

(2012) 11 P&H CK 0169

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11257 of 2011 (O and M)

P.L. Goyal and Sons Limited

APPELLANT

Vs

Authority Appointed Under Payment of Wages and Others

RESPONDENT

Date of Decision : 03-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 14A, Order 7 Rule 1, Order 7 Rule 8
Employees Compensation Act, 1923 — Section 7

Citation : (2013) 169 PLR 664

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : P.K. Kukreja, for the Appellant; Nilesh Bhardwaj, D.A.G., Punjab for State, Mr. Roopak Bansal, Additional Advocate General, Haryana and Mr. A.P. Setia for UT Chandigarh, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—The petitioner management has approached this court impugning the order dated 13.5.2011 passed by the Authority under the Payment of Wages Act, 1936 (for short, "the Act"), whereby the application filed by the petitioner for setting aside ex-parte order 27.12.2010, was dismissed. Learned counsel for the petitioner submitted that number of workers filed applications under the Act, which were being dealt with by the Assistant Labour Commissioner, Mohali, as an Authority under the Act. As the proceedings being conducted by the officer concerned were not fair, transfer of the cases was sought by the management vide letter dated 17.5.2010. Vide communication dated 6.10.2010 of the Secretary, Department of Labour, Government of Punjab, the cases were transferred from Assistant Labour Commissioner, Mohali, to Assistant Labour Commissioner, Patiala. As the workers' union had levelled certain allegations against the Assistant Labour Commissioner, Patiala, earlier, the concerned authority expressed reservation in dealing with the cases in hand. Thereafter, vide memo dated 28.12.2010, the Labour Commissioner, Punjab, recommended to the Chief Secretary, Government of Punjab, for transfer of the

cases to Assistant Labour Commissioner (Sadar) in the office of Labour Commissioner, Punjab. Thereafter, the cases were transferred accordingly and presently the proceedings are continuing before the Assistant Labour Commissioner (Sadar) in the office of Labour Commissioner, Punjab, who is holding camp office at Mohali.

2. Learned counsel for the petitioner submitted that earlier the cases were transferred from Mohali to Patiala. Thereafter reservation was expressed by the officer concerned at Patiala regarding dealing with the cases. The same were transferred again to Assistant Labour Commissioner (Sadar) in the office of Labour Commissioner, Punjab. The authority at Mohali did not have the jurisdiction to deal with the cases but still it continued with the proceedings and passed the order dated 27.12.2010 directing ex-parte proceedings against the petitioner. The non-appearance of the petitioner before the authority was neither intentional nor willful.

3. Notice of motion in the present writ petition was issued on 27.6.2011. The case was adjourned from time to time. However, the service of the respondents-workmen could not be completed.

4. A perusal of the memo of parties in the writ petition shows that address of the respondents-workmen is "c/o Bhartiya Mazdoor Sangh, Office: Main Bazar, Derabassi, District Mohali".

5. Learned counsel for the petitioner submitted that address was taken by the petitioner from the pleadings filed before the Authority. While noting contention raised by learned counsel for the petitioner on 16.8.2012 to the effect that proceedings for the subsequent period have been initiated by the respondent-workmen before the Authority, in which they are represented through an authorized representative, liberty was given to the petitioner to serve the respondents-workmen through their authorized representative in the pending proceedings before the Authority on 26.9.2012. On the next date of hearing, the office reported that though the service of the respondents-workmen was not complete, however, their authorised representative had been informed, but none represented the workmen. The case was adjourned to 15.10.2012. On that date as well no one had appeared.

6. Considering the aforesaid factual matrix and also taking note of the fact that when the petitioner was proceeded against ex-parte there was a dispute about the jurisdiction of the authority to deal with the cases, I do not think it appropriate to keep the case pending any more as the prayer of the petitioner is for setting aside ex-parte proceedings against him as a result of which the cases will be decided on merits by the competent authority after hearing the parties.

7. After hearing learned counsel for the petitioner and taking note of the contentions raised by him, as have been referred to above, where the issue regarding transfer of the cases from the Assistant Labour Commissioner, Mohali, to Assistant Labour Commissioner, Patiala, was pending and thereafter the cases

were transferred to Authority at Chandigarh but still during the interregnum, the authority at Mohali had passed the impugned order dated 27.12.2010, directing ex-parte proceedings against the petitioner and further the application filed by the petitioner for setting aside the ex-parte proceedings was also dismissed on 13.5.2011, I deem it appropriate to set aside the aforesaid orders and permit the petitioner to appear and defend the applications filed by the workers against it. The next date of hearing is stated to be 26.11.2012.

