
(2013) 09 MP CK 0215

In the Madhya Pradesh High Court

Case No : Writ Petition No. 9786 of 2012

Shree Factory Private Ltd.

APPELLANT

Vs

Ramanand Sahu and Another

RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Citation : (2013) 139 FLR 516

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Aditya Ahiwasi, for the Appellant; Rajesh Dubey, for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, J.—This petition is directed against the order dated 14.3.2012 Annexure P/1 and ex parte order dated 17.11.2011 Annexure P/4. Employee preferred an application u/s 7 of Payment of Gratuity Act. The employer/petitioner was noticed by the controlling authority. Petitioner appeared through Counsel before the controlling authority. Petitioner did not appear in certain proceedings and therefore, the controlling authority proceeded against him ex parte on 17.11.2011 Annexure P/4. By this order, petitioner is directed to pay the amount of gratuity to the tune of Rs. 34,560/- with 10% interest. Against this petitioner preferred an application for setting aside ex parte order Annexure P/5. Along with this application, medical certificate Annexure P/6 was filed. The Court below rejected the said application vide Annexure P/1. This order is also called in question.

2. Learned Counsel for the petitioner/employer submits that the petitioner appeared in certain proceedings but because he was advised bed rest he could not appear in subsequent proceedings. The Court below should have accepted the medical certificate filed along with application Annexure P/5.

3. Per contra, learned Counsel for the workman submits that ample opportunities were granted to the petitioner which is reflected from page 2 of order Annexure

P/4.

4. I have heard learned Counsel for the parties and perused the record.

5. A perusal of Annexure P/4 shows that various opportunities have been granted to the employer by the controlling authority. Despite giving these opportunities when the employer did not appear, the controlling authority proceeded ex parte. However, employer filed an application for setting aside ex parte order and also filed the medical certificate which shows that he was advised complete bed rest for 2 months. The authority below has not dealt with the aspect of petitioner's ailment. By Annexure P/1 it is opined that earlier ample opportunities were granted to the petitioner and therefore, it cannot be said that petitioner was not given reasonable opportunities of hearing. There is no whisper in the order Annexure P/1 about medical certificate and reasons assigned in the application Annexure P/5 which is supported by an affidavit. Thus, in the considered opinion of this Court, the authority below has erred in rejecting the contention vide Annexure P/1. In view of the averments of Annexure P/5 and the medical certificate, I deem it proper to set aside the order Annexures P/1 and P/4 and direct the controlling authority to give opportunity to the petitioner to put forth his defence. However, considering the fact that matter relates to gratuity of workman and the delay is caused for the reasons solely attributable to the petitioner, I deem it proper to impose cost of Rs. 5,000/- on petitioner payable to respondent No. 1. If the said cost is paid, the order Annexures P/1 and P/4 shall stand quashed and authority below will proceed in accordance with law as indicated above. Petition is allowed to the extent indicated above.