

(1993) 01 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition 3857 of 1983

Engineer-in-Chief Irrigation Dept.

APPELLANT

Vs

Sh. Sube Singh and Others

RESPONDENT

Date of Decision : 12-01-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (1993) 2 LLJ 289 : (1993) 2 LLJ 288 : (1993) 103 PLR 669

Hon'ble Judges : R.S. Mongia, J

Bench : Single Bench

Advocate : Sanjeeve Manrai, AAG, for the Appellant; Sabina, Workman, for the Respondent

Final Decision : Allowed

Judgement

R.S. Mongia, J.—The workman had moved an application u/s 17B of the Industrial Disputes Act, 1947, for paying current wages to the petitioner from the date of the application, i.e. April 15, 1992. With the consent of the parties, I have heard them in the main case also and propose to dispose of the main case itself.

2. Respondent No. 1, Shri Sube Singh (hereinafter called the workman) was working as work-charged Fitter with the petitioner (hereinafter called the Management), i.e. Engineer-in-Chief, Irrigation Department, Haryana with effect from January 1, 1982 (Annexure P-2). The workman raised an industrial dispute which was referred to the Labour Court, Rohtak for adjudication by the State Government, vide Notification dated September 16, 1992.

3. The Labour Court, Rohtak issued notice to the Management on September 24, 1982 for appearing before it on October 19, 1992 regarding the dispute between the parties. The registered A.D. envelope which has sent to the Management, was received back with the report of the Postal Authorities "Refused to take delivery". On October 19, 1982, the Labour Court, on the basis of the report of

the Postal Authorities on the registered A D. envelope, passed the order for proceeding ex-parte against the Management. On the same day, i.e. October 19, 1982, the Sub Divisional Officer, who had been authorised on behalf of the Management to appear in the case, moved an application to set aside the ex-parte order. In the application it was mentioned that he had reached the Court at 9.00 A.M. and he kept on sitting outside the Court Room till 10.45 A.M. and when he entered the Court Room and enquired about the case, the Reader of the Court told him that ex parte orders had been passed. It has further been mentioned in the application that the case had not been called for hearing and the absence of the applicant, i.e. the Management was not intentional. No orders have been passed on this application nor any notice was issued of this application to the workman. I find from the record, which was summoned by me from the Labour Court, that on November 9, 1982, a communication was addressed by the Executive Engineer on behalf of the Management to the Presiding Officer, Labour Court, Rohtak, intimating the Court that Shri. P.K. Vasudeva, Sub Divisional Officer had attended Labour Court about the hearing of the case, he was told that ex parte decision had been taken. It is further mentioned in this communication that an application had been submitted to the Court against the ex parte order on the same day and that the ex-parte decision would not be acceptable to the Management. This communication was received by the Labour Court on November 16, 1982 and the same has been attached as Annexure P-9 to the present writ petition. The Labour Court on October 19, 1982 fixed December 14, 1982 for ex parte evidence of the workman, at Hissar. On December 14, 1982, the case was adjourned to January 11, 1983 on the request of the workman. No one had appeared on behalf of the Management even on that date. The ex-parte evidence of the workman was recorded on January 11, 1983 in the absence of any representative of the Management, and ultimately, the award was made on February 5, 1983 (Annexure P-I). The Motion Bench, while admitting the writ petition on August 12, 1983 stayed the operation of the impugned award

4. The primary contention of the learned counsel for the petitioner-Management is that on the same day and order of ex-parte proceedings was made by the learned Labour Court, the Management had moved an application for setting aside the ex-parte order, but no order has been passed thereon. According to the learned counsel, the Labour Court was duty bound in law to decide the application for setting aside the ex-parte proceedings. According to the learned counsel, the Labour Court should have considered that application which had been filed much prior to the making of the award. He submitted that this Court may set aside the ex-parte proceedings now and opportunity should be given to the petitioner to lead evidence and to cross- examine the witnesses produced by the workman.

5. On behalf of the workman, Mrs. Sabina, the learned counsel, submitted that the duty of the Management did not come to an end merely by filing the application for setting aside the ex-parte proceeding. No body on its behalf cared

to appear to any of the adjourned dates. the Management was at liberty to appear on any of the subsequent dates fixed by the Labour Court.

6. After hearing the learned counsel for the parties, I am of the view that though the petitioner-Management should have pursued the application for setting aside the ex-parte proceedings, yet a duty was also cast on the Labour Court itself to decide the application one way or the other. Instead of remanding the application itself the Labour Court, I have thought it appropriate to decide the same herein these proceedings to avoid any further delay in the matter. There is no denying the fact that the application for setting aside the ex-parte proceedings was made on the same day, i.e. October 19, 1982, when the order requiring ex-parte proceedings against the petitioner was passed This was much before the award was announced. Even a communication was also addressed by the Management on November 9, 1982 (Received by the Labour Court on November 16, 1982), to the effect that the Management had already moved an application for setting aside the ex-parte proceedings and the order passed in the ex-parte proceedings would not be acceptable to the Management. When such an application was made. The Labour Court was required to decide the same. From the record, I find that the same has not been decided at all.

7. In view of what has been stated above, it cannot be said that there was intentional absence on behalf of the Management, The application for setting aside the ex-parte order was made on the same day, which application accompanied even the written statement to the claim of the workman. It has been often held that as far as possible the case should always be decided on merits after affording due opportunity to the parties concerned.

8. For the foregoing reasons, I am of the view that the ex-parte proceedings taken against the petitioner-Management are liable to be set aside Accordingly the ex-parte award ipso facto will have to be quashed.

9. In view of what has been observed above, this writ petition is allowed and the ex-parte award, dated February 5, 1983 (Annexure P-1), is hereby quashed, and the case is remanded back to the Labour Court for deciding the dispute on merits. The parties through their counsel are directed to appear before the Labour Court, Rohtak on February 8, 1993, to get further directions.

10. The case relates to the year 1982. Mrs. Sabina, learned counsel for the workman, has stated at the bar that her client would produce the entire evidence at his own responsibility, for which maximum two opportunities may be granted. The Labour Court would grant two opportunities to the workman to produce his entire evidence at his own responsibility and these two dates, if necessary, would be fixed within a gap of 1 1/2 months. On the closing of the evidence of the workman by the Labour Court, the Management will also be given only two opportunities to lead its entire evidence. These opportunities will also be given within a gap of 1 1/2 months from the closure of the evidence of the workman. The learned counsel for the petitioner- Management has stated that the written

statement filed along with the application for setting aside the ex-parte proceedings may be taken as the written statement to the claim application of the workman.

11. As far as the application for current wages is concerned, it cannot be denied that the workman is entitled to the current wages which he would have got had his services not been terminated. Though I am accepting the writ petition and remanding the case to the Labour Court, the workman would be entitled to the current wages to be calculated by the Management on the basis as if he had remained in service throughout. The workman will be entitled to the current wages from the date of the application, i.e. April 15, 1992, which shall be calculated as above by the Management and remitted to the workman within six weeks from today.

12. The office is directed to remit the record of this case expeditiously to Labour Court, Rohtak to reach prior to the date of hearing by the Labour Court, i.e. February 8, 1993. I make no order as to costs.

13. The certified copy of this judgment be given Dasti to the parties on payment.