8. Learned counsel for the petitioner further submitted that the petitioner is yet to file reply to the applications filed by the workmen. Reply to the applications filed by the workmen shall be filed by the petitioner before the appropriate authority on or before the next date of hearing. It is made clear that in case of failure to do so, the order directing setting aside of ex-parte proceedings shall stand vacated and the writ petition shall be deemed to have been dismissed. Considering the fact that it is a case in which the workmen are claiming wages, the Authority shall expedite the proceedings.

9. The writ petition is disposed of accordingly.

10. Before parting with the order, this court would like to direct the authorities working under the various Labour Laws to take some corrective steps.

11. It is evident from the facts of the present case, as have been noticed above, the service of the respondents-workmen could not be effected despite 6-7 efforts. The address of the workmen furnished in the writ petition is "c/o Bhartiya Mazdoor Sangh, Office: Main Bazar, Derabassi, District Mohali". The stand of learned counsel for the petitioner was that it is the same address which has been furnished by them in the applications filed before the Authority.

12. Vide order dated 16.8.2012, learned counsel for the petitioner was requested to assist the court on the issue as to whether workmen while filing application(s) before the Authority are required to furnish their complete addresses or mere mentioning of address as care of union or the authorized representative, is sufficient.

13. On the next date of hearing i.e. 27.9.2012 another issue was pointed out i.e. regarding mode of payment of amount due to the workmen. It was submitted that many times the amount is not paid to the workman directly rather it is paid in cash to the representative or the office bearers of the Union. Learned counsels for the States of Punjab, Haryana and Union Territory, Chandigarh were requested to assist the court on the issue and apprise the system being followed regarding payment of amount to the workmen. In response thereto, the affidavits have been filed in court today which are taken on record.

14. In the affidavit filed by Mr. P.S. Mand, Labour Commissioner, Punjab, Chandigarh, dated 12.10.2012, it is stated that it is not mandatory under the provisions of the Act to furnish permanent address of the workman as majority of the workers are migrants. They furnish their temporary present address as the

applications are filed with the help of trade unions. The addresses of the trade unions are mentioned. Though some of the field officers suggested that permanent address of the parties should be made mandatory in all the petitions filed before the authorities under different Labour Laws. The fact that in some cases the payment is made in cash, is not denied, though it is claimed that in most of the cases, it is by way of cheque.

15. The stand taken by the State of Haryana, by way of affidavit of Mr. Anupam Malik, Joint Labour Commissioner, Haryana, Chandigarh, dated 2.11.2012 is that though the payment to the workmen is made through cheques, however, in some cases the cash is also paid.

16. The stand taken by Smt. Mohinder Kaur, Assistant Labour Commissioner-cum-Authority under the payment of Wages Act, Union Territory, Chandigarh, in her affidavit dated 2.11.2012 is similar where it is stated that some times the payment is made in cash as well. It is further submitted that various labour laws are silent regarding furnishing of permanent address of the workman at the time of filing of application.

17. Learned counsel for the petitioner referred to Forms A and B appended with the Payment of Wages (Procedure) Rules, 1937 (for short, "the Rules"). He submitted that there is no specific column for mentioning address of the applicant in Form-A while filing application independently, whereas in case the application is to be filed by a group of persons in Form-B, there is specific requirement of mentioning of their permanent address.

18. In Form-F appended with the Employees' Compensation Rules, 1924, in an application filed by the workman, the address of the workman is required to be furnished. Similar is the position where the application is filed for payment u/s 7 of the Employee's Compensation Act, 1923, which is contained in Form-H, appended with the aforesaid Rules.

19. In Industrial Disputes (Central) Rules, 1957, in many of the Forms for initiating the proceedings under the Act, mentioning of address of the parties to the dispute is required. Similar is the position in other Labour laws.

20. The difficulty arising out of non furnishing of complete address in proceedings under the various Labour laws was experienced by this court while dealing with the cases and it was found that despite numerous opportunities the workmen are not served as the addresses in many of the proceedings, mentioned is merely care of trade union or through a representative which may have changed/shifted his office. In some cases the representative may not be interested in pursuing the cases if these are taken in higher courts or he may have not been given authority by the workman. As a result of this, even if the cases are dealt in higher courts, the workers himself may not get the ultimate relief, if granted by the higher court. Effective relief can be granted to him only if the permanent address of the workman is furnished in the pleadings. It has not been pointed out that there is any bar under different Labour laws for providing permanent

address.

