

(2016) 01 P&H CK 0453
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 908/2016

The District Cooperative Union, Amritsar	APPELLANT
Vs	
The Presiding Officer and Others	RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) LabLR 590 : (2016) LabLR 238

Hon'ble Judges : Sabina, J.

Bench : Single Bench

Advocate : Vishal Sharma, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

Sabina, J.—1. Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of certiorari for quashing the ex-parte award dated 05.01.2012 (Annexure P-2) and the order dated 20.11.2015 (Annexure P-3), whereby, application moved by the petitioner for setting aside the ex-parte award Annexure P-2, was dismissed. Learned counsel for the petitioner has submitted that in fact, respondent No. 2 had himself left the job. Petitioner had never passed any termination order qua the services of respondent No. 2.

2. Respondent No. 2 had raised an Industrial dispute challenging his termination by serving a demand notice. The appropriate Government referred the dispute field by respondent No. 2 to Industrial Tribunal for adjudication.

3. The case of respondent No. 2, in brief, was that he was working with the petitioner as Machine Man since 01.01.1980 and his services were terminated on 10.03.2009 by the petitioner without issuing any notice, charge-sheet or holding any inquiry.

4. Petitioner filed its written statement and denied the fact that respondent No. 2 had worked with it for 19 years as alleged. It was denied that the petitioner had

terminated the services of respondent No. 2. It was averred that respondent No. 2 had himself left the job and despite issuance of notice to respondent No. 2 by the petitioner, he had failed to join his duty.

5. On 29.11.2011, when the case was fixed for efforts regarding settlement between the parties and for filing replication, none appeared on behalf of the petitioner and it was proceeded ex-parte.

6. In his ex parte evidence, respondent No. 2 appeared in the witness-box as WWI and produced on record certificate dated 30.06.2010 (Exhibit W2) issued by the Management to establish the relationship of Master and Servant between the parties. Since the evidence led by respondent No. 2 had gone unrebutted, the learned Presiding Officer vide award dated 05.06.2012 ordered the reinstatement of respondent No. 2 with continuity of service and 50% back-wages.

7. Thereafter, petitioner moved an application for setting aside the ex-parte award. The said application was dismissed by the Industrial Tribunal vide order dated 20.11.2015. While dismissing the application, it has been noticed by the Industrial Tribunal that the representative of the petitioner had appeared on 33 dates but when the case was fixed for filing of replication on 29.11.2011, none had appeared on behalf of the petitioner and the case was adjourned for ex-parte evidence of respondent No. 2 to 20.12.2011. Respondent No. 2 closed his evidence on 20.12.2011 and the case was adjourned to 5.1.2012. However, on the said date also, none had appeared on behalf of the petitioner and ex parte award was passed in favour of respondent No. 2. Thus, in the present case, it was evident that despite having the knowledge of pendency of the reference before the Industrial Tribunal, petitioner had failed to pursue the same. In the facts and circumstances of the present case, the absence of the petitioner before the Industrial Tribunal on 29.11.2011 cannot be said to be bona fide or unintentional. The learned Industrial Tribunal thus, rightly dismissed the application moved by the petitioner seeking setting aside of ex-parte award. No ground for interference by this Court while exercising jurisdiction under Article 226 of the Constitution of India, is made out.