

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

**CWP-7040-2024**

**Judgement Reserved on: March 22, 2024**

**Judgement Pronounced on: April 01, 2024**

**Aviva Life Insurance Company India Limited and others**

**...Petitioners**

**Versus**

**Presiding Officer, Central Government Industrial Tribunal-cum-  
Labour Court-I and another**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH**

Argued By: Mr. Manish Jain, Advocate,  
Mr. Siddhant Jain, Advocate,  
Mr. Manan Jain, Advocate,  
for the petitioners.

Mr. Ajesh Tandon,  
respondent No. 2 - Workman in person.

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**SANJAY VASHISTH, J.**

**Challenge in the Writ Petition:**

1. Aviva Life Insurance Company India Limited (petitioner No. 1), its Director Sales Force (petitioner No. 2) and Cluster Manager, DSF (petitioner No. 3) [hereafter referred to as, 'the management'], have filed the present writ petition in the nature of Certiorari, under Articles 226/227 of the Constitution of India, for setting aside the order dated 06.10.2023 (Annexure P-1), passed by the learned Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh (hereafter referred to as, 'the Tribunal'), in Reference ID No. 34/2015, under Section 10(1)(c) of the Industrial Disputes Act, 1947 (hereafter referred to as, 'the Act'), titled as 'Ajesh Kumar Tandon

v. Aviva Life Insurance Company India Ltd. and others', vide which right of

the management to cross-examine the workman (respondent No. 2 herein) has been closed.

2. Notice of motion.

3. Mr. Ajesh Tandon, respondent No. 2 – workman, present in the Court, accepted the notice and opted to argue the matter in person. Accordingly, the submissions/arguments made by learned counsel for the management as well as the workman were heard on 22.03.2024 and the judgement was reserved by this Court.

**Factual Matrix (26.06.2006 to 07.10.2009):**

4. Admitted and own pleaded case of the management in the present petition is that Ajesh Kumar Tandon, respondent No. 2 – workman (hereafter referred to as, ‘the workman’), was appointed as a Sales Manager by the management on 26.06.2006. His services were terminated on 07.10.2009, allegedly on the pretext that he failed to fulfill/meet the targets and also had poor work ethic and performance.

**Proceedings under the Act (27.01.2010 to 12.03.2024):**

5. Feeling aggrieved, the workman issued a demand notice dated 27.01.2010 before the Labour-cum-Conciliation Officer, Jalandhar, seeking reinstatement and other reliefs, and the matter was referred to the Industrial Tribunal, Jalandhar, for adjudication by the State of Punjab, at the first instance. On an objection raised by the management regarding jurisdiction, the said reference was rejected on 14.11.2014, on the ground of lack of jurisdiction, with liberty to the workman to approach the appropriate forum.

6. Thereupon, the workman again approached the Assistant

Labour Commissioner-cum-Labour Conciliation Officer, Jalandhar, and eventually the reference under Section 10(1)(c) of the Act, being ID No. 34/2015, was referred to the Tribunal, somewhere in March, 2016, for adjudication. The workman had put in appearance before the Tribunal and since then he is awaiting adjudication over the termination of his services, done in October, 2009, i.e. about 14½ years ago.

7. It has also come on record that for about two years, the management even did not file any reply to the claim statement. The workman had also filed an application under Section 36(4) of the Act, raising objection regarding appearance of the management through an Advocate. No reply to the said application was filed by the management, accordingly the same was allowed by the Tribunal, vide order dated 26.04.2018 (Annexure P-2), which reads as under:-

“26.04.2018

*Present*

*Workman in person*

*None for the management*

*The workman has filed an application under Section 36 of the ID Act, raising objection regarding the appearance of management through an Advocate. **The respondent even has not filed reply to this application as well as statement of claim till date.** Though, this case was received by way of reference by this Court in March 2016. In view of this, application filed by the workman under Section 36 of the Act is hereby allowed vide separate order of today. Let notice of reference be again sent to the respondent-company to appear before this Court on 31.05.2018.*

