



CWP-26999-2018 & connected case -1-

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

244 (02 cases)

CWP-26999-2018
Date of Decision :28.01.2025

The Range Officer, Forest Department
and others

...Petitioners

Versus

Gurpreet Kaur and another

....Respondents

CWP-27000-2018
Date of Decision :28.01.2025

The Range Officer, Forest Department
and others

...Petitioners

Versus

Usha Rani and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Akshita Chauhan, DAG, Punjab
for the petitioner-State.

None for the respondents.

* * *

Harsimran Singh Sethi, J. (Oral)

1. In the present petitions, the challenge is to the order passed by the learned Presiding Officer whereby, application filed by the petitioner-State for setting aside the exparte award so as to allow the petitioner-State to participate in the proceedings, has been rejected vide order dated 03.05.2018



CWP-26999-2018 & connected case -2-

(Annexure P/6).

2. Learned counsel for the petitioner-State argues that as per the petitioner-State, the correct address was not given therefore, no summons were served upon so as to contest the claim of the respondent-Workmen hence, an application was filed for setting aside the said exparte award, which has been declined by the Tribunal solely on the ground that an application was required to be filed within a period of 30 days from the date of publication of award whereas, the application was filed after the lapse of 03 years.

3. Learned counsel for the petitioner-State further submits that application was filed immediately when the award passed came to their notice and once, the petitioner-State have been able to prove that they were not served, the award should have been recalled so as to give due opportunity to the State to rebut the claim of the respondent-Workmen, which has been wrongly denied by the Tribunal only on technicalities that application was filed after expiry of 30 days of the award.

4. Despite service, no one appears on behalf of the respondent-workmen. Proceeded exparte.

5. I have heard learned counsel for the petitioner-State and have gone through the record with her able assistance.

6. In order to prove that the petitioner-State have not been served, the petitioner-State stated that the address given by the respondent-Workmen was not correct and respondent No.1 had no link with the workmen and no summons were ever served upon the concerned office against whom the relief was being sought. The said contention of the petitioner-State has gone



CWP-26999-2018 & connected case -3-

unrebutted and even while passing the impugned order dated 03.05.2018 (Annexure P/6), the Tribunal has not recorded the finding that petitioner-State were served in a manner required qua the concerned department against whom the relief was claimed.

7. Further, the question of law as raised in the present petition has already been settled by the Hon'ble Supreme Court of India in **M/s Haryana Suraj Malting Ltd. vs. Phool Chand, 2018 (3) SCT 97** wherein, it has been held that qua ex parte Award, an application can also be entertained by the Labour Court even after 30 days and it cannot be said that the Labour Court becomes functus officio. The relevant paragraph of the said judgment is as under:-

“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.”

**CWP-26999-2018 & connected case -4-**

8. Keeping in view the totality of the circumstances, exparte award passed by the Tribunal dated 18.02.2015 (Annexure P/2) is set aside. Case is remanded back to the Industrial Tribunal, Ludhiana for fresh adjudication of the claim of the parties by giving due opportunity to both the parties to present their claim before deciding the issue raised by them.

9. A photocopy of this order be placed on the files of connected cases.

January 28, 2025
aarti

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No