

Neutral Citation No: 2024:PHHC:091632



CWP-4938-2024

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

CWP-4938-2024

Decided on:19.07.2024

Sri Guru Ram Das Institute of Medical Sciences and Research

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. A.P.S. Sandhu, Advocate for the petitioner.

Mr. Aman Dhir, DAG,Punjab.

Mr. Sartaj Singh-respondent No.3 is present in person.

SANJAY VASHISTH, J.(Oral)

1. Reply by way of affidavit of Vikas Kumar, Controlling Authority under the Payment of Gratuity Act, 1972-cum-Assistant Labour Commissioner, Amritsar has been filed on behalf of respondents No.1 and 2, in the Court today and same is taken on record. Registry is directed to tag the same at the appropriate place with the paper-book. A Copy thereof has been supplied to the opposite side.

2. Present writ petition has been filed by petitioner-Sri Guru Ram Das Institute of Medical Sciences and Research (Employer), challenging the order dated 04.01.2024 (Annexure P-10), whereby Controlling Authority under the Payment of Gratuity Act, 1972-



respondent No.2 has dismissed the application to set aside the ex-parte order dated 11.05.2023 (Annexure P-5).

Petitioner-Employer has sought quashing of the order dated 11.05.2023 i.e. final ex parte order, which holds the employee-Sartaj Singh (respondent No.3) as entitled for gratuity amount of Rs.1,19,308/- alongwith interest @ 9% per annum. In fact, on account of non-appearance of the petitioner or its representative, it was proceeded against ex-parte by the Controlling Authority vide its order dated 13.10.2022.

3. Learned counsel for the petitioner submits that neither any application for recalling the order dated 13.10.2022 has been moved; nor the said order has been assailed by the petitioner before this Court in the present writ petition. Learned counsel for the petitioner further submits that before the Controlling Authority, the petitioner was earlier represented through Sh. Iqbal Singh Verka, Advocate, who filed the written statement on 08.09.2022, after which the hearing of the case was adjourned to 13.10.2022, for further proceedings. On account of the non-appearance of his Advocate on 13.10.2022, the petitioner was proceeded against ex-parte.

After coming to know about the ex-parte award/order dated 11.05.2023, an application was moved for setting aside the ex-parte order, but the same has also been dismissed by the Controlling Authority-respondent No.2.



4. Learned counsel for the petitioner also submits that employee-Sartaj Singh clandestinely obtained the employment with petitioner-Establishment by furnishing false documents. On verification of the matriculation certificate, it was remarked by the Punjab School Education Board that *“the entry with respect to Roll No.64956 was not issued from District Amritsar for the examination of Matriculation to be conducted in the year 1985 and that he copy of certificate supplied is not as per the record of office’.*

Further submits that relationship of Employer and Employee is not a material issue in the proceedings, but in view of the defence taken by the petitioner-Employer, it is bounden upon the employer to prove its pleading by leading the substantive evidence before the Controlling Authority. For that reason, a sympathetic view be taken by setting aside the impugned ex-parte order dated 11.05.2023 (Annexure P-5) and consequently, allowed of the application, which has been dismissed vide order dated 04.01.2024 (Annexure P-10)

5. Learned counsel for the petitioner also submits that for the act of omission done by his Advocate by not appearing before the Controlling Authority, the petitioner-Employer should not be penalized. He also submits that already an amount of Rs.25,000/-, by way of pay order/Bankers Cheque bearing No.633870 dated 24.04.2024 has been paid to respondent No.3-Sartaj Singh. In case the petition is allowed and opportunity for leading evidence is granted, for



any further delay caused at the instance of the petitioner, employee would be duly compensated as per the satisfaction of the Court.

6. On the other hand, respondent No.3-Sartaj Singh, who is present in person, does not dispute the receiving of the aforesaid amount of Rs.25,000/- and submits that he would not be much averse if the proposal given by the petitioner-employer before this Court is accepted, subject to the securing of the interest of the answering respondent, in case the proceedings get delayed at the instance of petitioner-employer.

Respondent No.3 also submits that the already deposited amount under the order dated 03.04.2024 of this Court and the amount already adjudicated by the Controlling Authority in its order dated 11.05.2024 be converted into the shape of FDR and same be deposited with the Controlling Authority.

7. After hearing learned counsel for the parties as well as respondent No.3 and going through the record for the purpose of securing the interest of both sides, this Court is of the view that no one should be deprived of the chance of leading its evidence to reach to the correct, proper and justified conclusion of the issue before it.

8. In the backdrop of the circumstances explained by the petitioner-employer and especially when it is ready to look after the interest of the employee, whose gratuity payment is getting delayed, this Court deems it fit to allow the present writ petition by setting



aside the orders dated 11.05.2023 as well as order dated 04.01.2024. Consequently, the application moved by the petitioner for setting aside the ex parte order dated 11.05.2023 is hereby accepted.

9. Though the petitioner has not challenged the order dated 13.10.2022, whereby he was proceeded against ex parte, but said order would also not be given any effect. Rather, from the said stage Controlling Authority would proceed further by granting two effective opportunities for the petitioner-employer to lead the entire evidence for proving its pleadings raised through written statement.

10. It is also clarified that in case petitioner-Employer does not complete the evidence within two effective opportunities, for each further opportunity petitioner would pay an amount of Rs.20,000/- (twenty thousand only) to respondent No.3-Sartaj Singh. However, total number of opportunities would not exceed more than four opportunities including the extended two opportunities, as observed hereabove.

11 With the aforementioned observations and the terms recorded hereabove, the writ petition is disposed of.

19.07.2024
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[SANJAY VASHISTH]
JUDGE

Whether speaking/reasoned	yes/no
Whether reportable?	yes/no