
(2012) 07 P&H CK 0046
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 7611 of 2010 (O and M)

SDB CISCO (India) Pvt. Ltd.

APPELLANT

Vs

Rajender Singh and Another

RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

Citation : (2013) 1 SCT 236 : (2013) 2 SLJ 107

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : G.K. Chawla, for the Appellant; Sudhir Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—The management is before this court challenging the ex-parte award dated 27.2.2009, passed by Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurgaon (for short, the Tribunal). The pleaded facts are that respondent No. 1-workman joined service with the petitioner as Security Guard on 1.11.2001. His services were terminated on 11.10.2004. A demand notice was issued by him on 13.10.2004. The Labour Department referred the dispute to the Tribunal on 19.12.2005. After notice was issued to the petitioner, none having appeared on its behalf despite service, it was directed to be proceeded against ex-parte on 10.3.2008. The ex-parte award was passed in favour of respondent No. 1 on 27.2.2009 granting reinstatement in service with back wages to the extent of 30% on the basis of last drawn salary. The petitioner having come to know about the ex-parte award when summon was received from the Labour Inspector for implementation thereof, the same was challenged before this court.

2. Learned counsel for the petitioner submitted that service of the petitioner was not properly effected. On 10.1.2008, the Tribunal directed for service of notice on the management on filing of a registered cover. The workman did not furnish the registered cover and got the notice issued through ordinary process. It was

reported that the management had refused to accept the summon. Merely on that basis, the petitioner was directed to be proceeded against ex-parte. In fact, the petitioner was earlier functioning from a rented premises at L-1/G, Street-1 (Front Row), Mahipalpur, New Delhi, which was vacated w.e.f. 31.5.2006 and a notice to that effect was given to the landlord on 1.4.2006 (Annexure-P6). Thereafter, the petitioner had shifted its office to 93, Community Centre, Zamrudpur, Greater Kailash-I, New Delhi. As on the date when the summon was sent to the petitioner at the old address, it was not operating from there, there was no reason for refusal of service. In fact, the report had been procured. In case, an opportunity is granted, the petitioner will put its case on merits before the Tribunal as it should not be condemned unheard. Without there being any material on record, the Tribunal has awarded back wages to the extent of 30%.

3. On the other hand, learned counsel for respondent No. 1- workman submitted that when despite service none represented the petitioner before the Tribunal, it had no other option but to proceed ex-parte. No statement of a witness or the Process Server was required to be recorded in the order sheet. Merely on the basis of report of the Registry of the Court, the order is passed directing ex-parte proceedings against a party. He further submitted that the petitioner had knowledge about the reference having been sent to the court as copy of order dated 14.12.2005 (Annexure-P2) was sent by the government to the petitioner as well, intimating reference of dispute to the Tribunal. He further submitted that even as per the pleaded case of the petitioner itself, it got knowledge of the award passed by the Tribunal through a notice from Labour Inspector at the address which is claimed to be old one from where the office had been shifted way back in the year 2006. The aforesaid notice was issued to the petitioner on 17.2.2010 (Annexure-P4). Considering the aforesaid facts, the claim made by the petitioner lacks bonafide as apparently it had knowledge about the pendency of proceedings but still did not choose to put in appearance to defend the case. He further submitted that even otherwise sufficient material was produced on record by the workman to show that he had been employed and his services were terminated illegally. There was no delay in raising a demand or reference of dispute to the Tribunal. Despite the fact that the award was passed way back on 27.2.2009, the workman has still not been taken back in service though there is no interim stay.

4. Heard learned counsel for the parties and perused the paper book.

The case sought to be set up by the petitioner is that on account of shifting of its office from Mahipalpur, summon had not been served on it and the report of service seems to be procured. However, considering the material on record, I do not find it to be meritorious. No doubt, the petitioner has produced on record a communication sent to the landlord of the premises at Mahipalpur for vacating the premises on or before 31.5.2006 and the petitioner was directed to be proceeded against ex-parte on 10.3.2008, however, the fact remains that prior thereto, a copy of order dated 14.12.2005 passed by the government referring

the dispute to the Tribunal was sent to the petitioner, the receipt of which is not in dispute. Meaning thereby that the petitioner had knowledge about the fact that the labour dispute with the workman had been referred to the Tribunal. Secondly, it is the admitted case of the petitioner itself that it acquired knowledge about the passing of ex-parte award when a notice was received from Labour Inspector, Gurgaon on 22.2.2010. A copy of the notice is on record as Annexure-P4. It is dated 17.2.2010. It was sent to the petitioner at its old Mahipalpur address, which as per the petitioner was vacated on 31.5.2006. Still the notice was received by it and immediately a petition was filed in this court challenging the ex-parte award. Under these circumstances to state that report of the Process Serving agency in the year 2008 at the same address is a procured one cannot be believed. Still further, it is an admitted fact that the respondent-workman joined the petitioner-company as Security Guard on 1.11.2001 and his last drawn salary was 3,340/- per month. His services were terminated on 11.10.2004. A perusal of the impugned award shows that the Tribunal had referred to the evidence led by the workman. It has been referred to in paragraph 5 thereof, which is extracted below:

5. Claiming himself to be an employee of respondent and having worked for more than 240 days w.e.f. 1.11.2001, the workman sought reinstatement in service of the later with back wages. In this regard besides examining himself as PW-1, the workman placed reliance on documents Ex. PW-1/1 to Ex. PW- 1/39. The workman while filing affidavit Ex. PW-1/A reiterated his version contained in the demand notice as well as claim statement. Then, it is evident from a perusal of document Ex. PW-1/5 that the workman was covered under ESI scheme and his date of joining as 1.11.2001. He was even issued identity card as evident from documents Ex. PW-1/6 and PW-1/7 respectively. Then, a perusal of documents Ex. PW-1/1 to Ex. PW-1/4, Ex. PW-1/15 to Ex. PW-1/20 shows the salary being drawn by the workman and deductions made thereof. Then, there are documents Ex. PW-1/9 to Ex. PW-1/11 and which shows that his services were placed at the disposal of NBCC Ltd. It is also proved that he attended to his duties as evident from copies of attendance register Ex. P-1/23 to Ex. PW-1/39. Thus, all these shows that the workman was an employee of respondent and his services were dispensed with in an illegal manner. So, he is held entitled to reinstatement in its service with back wages @ 30% on the basis of last drawn salary as it is not proved that he remained unemployed during the operation of alleged order of termination.

5. A perusal of the aforesaid paragraph shows that there is no dispute about the employment of the petitioner as Security Guard on 1.11.2001 and his working with the management. The dispute arose only due to termination of his services.

6. Nothing has been said by the petitioner in the petition or otherwise as to how the award of the Tribunal can be said to be erroneous in the facts and circumstances of the case. Even if the ex-parte award of the Tribunal is set aside and the case is heard on merits and ultimate result remains the same, this would

amount to an exercise in futility. As far as grant of back wages granted to the extent of 30% is concerned, I do not find the same to be unreasonable. For the reasons mentioned above, I do not find any merit in the present petition. Accordingly, the same is dismissed.