*Sd/-*

*Presiding Officer-  
cum-Link Officer, CGIT-I,  
Chandigarh.”*

**[emphasis added]**

8. On 13.08.2018, the workman had filed an application for

seeking official documents from the management and it seems that some directions were also issued by the Tribunal, to the management to produce the record on 13.08.2018 itself. Thereafter, when the matter again came up for consideration on 27.11.2018, the workman tendered his evidence by way of attested affidavit dated 23.08.2018 (Annexure P-3), and copy of the same was supplied to the management. However, the order dated 13.08.2018, passed by the Tribunal was not complied with by the management and no document as sought by the workman was filed. The management was again directed to produce the record on 10.01.2019, by giving last opportunity for the said purpose. Despite this, the management did not comply with the orders dated 13.08.2018 and 27.11.2018 regarding supply of documents, and again another opportunity was granted by the Tribunal, vide order dated 11.06.2019, to submit the required documents by the next date i.e. 30.07.2019. Even on 30.07.2019, documents were not produced by the authorised representative of the management with the lame excuse that ***“.....complete document is not in his possession and management is trying to ensure all the documents for submission before the Tribunal”***. On the request of the management, one more opportunity was granted to submit the documents, and the case was fixed for 12.09.2019.

9. Record further reveals that finally the case was fixed for evidence of the workman for 01.11.2019. However, no effective hearing of the matter could take place from 01.11.2019 to 04.02.2021 due to the reason that the Tribunal is stated to be vacant during the said period. On 04.02.2021, when the matter again came up for consideration of the

Tribunal, following order was passed:-

*“04.02.2021*

*Present*

*Sh. Ajesh Kumar Tandon, workman in person*

*None for management*

*Heard the workman, who is present before me in person and perused the file, it is brought in my knowledge that the application of the workman for submitting documents is allowed by my predecessor on 13.08.2018. Workman has brought in my knowledge that reply moved by the management dated 06.08.2018 is irrelevant because order regarding the submission of the documents had been passed by this Tribunal as such, question of filing any objection does not arise.*

***It is pertinent to mention that none is appearing on behalf of the management-company as such, reply/application moved by the management-company is meaningless as such, it stands rejected. Management is regularly not complying the order of the Tribunal regarding submission of the documents till today.***

***Perusal of the zimni orders reveals that case is pending at the stage of the evidence of the workman Ajesh Kumar Tandon who has submitted his affidavit as evidence. Unfortunately, none is present today on behalf of the management as such, case is proceeded ex parte against the management company. Fix 11.03.2021 for hearing whether workman has come within the definition of workman as is stated by the management company as well as for ex parte arguments by the workman.***

*Sd/-*

*(A.K. Singh)*

*Presiding Officer-cum-*

*Link Officer, CGIT-I,*

*Chandigarh.”*

**[emphasis added]**

It is also pertinent to notice that w.e.f. 17.03.2020 to 04.02.2021, there was no representation before the Tribunal, on behalf of the management, which is why it was proceeded against *ex parte*, vide order dated 04.02.2021.

10. On 05.10.2021, i.e. after about 8 months of passing the aforementioned order dated 04.02.2021, the management moved an

application alongwith affidavit, for setting aside the *ex parte* proceedings order dated 04.02.2021, and reply of the same was filed by the workman promptly on 27.10.2021. Interestingly, again from 27.10.2021 to 21.03.2022, there was no representation on behalf of the management. Eventually, the said application moved by the management was allowed by the Tribunal, vide order dated 19.09.2022, by imposing costs of Rs.5,000/-, and the case was fixed for further proceedings i.e. for cross-examination of the workman.

11. Instead of cross-examining the workman, the management devised a subtil idea, and moved an application on 27.02.2023, seeking permission to defend the case through Legal Practitioner or Advocate, that too fully knowing well that on an earlier point of time, the application under Section 36 of the Act, which was filed by the workman, raising an objection regarding appearance of the management through an Advocate, was already allowed by the Tribunal, vide order dated 26.04.2018, and the said order was not ever assailed by the management.

12. Case of the workman was again delayed because it took seven months for deciding the said application moved by the management, which was ultimately rejected, vide order dated 25.09.2023, which reads as under:-

“25.09.2023      *Taken up*

*Present:      Workman in Person  
                 None for Management*

*The case is fixed for consideration on application moved by the management. Application has been moved on behalf of management to permit to defend the case for legal practitioner. The objection has been raised by the workman Ajesh Kumar Tandon. Ajesh Kumar Tandon the workman has*

*drawn the attention of the Tribunal upon the order passed on 26<sup>th</sup> April, 2018. The detailed order has been passed considering the application and case laws submitted by both the parties and the then Presiding Officer has been pleased to decline the claim of management to permit to defend his case through legal practitioner. Since none is today for management to press this application and an order has been passed on similar matter regarding permission to defend case through legal practitioner and that order has not been challenged by the management. That order has become final. The application of the management is liable to be rejected.*

