

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

CWP-32289-2018 (O&M)
Date of decision : 18.07.2023

DESRAJ

-

...Petitioner

Versus

THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, PANIPAT (HARYANA) AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Parveen Kumar Rohilla, Advocate
for the petitioner.

Mr. Hitesh Pandit, Advocate
for the respondents.

HARSH BUNGER, J. (ORAL)

The petitioner has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of *certiorari*, for setting aside the award dated 25.11.2016 (Annexure P-9) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat, whereby, the Labour Court had decided the reference of Industrial Dispute raised by him under Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short 'the Act, 1947'), as award of "No Dispute" in view of the fact that the workman as well as the Management, were proceeded against *ex-parte*.

The petitioner further challenges the order dated 04.08.2017 (Annexure P-12) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat; whereby, an application filed by him for setting aside

the *ex-parte* award dated 25.11.2016, was dismissed, by relying upon the judgment rendered by Hon'ble the 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 Act, 1947, then the Labour Court would become *functus officio*.

2. The brief facts of the case are that the petitioner was appointed as 'Safai Karamchari' on 01.05.2002 with the Haryana State Warehousing Corporation (respondents No.2 and 3) and he is stated to have continued in service without any break upto 06.06.2015 at fixed wages of Rs.150/- per day at the time of his appointment, which according to him, were increased from time to time, as per the prescribed Payment of wages Act. According to the petitioner, he requested the Management to regularize his services since he had completed more than 10 years' satisfactory service with the respondent-Corporation. However, the Management, instead of regularizing the services of the petitioner, got annoyed with him and his services were terminated on 06.06.2015 without giving any notice or payment of any retrenchment compensation to him. As per the petitioner, the other persons, who were junior to him, were retained in service while terminating the services of the petitioner. The petitioner claims to have completed more than 240 days continuous service.

3. The petitioner-workman sent a demand notice under Section 2-A of the Act, 1947 with a prayer to re-instate him in service, which was contested by the Corporation. Before the Assistant Labour Commissioner, since no compromise could take place between the parties, accordingly, the petitioner was permitted to file a claim petition before the Labour Court, Panipat. Accordingly, the petitioner filed a claim statement

before the Industrial Tribunal, Panipat, which was contested by the Corporation by filing its reply.

4. As per the petitioner, his case was listed before the Industrial Tribunal, Panipat on 25.11.2016 for the purpose of filing the replication; however, none of the parties were present, accordingly, both the parties were proceeded against *ex-parte* by the Tribunal vide order dated 25.11.2016 (Annexure P-9) and the award of 'No Dispute' was passed. The relevant extract of award dated 25.11.2016, reads as under :-

"4. Today, the case was fixed for filing replication on behalf of the workman but none has appeared on behalf of both parties and therefore, both parties are hereby proceeded against ex-parte.

5. In this case, both the workman as well as respondent has been proceeded against ex parte. This accordingly shows that neither of the party wants to prosecute the reference. This shows that "No Dispute" remains to be determined. Hence, Award of "No Dispute" is hereby passed. The reference stands answered accordingly."

5. The afore-said award is stated to have been published by the competent authority on 15.12.2016.

6. As per the petitioner, on 01.05.2017, he filed an application for restoration before the Industrial Tribunal by stating that on 25.11.2016, he was present before the Tribunal since morning and when the case was called out for hearing, then he could not be present instantly. It was submitted that on account of the death of father of the counsel representing the petitioner before the Tribunal on the said date, he could not proceed with the case properly as he was busy with last rites and ceremonies of his father; accordingly, the non-appearance of the petitioner and his counsel was not

intentional but for the afore-said reason. Accordingly, prayer for restoration was made.

7. The afore-said application came to be dismissed by the Industrial Tribunal-cum-Labour Court, Panipat vide order dated 04.08.2017 (Annexure P-12); 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*.

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

9. 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 as far as setting aside an *ex-parte* award is concerned.

10. 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.”*

11. On the other hand, learned counsel appearing for the respondents 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) and has further submitted that he has no objection, if the impugned award dated 25.11.2016 (Annexure P-9) as well as order dated 04.08.2017 (Annexure P-12) are set aside and the matter is decided by the Labour Court, on merits.

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

13. In the instant case, concededly, the petitioner as well as the respondent-Corporation had not appeared before the Labour Court on 25.11.2016 when an *ex-parte* award of "No Dispute" was passed by the Labour Court, Panipat. In the application for seeking setting aside of the *ex-parte* award, the petitioner had submitted that he was present before the Labour Court on 25.11.2016 since morning; however, when the case was called out, he could not be present. It was mentioned that the father of the counsel representing the petitioner had expired and he was busy in the last rites of his father; accordingly, the non-presence of the petitioner as well his counsel was wholly un-intentional.

14. The said application for setting aside *ex-parte* award was rejected by holding that after the award become enforceable, the Labour Court become *functus officio*. However, as per the afore-said authoritative pronouncement in ***M/s Haryana Suraj Malting Ltd.*** case (supra), it is well settled that the Labour Court is not *functus officio* after the award has become enforceable as far as setting aside an *ex-parte* award is concerned. It has been held in the afore-said judgment of Hon'ble the Supreme Court that in case, the party is able to show sufficient cause for its non-appearance in Labour Court when it was set *ex-parte*, Labour Court is bound to consider

such application. Therefore, the reasoning rendered by the Labour Court, Panipat, for rejecting the application for restoration cannot be sustained. Accordingly, the same is set aside.

15. Further, instead of remanding the matter to the Labour Court, Panipat, for deciding upon the application for restoration of the case, I am of the considered view that the petitioner had shown sufficient grounds for his non-appearance as well as non-appearance of his counsel before the Labour Court on the date fixed i.e. 25.11.2016 as the father of the counsel representing the petitioner had expired and thus, they were not available when the case was called out.

16. I see no reason to doubt the said stand taken by the petitioner, especially when no objection has been raised by the counsel for the respondent-workman. Accordingly, I am satisfied that the petitioner had shown sufficient cause for his non-appearance as well as non-appearance of his counsel before the Labour Court on 25.11.2016. Accordingly, the *ex-parte* award dated 25.11.2016 (Annexure P-9) is hereby set aside and the matter is remitted to the Labour Court, Panipat for fresh decision thereupon on merits.

17. The parties are directed to appear before the Labour Court, Panipat on 16.08.2023 or any date thereafter as may be fixed by the concerned Labour Court.

18. The writ petition is accordingly disposed of.

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

July 18th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No