
(2011) 03 P&H CK 0596

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 842 of 2011 (O and M)

Smt. Shashi Sharma

APPELLANT

Vs

The Labour-cum-Conciliation Officer and Another

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Building and Other Construction Workers (Regulation of Employment and Conditions of Services) Act, 1996 — Section 45
Constitution of India, 1950 — Article 227
Payment of Wages (Procedure) Rules, 1937 — Rule 8(3)
Payment of Wages Act, 1936 — Section 15(5), 5(2)

Citation : (2011) 131 FLR 129 : (2011) 3 LLJ 743 : (2011) LLR 841 : (2011) 163 PLR 451

Hon'ble Judges : Ram Chand Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ram Chand Gupta, J.—The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 28.1.2011 passed by Respondent No. 1 vide which application filed by the Petitioner for setting aside ex parte order dated 27.2.2009 has been dismissed and further directing Respondent No. 1 to decide the main case on merit, after hearing both the parties.

2. I have heard learned Counsel for the parties and have gone through the whole record carefully including the impugned order passed by Respondent No. 1, i.e., Labour -cum-Conciliation Officer, Circle 2, Jalandhar-cum-Authority under the Payment of Wages Act, 1936 (hereinafter to be referred as 'Authority') .

3. Facts relevant for the decision of present revision petition are that Respondent No. 2 filed an application under Sub-Section 2 of Section 5 of Payment of Wages Act, 1936 (hereinafter to be referred as 'the Act') read with Section 45 of the Building and other Construction Workers (Regulation of Employment & Service Conditions) Act, 1996, (hereinafter to be referred as 'the Act 1996') for claiming

an amount of Rs. 70,000/-on account of payment wrongly withheld as per the provisions of Sub-Section 3 of Section 15 of the Act read with the Act 1996 together with such compensation as the Authority may deem fit. The application is Annexure P1.

4. Petitioner-Respondent appeared before the said Authority and filed reply. Learned Authority framed the following issues in the presence of the parties on 12.12.2008:

1. Whether the application is maintainable in view of the preliminary objection? OPA

2. Whether the applicant is entitled to his claim? OPA

5. However, later on none appeared for the present Petitioner and hence, Petitioner was proceeded ex parte by learned Authority vide order dated 12.1.2009 and after recording ex parte evidence of Respondent-applicant, ex parte order dated 27.2.2009 was passed in favour of Respondent -applicant and against the present Petitioner directing present Petitioner to pay a sum of Rs. 1,40,000/- to Respondent-applicant.

6. Present Petitioner filed an application for setting aside ex parte proceedings and ex parte order on 10.11.2009, which was dismissed by learned Authority, which reads as under:

"The present application has been filed by Smt. Shashi Sharma who is applicant in the present case and was Respondent in the main application filed by Shri Om Parkash which was disposed of by way of order dated 27.2.2009 directing Smt. Shashi Sharma to pay to Shri Om Parkash a sum of Rs. 1,40,000/-. The applicant Smt. Shashi Sharma prayed that ex parte order dated 27.2.2009 may please be set aside on the ground that she is patient of depression for a long time and has been under treatment of Ashok Neuro Hospital, Jalandhar, and because of her physical conditions she could not properly pursue the case and being a case of acute depression she could not appear on the dates fixed by this Hon"ble Authority and in her absence order was passed as ex parte. She further submitted that she has come to know that some execution proceedings have been initiated to recover the said amount and that is how the applicant has come to know that an ex parte order has been passed against her, and in the above circumstances, it is prayed that the ex parte order may kindly be set aside and the present application may be allowed to contest the claim of the claimant Shri Om Parkash on merits.

I have heard the learned representative Shri M.S. Sachdeva and have gone through the case carefully. Smt. Shashi Sharma at the first instance appeared in the Court and filed her written statement but did not appear on subsequent dates fixed by my predecessor in the Court and lost interest to defend the case. Thus, the case was proceeded as ex parte and finally order was passed on 27.2.2009. A person who had knowledge about the court proceedings and have

also filed written statement and thereafter had abstained from the court deliberately, then there is no excuse. Willful absence is like abuse to the process of the law. Therefore, I am not agree with her contention, and her application dated 10.11.2009 is rejected.

7. It has been contended by learned Counsel for the Petitioner that Petitioner came to know about passing of ex parte order against her when she received summon of application u/s 15(5) of the Act from the Court of Chief Judicial Magistrate, Jalandhar, in execution of order dated 27.2.2009. Thereafter, she filed the present application for setting aside the ex parte proceedings and ex parte order passed against her. Hence, it is contended that impugned order cannot be sustained in the eyes of law. It has also been contended that the order is also illegal and void as the application could not be entertained by learned Authority in view of Rule 8 (3) of the Payment of Wages (Procedure) Rules 1937 (hereinafter to be referred as 'the Rules') as the Act is not applicable in the present case. It is also contended that validity of a void order can be questioned at any stage. On this point he has placed reliance upon *State of Orissa v. Brindaban Sharma* .