*The application of the management is rejected. It would be pertinent to mention here that this would be very old case and management is lingering this case by moving application and not cross-examining to the witness. This is the last opportunity to the management to cross-examine to the witness. Put up on 06.10.2023 for cross-examination from the workman. If none is present on behalf of management on the next date automatically his opportunity to cross-examination will be closed.*

Sd/-  
(J.K. Tripathi)  
Presiding Officer  
CGIT-1, Chandigarh”

**[emphasis added]**

From a perusal of the order dated 25.09.2023, it is clear that even on said date there was no representation on behalf of the management and a specific observation has been made by the Tribunal that the management is lingering this case by moving application and not cross-examining the witness (workman). Still, one more opportunity was granted for cross-examination of the workman on 06.10.2023, by making it clear that ‘If none is present on behalf of management on the next date automatically his opportunity to cross-examination will be closed’.

13. Instead of cross-examining the workman on 06.10.2023, when the case was specifically fixed for the said purpose, the representative of the

management, namely, Sh. Tejram Thakur (Operation Manager), came up with a new plea and refused to cross-examine the witness on the pretext that “*he is unaware with law and legal proceedings. So he can’t cross-examine the witness.*” Thus, the Tribunal was left with no option except to close the right of the management to cross-examine the workman, vide impugned order dated 06.10.2023 (Annexure P-1), which is reproduced as under:-

“06.10.2023      Taken up

*Present:      Sh. Ajesh Kumar Tondon, workman in person.*

*Sh. Tejram Thakur (Operation Manager) for the Management.*

*On previous date i.e. 25.09.2023 the court has passed the detailed order disposing the application moved by the management to give permission to defend the case for legal practitioner. The case is fixed for cross-examination to the witness. The workman Ajesh Kumar Tondon as witness is also present. The person who is present on behalf of the Management is unable to cross-examine the witness.*

*It is submission of Mr. Tejram Thakur that he is unaware with law and legal proceedings. So he can't to cross-examine the witness. Several opportunity have been given to the management to cross-examination to the witness but management failed to do so. The opportunity of the management is closed to cross-examine by witness Ajesh Kumar Tondon.*

*Put up on 05/12/2023 for evidence of Management.*

*Sd/-  
(J.K. Tripathi)  
Presiding Officer  
CGIT-1, Chandigarh”*

Thereafter, on 05.12.2023, last opportunity was given to the

management to lead its evidence on 12.03.2024, while imposing costs of Rs.500/-, and now the case is stated to be fixed before the Tribunal on 05.04.2024.

14. With a motive to further linger on the case before the Tribunal, yet another feeble attempt has been made by the management by filing the present petition, after a period of five months of passing of the impugned order dated 06.10.2023 (Annexure P-1), and availing two opportunities on 05.12.2023 and 12.03.2024, for leading its evidence.

**Submissions by respective parties:**

15. Questioning the validity of the impugned order dated 06.10.2023 (Annexure P-1), learned counsel for the management stated that if the impugned order is allowed to sustain, the management would suffer irreparable loss because its indefeasible right to defend the case by cross-examining the witness, has been curtailed. Not only this, it will also affect the decision of the case. Learned counsel, thus, submitted that if given a chance, the management will cross-examine the workman/witness on the date fixed for the said purpose, by paying reasonable costs, as may be determined by this Court.

16. At the first instance, the workman was ready to accept the proposal of granting one opportunity, but only on the next date of hearing fixed before the Tribunal, i.e. 05.04.2024, subject to payment of some cost amount. However, after sometime he changed his mind and prayed for dismissal of the writ petition by opposing the prayer made by the management by asserting that he has been made to run pillar to post, for

getting justice, for the last about 14/15 years. Drawing attention of this Court about the acts and conduct of the management during all these years, the workman submitted that the same is not conducive; requires to be deprecated; and the management does not deserve any leniency by granting any further opportunity to cross-examine him in the pending reference before the Tribunal.

**Findings:**

17. I have heard learned counsel for the management and the workman in person, as also gone through the material available on record.

18. To a specific query of the Court about the acts and conduct of the management, Mr. Manish Jain, learned counsel very fairly responded that there is no justifiable answer with the management as to why the workman has been made to suffer and wait for such a long time, i.e. since the year 2016, when the first time workman appeared before the Tribunal. Admitted fact is that the workman was terminated on 07.10.2009 and to adjudge the sustainability of the termination order, industrial dispute has been referred for its adjudication.

