
(2014) 03 UK CK 0003

In the Uttarakhand High Court

Case No : Writ Petition No. 1030 of 2013 (M/S)

Akhtar Hussain

APPELLANT

Vs

Kishan Ram and Others

RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:

Citation : (2015) 145 FLR 984 : (2015) 1 UC 352

Hon'ble Judges : Alok Singh, J.

Bench : Single Bench

Advocate : T.A. Khan, Senior Advocate assisted by Rajesh Joshi, Advocate, for the Appellant; D.S. Mehta, for the Respondent

Final Decision : Allowed

Judgement

Alok Singh, J. Prescribed authority exercising the powers under the provision of Payment of Wages Act was pleased to direct the employer to release wages in favour of the employee ex-parte. Having acquired knowledge about the ex-parte order passed by the Prescribed Authority, petitioner/employer moved application to recall the ex-parte order and to decide the case afresh which was dismissed by the Prescribed Authority vide order dated 16.04.2013. Rule 8 of Payment of Wages (Procedure Rules), 1937 reads as under:--

"8. Appearance of parties. - (1) if the application is entertained, the Authority shall call upon the employer by a notice in Form E to appear before him on a specified date together with all relevant documents and witnesses, if any, and shall inform the applicant of the date so specified.

(2) If the employer or his representative fails to appear on the specified date, the Authority may proceed to hear and determine the application ex parte.

(3) If the applicant fails to appear on the specified date, the Authority may dismiss the application;

Provided that an order passed under sub-rule (2) or sub-rule (3) may be set

aside and the application re-heard on good cause being shown within one month of the date of the said order, notice being served on opposite party of the date fixed for hearing."

2. As per Rule 8, Prescribed Authority having received an application shall call upon the employer by notice in Form E to appear before him on a date fixed. If the employer or his representative, fails to appear, the Prescribed Authority to hear and determine the application ex-parte. As per Rule 3, if the applicant fails to appear on the specified date, the Prescribed Authority may dismiss the application. As per the proviso to the Rule, ex-parte order passed by the Prescribed Authority can be set aside on showing good cause of remaining absent on the date fixed.

3. Having perused the application moved by the petitioner before the Prescribed Authority, I find that notice sent by the Prescribed Authority was in fact never served on the petitioner/employer, therefore, cause shown seems to be sufficient.

4. Consequently, present petition is allowed. Impugned orders rejecting the restoration application dated 16.04.2013 and ex-parte judgment dated 08.02.2013 are set aside. Case is restored on the file of the Prescribed Authority. Parties are directed to remain present before the Prescribed Authority on 15th April, 2014 for further orders. Thereafter, Prescribed Authority shall decide the application moved by the respondent at its own merit in accordance with law preferably within next three months. CLMA No. 4765 of 2013, CLMA No. 10790 of 2013 and IA No. 1195 of 2014 stand disposed of accordingly.