

CWP-9828-2016

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

CWP-9828-2016

Date of Decision: April 10, 2024

Dalip Kumar

.... Petitioner

Versus

**Presiding Officer, Industrial Tribunal-cum-Labour Court, Circle No. 1,
Faridabad and another**

...Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Bharat Bhushan Sharma, Advocate,
for the petitioner.

Mr. Vikas Chaudhary, Advocate,
for respondent No. 2.

SANJAY VASHISTH, J.

1. Petitioner – Dalip Kumar (deemed workman), has filed the present writ petition, under Articles 226/227 of the Constitution of India, for quashing of award dated 16.07.2015 (Annexure P-4), passed by the Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad (here-after referred to as, ‘the Tribunal), whereby Reference No. 194/2012, under Section 10(1)(c) of the Industrial Disputes Act, 1947 (here-after referred to as, ‘the 1947 Act’), has been answered against the workman, primarily for the reason that he could not submit himself for cross-examination, despite affording last opportunity.

2. In the claim statement, the workman pleaded that he joined M/s Naini Export Private Limited (respondent No. 2 herein) on 04.05.2005, as ‘Die Maker’, on a salary of Rs.11,500/-. And, without complying with the

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statutory provisions of the 1947 Act, such as Section 25-F, 25-G and 25-H, his services were terminated on 18.04.2012.

3. In the written statement filed by the management, pleading is raised that the workman did not complete 240 days, as mandatory period for drawing any benefit under the 1947 Act. Broadly speaking, the management stated that there was no violation of the provisions of the 1947 Act, and the provisions of Section 25-F would not be attracted in the dispute, allegedly sought to be raised by the workman.

4. After framing of issues vide order dated 03.07.2013, the Tribunal afforded opportunity to both the parties for leading evidence. In support of his case, the workman himself appeared as WW-1, and one Sunil Tayagi appeared as WW-2. But they could not produce themselves for cross-examination, despite last opportunity. On the other hand, the management also has not led any evidence.

5. While returning its findings on Issue Nos. 1 and 2, the Tribunal has made observation that evidence recorded in examine-in-chief, cannot be legally read as evidence, unless same is tested by way of cross-examination.

The finding recorded by the Tribunal says as under:-

“ISSUE NO. 1:

10. Claimant claims his appointment with the respondent on 04.05.2005 and dismissal on 18.4.2012. The respondent alleged that initially he had joined in September, 2009 as Operator and left the job in August, 2011. He again joined in December, 2011 and worked upto April, 2012. The claimant had not completed 240 days. The claimant had collected wages for the month of March.

11. The claimant in support of his case apart from tendering his own affidavit, tendered affidavit of Sunil Tayagi WW-2. But none of these witnesses was sported by the

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claimant for cross examination. Evidence recorded in examination in chief cannot legally read as evidence unless it is tested by way of cross examination. Meaning thereby there is no evidence on record to support the claim of the claimant and his plea is not established. The workman has failed to prove that he has worked for 240 days in preceding year of his alleged illegally termination. So, he is not entitled to any relief. This issue is decided against the workman.

ISSUE NO. 2:

12. No evidence has been led by the respondent to support and prove this issue. So it is decided against the respondent.”

6. The said finding has been recorded by the Tribunal by taking note of the fact, recorded in a separate zimni order dated 16.07.2015 (Annexure P-5) that despite last opportunity, WW-1 Dalip Kumar (workman) was not present for his cross-examination and a date was requested. Zimni order dated 16.07.2015 (Annexure P-5) reads as under:-

*“Present: Shri C.L. Gera AR for the applicant-workman
Shri Sudhir Chauhan AR for the applicant-respondent*

WW-1 Sh. Dalip Kumar is not present for his cross examination despite last opportunity. A date is requested which is strongly opposed. The witness has not been produced for cross examination despite last opportunity nor any other witness is present. There is no ground to adjourn the case further for this purpose. So, the evidence of the claimant is closed by order of the court. AR of the respondent states at bar that he does not want to lead any evidence. Heard. By separate award, the reference is answered against the claimant. File be consigned to record room after due compliance.

*Sd/-]
(Dr. D.N. Bhardwaj)
PO,
Labour Court-1, Fbd.
16.7.15”*

7. Learned counsel representing the petitioner/workman as well as respondent No. 2/management, jointly state that the workman had filed a

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separate application, under Section 33-C(2) of the 1947 Act, before the Tribunal and the proceedings in the said application were also conducted together with the reference in question, which is subject matter of present writ petition, i.e. Reference No. 194/2012.

