8. On the other hand, learned counsel appearing for respondent No.2-Management has not raised any dispute with regard to the legal position as laid down by Hon'ble the Supreme Court in *M/s Haryana Suraj Malting Ltd.* case (*supra*); however, it is submitted that the application for restoration was required to be filed within a period of 30 days from the date of publication of the Award. It is further submitted that the petitioner had sought several dates in the matter before the learned Tribunal below; however, he failed to produce his evidence in support of his claim and on 25.01.2006, the reference was dismissed for non-prosecution because of the non-appearance of the petitioner and or his representative. It is further submitted that even in the application for restoration, various dates were taken by the petitioner and it was only after the period of six years, the said application came to be decided on 27.02.2012 (Annexure P-6). It is, therefore, submitted that the petitioner is prolonging the proceedings unnecessarily as he is not serious about prosecuting his claim. Accordingly, prayer for dismissal of the writ petition has been made.

9. I have heard learned counsel for the respective parties and have perused the paper-book with their able assistance.

10. In the instant case, concededly, none of the parties had appeared before the learned Tribunal below on 25.01.2006 when the reference came to be dismissed in default for want of prosecution. In the application seeking setting aside of the award dated 25.01.2006 (Annexure P-3), the petitioner had submitted that due to misunderstanding of the date, he could not appear before the learned Tribunal below and he came to know about the factum of dismissal of the reference only on 15.09.2006 when his counsel informed him regarding the said award dated 25.01.2006 (Annexure P-3) and

thereafter, the application was filed by him within time from the date of knowledge of the order.

11. In *M/s Haryana Suraj Malting Ltd.* case (*supra*), it has been held that in case, the parties are able to show sufficient cause for its non-appearance before the Labour Court then the Labour Court is bound to consider such application. Therefore, the reasoning rendered by the learned Tribunal below for rejecting the application for restoration cannot be sustained; accordingly, the same is set aside.

12. Further, instead of remanding the matter to the learned Tribunal below for deciding upon the application for restoration of the case, I am of the considered view that the petitioner had shown sufficient ground for his as well as his representative's non-appearance before the learned Tribunal below on the date fixed i.e. 25.01.2006 as there was some misunderstanding of the date and the petitioner became aware of the fact that the reference has been dismissed for non-prosecution only on 15.09.2006 when he was informed regarding the same by his counsel, then immediately thereafter, the application is stated to have been filed seeking restoration of the reference.

I see no reason to doubt the afore-said stand taken by the petitioner; especially when the said stand has not been controverted by the learned counsel appearing for the respondent-Management. Therefore, I am satisfied that the petitioner had shown sufficient cause for his non-appearance as well as the non-appearance of his authorized representative before the learned Tribunal below on 25.01.2006. Accordingly, the impugned award dated 25.01.2006 (Annexure P-3) as well as order dated 27.02.2012 (Annexure P-6) are set aside and the matter is

hereby ordered to be restored to its original number and status before the learned Tribunal below, who shall decide the same in accordance with law.

13. The writ petition is, accordingly disposed of in the afore-stated terms.

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

15. Copy of this order be forwarded to the learned Tribunal below and on receipt of the same, the learned Tribunal below shall call upon the parties by fixing a date as per its convenience and proceed to decide the matter in accordance with law.

December 07, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No