19. *Ex facie*, since the very inception of the industrial dispute in question, the management has been remiss and negligent in pursuing its cause, may be deliberately/intentionally, inasmuch as, despite repeated opportunities, it failed to take the required steps during the pendency of different stages of the reference in question. Not only this, the management has never paid any heed and cared to comply with the orders/directions issued by the Tribunal from time to time, which is evident from the

background of the case, as already noticed in detail, in foregoing paragraph Nos. 5 to 14 of this judgement.

20. Considering the acts and conduct of the management in its totality, though it is not a fit case to extend any courtesy or leniency towards the management, but it shall be equally true that if the management is not afforded an opportunity to cross-examine the workman/witness, it shall suffer an incalculable loss. This Court is also conscious of the well established legal proposition of law that the right to cross-examine the witness is not only crucial for uncovering the truth, but also for adhering to the principles of the Indian Evidence Act, 1872. Thus, cross-examination of the workman is necessary for the proper and just adjudication of the reference under Section 10(1)(c) of the Act, which is pending adjudication before the Tribunal, without causing prejudice to the rights of any of the parties to *lis*.

The view taken by this Court is fortified by the observation made by Hon'ble Justice P.N. Bhagwati in case titled as “**State of Kerala v. K.T. Shaduli Grocery Dealer**”, (1997) 2 SCC 777, wherein His Lordship succinctly encapsulated the essence and purpose of cross-examination, which reads as under:

*“.....cross-examination is one of the most efficacious methods of establishing truth and exposing falsehood”.*

21. Thus, taking into consideration the totality of circumstances and the prayer made, I deem it appropriate to grant one last opportunity to the management to cross-examine the workman/witness.

**Conclusion:**

22. As a sequel to the above discussion, the writ petition is disposed of, in the following terms:-

- i) Impugned order dated 06.10.2023 (Annexure P-1), passed by the Tribunal, is set aside to the extent of closing the opportunity of the management to cross-examine the witness Ajesh Kumar Tandon (respondent No. 2/ workman).
- ii) The management will be afforded an opportunity to cross-examine the witness/workman, on the next date of hearing before the Tribunal, i.e. 05.04.2024.
- iii) In case, due to some unavoidable or compelling circumstances beyond the control of the Tribunal, the cross-examination of the witness/workman could not be done or completed on 05.04.2024, in that eventuality one more effective date, not beyond 15 days, be fixed in the case, for the purpose of completion of cross-examination of the witness/workman.
- iv) In the event of any default on the part of the management, the matter shall not be adjourned at any cost, and the right of the management to cross-examine the witness/workman shall be deemed to have been closed.
- v) Said opportunity would be available to the management, subject to the payment of costs of Rs.50,000/-, as a precondition. Out of total cost amount, Rs. 25,000/- shall be paid to the workman, and remaining Rs.25,000/- shall be deposited with the **Chandi Kusht Ashram**

**Society, Leprosy Colony, Near 3BRD Gate, Sector 47-D, Chandigarh [Contact No.: 9876731965], in its bank Account No.: 1445265900, IFSC: KKBK0004211, in Kotak Mahindra Bank Limited, SCO No. 73, Sector 46-C, Chandigarh – 160047.**

And in case, the workman still refuses to accept the cost amount of Rs.25,000/-, then the entire cost amount of Rs.50,000/- shall be deposited with the **Chandi Kusht Ashram Society**.

23. Before parting with the judgement, looking at the past conduct of the management in the matter, this Court feels no hesitation to observe that in the next lap of adjudication of the reference in question, i.e. defence evidence of the management, arguments and final decision by the Tribunal, utmost care shall be taken, so that the matter may not linger on any further. It would be highly appreciable, if the reference is answered within a stipulated time frame of six months, post next date of hearing i.e. 05.04.2024.

Needless to say that any observation made hereabove, shall not have any bearing on the merits of the case, for the purpose of its adjudication by the Tribunal.

24. With all the aforementioned observations and terms recorded hereabove, present writ petition stands disposed of.

**(SANJAY VASHISTH)**  
**JUDGE**

**April 01, 2024**  
Pkapoor

Whether speaking/reasoned?    ✓ **Yes/No**  
Whether reportable?                ✓ **Yes/No**