21. If any party approaches any authority for a relief, the first thing required to be mentioned is his complete address. Mentioning of address of the representative is secondary as some one may like to appear in person. Even Order VI Rule 14A CPC provides that in every pleadings, the parties are required to furnish their complete address and any change is also required to be informed. The High Court Rules and Orders also throw light on this issue. The matter in this regard was also considered by this court in R.F.A. No. 5203 of 2010 - Parveen Kumar v. The State of Haryana and another, wherein vide order dated 7.3.2011, while referring to provisions of Order VI Rule 14-A CPC, Order VII Rule 1 CPC and Rules 1 and 8 in Volume-I, Chapter-I, Part-"C" of Rules and Orders of the Punjab and Haryana High Court, the need of furnishing of complete addresses by the parties was emphasised. In case the party fails to furnish complete address, the petition/case can be dismissed in extreme circumstances.

22. To streamline the working of various authorities under the different Labour Laws, it is directed that in future in all the cases which are to be filed and in all the pending cases, the parties shall be directed to furnish their permanent address(es). Even if the representative of the workman is continuously appearing, he shall furnish permanent address of the workman. Even in proceedings subsequent to first stage, it shall be mandatory to provide permanent address of the party for his service. Merely mentioning through Labour union or authorised representatives, who are some times union leaders or legal practitioners, will not be sufficient. Service of notice will have to be effected on the permanent address of the workman.

23. The next issue on which counsel for the petitioner and the State counsels were to assist the court was the manner in which the payment is made under the various labour laws to the workmen. It is not in dispute that no uniform system is being followed. In some cases, the payment is made through cheques, in some cases it is paid in cash or through the representative of the workman. On account of incomplete address, the workmen may not be getting the relief ultimately granted to them. To avoid the same in future, a uniform system shall be followed by all the authorities working under various Labour laws. The workman will be required to open an account in any bank and submit copy of the passbook to the authority during the course of proceedings. It shall not be a joint account of the workman with his authorised representative, though it can be a joint account with his/her family member(s). If any amount is to be paid to a workman, the same shall be credited to his bank account directly. Even before release of the amount to the workman, the names of the account holders shall be confirmed by the authority. In no case the amount shall be paid to any authorised representative or the office bearers of the union, who may be representing the workman either by way of cheque or in cash. The officers of the Labour Department shall be duty bound to ensure that payment is received by the right person and not taken away by the middleman/the representative.

Identity proof be asked for.

24. Hon"ble the Supreme Court of India in AIR 2010 S.C.W. 631 Haryana State Industrial Development Corporation v. Pran Sukh and others, directed the Land Acquisition Collector to transfer the amount of enhanced compensation to the bank accounts of the land owners directly to avoid their fleecing by the middlemen.

25. This court in R.F.A. No. 1492 of 2008 - Haryana State Industrial & Infrastructure Development Corporation Ltd. v. Smt. Krishna Rani and another, decided on 8.4.2011, directed that the amount payable to a landowner on account of acquisition of land be transferred in his bank account directly by the Land Acquisition Collector in all undisputed cases.

26. In C.R. No. 7407 of 2010 - Jyoti Burmi @ Jyoti Sharda v. Anusandeeep Burmi, vide order dated 3.6.2011, it was directed that in all cases where any amount is directed to be paid by any court to any of the party, whether as a one time measure or at regular intervals, it should be ensured that the parties exchange their bank account particulars and the person, who is to pay the amount, transfers the amount directly in the account of the person entitled to receive.

27. Effort made in the aforesaid directions is only to avoid harassment of workmen, timely service of notice and that the amount due to them is in fact received by them.

28. Copy of the order be given to the learned counsels for the States of Punjab, Haryana and Union Territory, Chandigarh. Copy of the order be also sent to the Secretaries, Department of Labour, Punjab, Haryana and Union Territory, Chandigarh and to all the Presiding officers of the Industrial Tribunals and Labour Courts in the States of Punjab, Haryana, Union Territory, Chandigarh and Chandigarh Judicial Academy, by Email.