Further it has been jointly stated that similar was the situation in the proceedings of the application filed by the workman, under Section 33-C (2) of the 1947 Act, because the statement/examination-in-chief recorded in support of the said application never cleared the test of cross-examination, therefore, the same was not read as admissible evidence, in support of the application under Section 33-C(2) of the 1947. Accordingly, the said application was also dismissed by the Tribunal, vide order dated 16.07.2015, by passing a separate order. And, the same was assailed by the petitioner/workman by way of CWP No. 9852 of 2016.

8. It has also been pointed out by learned counsel for the parties that CWP No. 9852 of 2016, has already been finally decided by a Co-ordinate Bench of this Court, vide order dated 04.05.2017, copy of which has been furnished and taken on record. Registry to tag the same at an appropriate place of the paper book.

Perusal of the order dated 04.05.2017, passed in CWP-9852-2016, reveals that while setting aside the order dated 16.07.2015, passed by the Tribunal in the application under Section 33-C(2) of the 1947 Act, the Co-ordinate Bench of this Court, restored the file on the Board of the Tribunal, to proceed with it in accordance with law by picking up the case from 16.07.2015. Order dated 04.05.2017, passed in CWP No. 9852 of 2016, says as under:-

“ *The Labour Court-I, Faridabad passed the impugned order dated 16.07.2015 passed by the labour court in an application under Section 33 C (2) of the industrial Disputes Act, 1947, which is impugned by the petitioning workman in this writ petition brought under Article 226/227 of the Constitution of India. The sum total of the impugned order reads as under:*

“WW-1 Sh. Dali Kumar is not present despite last opportunity. A date is requested which highly is opposed. Applicant-workman has already availed many opportunities but he not been produced for cross examination despite last opportunity. So there is no ground to adjourn the case any further for this purpose. Evidence of the workman is closed by order of the Court. Respondent AR also does not want to lead any evidence. The applicant-workman has failed to show that he is entitled to get any amount computed. So, the application is dismissed. File to consigned to record room after due compliance.”

*This order ex facie deserves to be set aside on the ground that it is highly erroneous approach and contains no reason whatsoever as to what was weighing in the mind of the labour court that applicant-workman had failed to show that he is entitled to get any amount computed. Recording reasons is a facet of reasonableness and the necessary tool in discharge of judicial business. Not to speak of administrative orders, which also require reasons to be stated, judicial orders require more vigour as explained by the constitution bench of the Supreme Court in **S. N. Mukherjee vs. Union of India**, AIR 1990 SC 1984. If there is no reason assigned or one which is, is perfunctory and of insufficient in quality to understand the process of reasoning, no order, whether judicial or administrative, can survive judicial review.*

I am surprised that after having passed this order, the application of the workman for restoration of the application for a decision on merits was disallowed when the position could have been rectified to do substantial justice. Many peripheral and irrelevant issues entered the decision on the restoration application by the labour court in a rather copious order, when the same amount of time and effort could have been spent in deciding the application on merits. Instead, justice was dispensed with. The only possible cure of the patent defects noticeably apparent on the face of the record is to remit the case back to the labour court for its reconsideration on merits of the dispute.

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Consequently, the writ petition is allowed and both the orders are set aside and the case is remanded to the Labour Court, Circle I, Faridabad. The file is restored on the Board of Labour Court to proceed with it in accordance with law by picking up the threads from 16.07.2015.

Parties are directed to appear before the Labour Court, Circle I, Faridabad on 23.05.2017.”

9. In the backdrop of above factual matrix, learned counsel for the petitioner/workman prays that the instant petition may also be allowed and the matter be remanded back to the Tribunal for adjudication afresh from the stage of cross-examination of the witnesses of the workman.

10. Learned counsel for respondent No. 2/management is completely in agreement with the contention of learned counsel for the petitioner and also not in a position to dispute the facts narrated and recorded here-above.

11. Therefore, taking note of the circumstances, pleadings in the present petition and placing reliance upon the admitted contention, present writ petition is allowed, and the impugned award dated 16.07.2015 (Annexure P-4), passed by the Tribunal in Reference No. 194/2012, is set aside. Consequently, the file is restored on the Board of the Tribunal, with a direction to proceed with it, in accordance with law, by picking up the proceedings from the stage of cross-examination of the witnesses of the petitioner/workman.

Parties are directed to appear before the Tribunal on 02.05.2024.

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Registry is directed to transmit a copy of this order to the
Presiding Officer, Industrial Tribunal-cum-Labour Court, Circle-I,
Faridabad, forthwith.

(SANJAY VASHISTH)
JUDGE

April 10, 2024
Pkapoor

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