8. On the other hand, it has been contended by learned Counsel for the Respondent that the application for setting aside ex parte proceedings could be filed by the present Petitioner within thirty days from the date on which she was proceeded ex parte and, however, the application was filed much beyond the period of limitation and, hence, it is contended that no illegality has been committed by learned Authority in passing the impugned order. On the point he has placed reliance upon *Commissioner of Customs & Central Excise v. M/s Hongo India (P) Ltd.* and *Anr. 2009(5) SCC 791*, *Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission and others AIR 2010 (SC) 2061*, and *Om Parkash v. Ashwani Kumar Bassi 2010(4) RCR 163*.

9. It has been contended that moreover main order dated 27.2.2009 has not been challenged by the Petitioner. It has been further contended by learned Counsel for the Respondent that Petitioner could file appeal against the said order u/s 17 of the Act and, however, he has not availed the said remedy.

10. The application for setting aside ex parte proceedings, which has been dismissed by learned Authority vide impugned order was filed under Rule 8(3) of the Rules, which reads as under:

8. Appearance of parties-(1) If the application is entertained, the Authority shall call upon the employer by a notice in Form E to appear before him on a specified date together with all relevant documents and witnesses, if any, and shall inform the applicant of the date so specified.

(2) If the employer or his representative fails to appear on the specified date, the authority may proceed to hear and determine the application ex parte.

(3) If the applicant fails to appear on the specified date, the Authority may

dismiss the application. Provided that an order passed under Sub-rule (2) or Sub-rule (3) may be set aside and the application re-heard on good cause being shown within one month of the date of the said order, notice being served on opposite party of the date fixed for rehearing.

11. A bare perusal of the aforementioned provision shows that Petitioner could file an application for setting aside ex parte proceedings and ex parte order and for re-hearing on good cause being shown within one month of the date of the order. In the present case Petitioner was proceeded ex parte vide order dated 12.1.2009 and the ex parte order was passed vide order dated 27.2.2009. However, the present application for setting aside ex parte proceedings was filed on 10.11.2009, i.e., much after the expiry of statutory period of thirty days.

12. In view of the legal proposition settled in the aforementioned authorities, on which reliance has been placed by learned Counsel for the Respondent, learned Authority has no power to entertain the application after expiry of statutory period of thirty days. Hence, on this ground alone, it cannot be said that any illegality has been committed by learned Authority in passing the impugned order.

13. There is also force in the argument of learned Counsel for the Respondent that Petitioner could challenge the impugned order by way of filing an appeal u/s 17 of the Act and, however, he has not availed the said remedy and filed the present revision petition. Hence, it has been rightly contended that in the present revision petition the main order, which is appealable, cannot be challenged by the present Petitioner.

There is also no force in the argument of learned Counsel for the Petitioner that impugned order is void and that Respondent-Authority was having no power to entertain the petition.

14. It has been contended that Respondent was allegedly employed to work for raising construction of a residential house and hence the said activity is not covered under the Act. However, it has been rightly argued by learned Counsel for the Respondent that as per Section 2 of the Act, the establishment in which any work relating to construction is involved is also covered u/s 2(ii)(g) of the Act and hence, it cannot be said that the impugned order is a void order. The same reads as under:

(ii) Industrial or other establishment means any

(a) tramway service, or motor transport service engaged in carrying passengers or goods or both by road, for hire or reward;

(aa) air transport service other than such service belonging to, or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India;

(b) dock, wharf or jetty;

(c) inland vessel, mechanically propelled;

(d) mine, quarry or oil field;

(e) plantation;

(f) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale;

(g) establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on;

15. In view of the aforementioned discussion, it cannot be said that any illegality or material irregularity has been committed by learned Authority in passing the impugned order and that a grave injustice or gross failure of justice has occasioned thereby, warranting interference by this Court.

16. Moreover, law is well settled in *Surya Dev Rai v. Ram Chander Rai and Ors.* 2004(1) RCR 147 that mere error of fact or law cannot be corrected in the exercise of supervisory jurisdiction by this Court. This Court can interfere only when the error is manifest and apparent on the face of proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and that a grave injustice or gross failure of justice has occasioned thereby.

17. Hence, the present revision petition is, hereby, dismissed being devoid of any merit.