

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

106

CWP-8213-2024

Date of Decision:15.04.2024

M/S WALIA INDUSTRIAL ENGG. CORPORATION

.... Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, LABOUR
COURT, U.T. CHANDIGARH AND ANR

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Inder Pal Singh, Advocate for the petitioner.

SANJAY VASHISTH, J.(Oral)

1. By way of present writ petition, petitioner-M/s Walia Industrial Engg. Corporation, has sought quashing of the order dated 30.11.2023 (Annexure P-2), vide which petitioner was proceeded against ex-parte at the stage of filing of reply to some application under Section 151 Code of Civil Procedure.

Further quashing has been sought of the order dated 21.02.2024 (Annexure P-5), whereby learned Industrial Tribunal-cum-Labour Court has dismissed the application for setting aside of the order dated 30.11.2023, vide which petitioner was proceeded against ex parte.

2. Learned counsel for the petitioner argues that the reference i.e. IDR No.106/2021 was referred to the Labour Court for

its adjudication in the year 2021. Thereafter, the claim statement had been filed by respondent No.2-Bhushan Kumar (workman) and the petitioner-Management also filed its written statement. In response to the written statement filed by the petitioner-Management, workman filed his replication. Hence, pleadings were completed and evidence was yet to begin. However, on filing of one application by the workman under Section 151 of CPC, Management was asked to supply/produce certain documents on record before the learned Labour Court on 30.11.2023. But, on the said day, no representation could be made on behalf of the Management, which resulted in passing of the order dated 30.11.2023, whereby only on account of one absence, petitioner- Management was ordered to be proceeded against ex-parte.

For the sake of convenience, order dated 30.11.2023 is reproduced here below:

*'Bhushan Kumar Vs. M/s Walia Indl. Engg. Corpn.
30.11.2023:Present: Sh. B.S. Saharwal-Rep. For the
workman
None for the management.
The case is at stage for filing reply to application
under Section 151 CPC. Previously management was
appearing through its representative. Today, neither
Ld. Representative appeared in person no anyone else
appeared on its behalf despite repeated calls since
morning. It is already 3:30 PM. Case is called once
again. None appeared on behalf of management.
Thus, Management is proceeded against ex-party.
Case is adjourned to 11.12.2023 for ex-parte
evidence of the workman.'*

3. Learned counsel for the petitioner further submits that on 30.11.2023, it was Thursday and just after three days i.e. on 04.12.2023, applicant-petitioner (Management) filed its application

for setting aside of the order dated 30.11.2023 by giving explanation in regard to the absence recorded on that day. Petitioner-Management gave an explanation that on 30.11.2023, due to heavy rainfall and consequent traffic jam, the Authorized – Representative (AR) of Management got stuck in the Punjab and Haryana High Court, Chandigarh.

Further submits that when the Authorized – Representative (AR) of Management reached the Labour Court, it was informed that the petitioner-Management has already been proceeded against ex-parte. Thus, the absence of the petitioner cannot be considered as a negligent, careless or motivated act, because, the order was passed on 30.11.2023 and just after 3/4 days, the required application (Annexure P-3) for setting aside of ex-parte order was moved, which has been wrongly dismissed by learned Labour Court.

4. This Court has examined the order dated 21.02.2024 (Annexure P-5) vide which application to set aside the ex-parte order dated 30.11.2023 was declined and is of the view that for deciding the controversy raised in the present writ petition filed at the instance of Management, issuance of notice to the other side i.e. respondent No.2-workman would be wastage of time, without any substantial gain, Rather, by keeping in mind the element of interest of justice and concern of all the parties; early and expeditious disposal of present petition, may serve the required purpose of imparting justice.

5. From the averments taken in the application (Annexure P-3) and the reasons assigned therein, this Court is completely satisfied and is of the view that the reasons assigned in the application appears to be genuine one. Even otherwise also, the fact cannot be ignored that the Management had been appearing throughout the proceedings and it was only on 30.11.2023, the absence was recorded for the first time and Management was proceeded against ex-parte. Thereafter, an application for setting aside of the ex-parte order was immediately moved within three days, which also included two non-working days i.e. Saturday and Sunday.

6. In case, appropriate opportunity to defend itself is not granted to the Management, there would be every possibility that the Management may not be able to lead its evidence by joining the proceedings. Undoubtedly, Industrial Dispute referred for its adjudication is expected to be decided as per law, after giving adequate opportunities to all the concerned parties. Depriving any particular party from leading evidence unreasonably would amount to violation of Principles of Natural justice, particularly the principle of *audi alterem partem* i.e. Right to fair hearing.

7. Therefore, by examining all the facts and circumstances as well as the submissions addressed and also by going through the application, reply thereto and the impugned orders passed by the learned Labour Court, this Court deems it appropriate to set aside the orders dated 30.11.2023 (Annexure P-2) and 21.02.2024 (Annexure P-

5) by granting an opportunity to the petitioner-Management to join the proceedings from the date when it was proceeded against ex-parte i.e. 30.11.2023 onwards.

8. However, at the time of appearing before the Tribunal, petitioner-Management would pay the cost amount of Rs.20,000/- to respondent No.2-Bhushan Kumar (workman) in the shape of demand draft of some nationalized bank.

9. In case, respondent No.2-workman is not satisfied with this order, he would be at liberty to seek revival of the present writ petition by giving his statement before learned Labour Court but in that situation, respondent No.2-Bhushan Kumar (workman) would not be entitled to accept the cost amount of Rs.20,000/- as ordered by this Court.

Accordingly, petition stands allowed.

April 15, 2024
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[SANJAY VASHISTH]
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no