
(1995) 02 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15212 of 1992 and Civil Miscellaneous No's. 11404 and 12205 of 1994

B.H. Industries (Regd.)

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 02-02-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (1995) 110 PLR 155

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : Jasbir Singh, for the Appellant; G.S. Punia, for the Respondent

Judgement

N.K. Sodhi, J.—This petition under Article 226 of the Constitution is directed against the order dated 31.3.1992 passed by the Labour Court, Ludhiana whereby the application filed by the petitioner-management for setting aside the ex parte order dated 14.10.1987 was rejected. While issuing notice to respondent, the records of the Labour Court were summoned.

2. Gurdev Singh-respondent (for short, the workman) filed an application before the Labour Court u/s 33C(2) of the Industrial Disputes Act, 1947 Claiming a sum of Rs. 28505/- on account of arrears of earned wages, notice pay, retrenchment compensation, leave wages and bonus for some years. A registered notice of this application was issued to the management on 30.12.1986 for 9.2.1987. On 9.2.1987 the management did not appear and since more than 30 days had expired from the date on which the notice was sent, the Labour Court presumed that the management had been served and proceeded against it ex-parte. After recording statement of the workman on 23.9.1987, the Labour Court by an ex-parte order dated 14.10.1987 computed the amount claimed by the workman. The management then filed an application for setting aside of this order on the ground that it had not been served in the main case. This application was

opposed by the workman and the following issues were framed :

1. Whether the application is not within time?
2. Whether the court has no jurisdiction?
3. Whether there are sufficient grounds for setting aside the impugned order dated 14.10.87, if so on what terms?

Harminder Pal Singh - a partner of the petitioner firm appeared as MW1 and stated on oath that the management had not been served in the main case and that it learnt about the matter only on receipt of a letter from the Collector requiring the management to appear before him on 27.9.1988 for making payment to the workman. The workman tendered two documents in evidence and closed his case. After hearing the representatives of the parties, the Labour Court by the impugned order rejected the application holding that there were no sufficient grounds for setting aside the ex parte order dated 14.10.1987. It is this order which is now under challenge in this petition.

3. I have heard counsel for the parties and perused the records of the Labour Court. There is no manner of doubt that the management was not served in the application filed by the workman under the section 33C(2) of the Act. A registered notice was sent on 31.12.1986 for 9.2.1987 and since the acknowledgement had not been received back, the Labour Court presumed that the management had been served. Thereafter, when the application was filed for setting aside of the ex parte order, MW 1 stated on oath that no notice was ever served on the management. This witness was not cross-examined in this regard and only a suggestion was put to him that the management had been served which he denied. In view of this statement, the onus to prove that the management had in fact been served shifted on the workman which he has failed to discharge. In the proceedings for the setting aside of the exparte order he has not even appeared in the witness box and the two documents produced by him in evidence are only letters dated 31.5.1988 and June 3,1988 from the Labour Inspector addressed to the Conciliation Officer in which the former is informing the latter that the management had been informed about the exparte order dated 14.10.1987 and that it had been directed to make payment to workman. These letters do not prove that the management was in fact served in the main case. In my opinion, the Labour Court was not justified in proceeding ex parte against the management merely because the notice sent to it had not been received back within 30 days from the date of its despatch. Since the management had not been served in the main case, the impugned order of the Labour Court cannot be sustained.

4. In the result, the writ petition is allowed and the order dated 14.10.1987 (Annexure P-5 with the writ petition) quashed. The Labour Court is directed to dispose of the application filed by the workman on merits and in accordance with law after affording an opportunity of hearing to both the parties. Parties though their counsel have been directed to appear before the Labour Court on 3.4.1995.

Records of the Labour Court be sent back forthwith.