

The Respondent-workman Never Had Been in the Vs.

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Court : Punjab and Haryana

Decided On : Aug-19-2013

Appellant : The Respondent-workman Never Had Been in the

Judgement :

LPA No.1453 o

1. HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

*** LPA No.1453 of 2013 (O&M) Date of decision:

19. 08.2013.

*** M/S A.L.Metals and Methods (P) Ltd., 54/5, Industrial Area, Site IV, near Atlas Cycle Industries, Sahibabad, Ghaziabad (UP).through its Director, Amit Tgadvalkar.

Versus The Presiding Officer, Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad and another.

*** CORAM: HON'BLE Mr.JUSTICE RAJIVE BHALLA HON'BLE Mr.JUSTICE DR.

BHARAT BHUSHAN PARSOON.

*** Present: Shri Jasmeet Singh Bedi, Advocate, for the appellant.

*** DR.

BHARAT BHUSHAN PARSOON, J This Letters Patent Appeal under clause X of the Letters Patent is directed against judgment dated 22.5.2013 passed by the learned Single Judge of this Court, whereby CWP bearing No.6698 of 2010 filed by the appellant against impugned order dated 16.12.2008, (Annexure P1) whereby the petitioner was proceeded against ex-parte and consequently the impugned award dated 3.3.2009 (Annexure P-2) whereby reference was decided in favour of respondent No.2 holding him entitled to reinstatement with full back wages, was dismissed.

The impugned orders of 22.5.2013 and 16.12.2008 as also the impugned award of 3.3.2009 are claimed to be illegal, unjust, unconstitutional and contrary to the provisions of Industrial Disputes Act, LPA No.1453 o

2. 1947 (hereinafter to be referred to as the

194. Act.).The appellant has prayed that the case be remanded back to the Industrial Tribunal for deciding the reference afresh on merits after giving due opportunity to both the parties.

Respondent No.2 had challenged his termination order dated 27.12.2004 by raising Industrial dispute, which was referred for adjudication by the Government of Haryana to respondent No.1 on 1.9.2005.

This reference came up for adjudication and was decided ex- parte vide award dated 3.3.2009.

Contention of the appellant management is two fold:- 1.

The appellant-management had never been served in the proceedings; and 2.

The respondent-workman never had been in the employment of the appellant.

It is claimed by the appellant that he did not receive any intimation about the pending adjudication before the Industrial Tribunal -cum- Labour Court, Faridabad.

After scanning through the entire record, the Tribunal had found that the contesting respondent was working as Head Mechanic with the appellant from

29.9.2003 to 22.12.2004 when his service was terminated.

Several attempts were made to serve the appellant but service could not be effected as they had shifted their factory from Faridabad to Sahibabad District Gaziabad (U.P). Respondent also took time to locate the appellant employer in Sahibabad and supplied its complete and correct address, where fresh notice was issued.

The appellant who had not been served despite efforts made from 16.12.2005 to 6.10.2008 finally was served as the registered acknowledgment due was received on 16.12.2008 with the report of refusal.

Consequently, the management was proceeded against ex-parte and when the matter was LPA No.1453 o

3. postponed for ex-parte evidence for 27.1.2009, none came forward and ex-parte award was announced against the appellant.

The order dated 22.5.2013 rendered by the learned Single Judge of this Court has not only explained the circumstances but also the efforts made in serving the management.

It may be noticed that it was not presumptive service under Order 5 Rule 19-A of the CPC but was actual service at the given address.

There is an endorsement of the postman made on 27.11.2008 on the Registered Letter No.2038 on 20.11.2008 to the effect Lainey se Inkar Hai. The order passed by the learned Single Judge further reveals that even earlier the process server who was assigned the task of serving notice upon the appellant had not given address for effecting service of summons for 13.2.2008 but had found none with effect from 15.2.2008 to 20.2.2008 to effect service of the summons.

Learned Single Judge had clearly recorded that address at which the process server had been going for effecting service as also the address where the postman had effected service of registered letter on 27.11.2008 is the same as has been given by the appellant in the memo of parties of the writ petition.

Claim of the of the appellant that no service was effected and that the address of the appellant was not correct, is mis-conceived.

Undoubtedly, initially address of the appellant was of Faridabad where the appellant was earlier located but later respondent No.2 had been successful in finding the complete and correct address where the appellant was situate after shifting from Faridabad to Sahibabad District Gaziabad (UP).Refusal by a party and particularly on registered letter is as LPA No.1453 o

4. good as personal service.

Had the appellant been sure about the report of refusal on the registered envelope being incorrect or false, they were not stopped to make a complaint of the postman and could have got the matter inquired into from the postal authorities.

The management did not have the courage for getting this matter inquired into at the factual level from the postal authorities.

Learned Single Judge had found that even averments in the writ petition regarding report of refusal by the postman, have been verified on legal advise.

Therefore, no cognizance was taken of the explanation offered by the appellant with respect to service of summons on the management/Appellant.

For quick reference, the relevant portion of the impugned judgment is necessary.

Sequely the following portion culled out, reads as under:- This court finds from the original record that the address of the petitioner which led to refusal was indeed the correct address where service could have been validly effected.

There is no valid reason to disbelieve the report of the Postman on the registered letter which was returned with the remarks-refusal to accept.

Service is deemed to be effected.

Thereafter, the management would remain at its peril in the ex parte proceedings.

The petitioner does not dispute that it shifted base in May 2005 from District Faridabad, Haryana in District Ghaziabad, Utter Pradesh.

The petitioner pleads that the dispute was raised alleging illegal termination on 7.12.2004 by the respondent claiming himself to be the workman of the petitioner company but the petitioner does not say categorically that Dinanath was not its workman employed and serving at its industrial establishment at Faridabad.

It is urged that the petitioner could not be served on account of incorrect address and therefore the impugned zimini order dated 16.12.2008 is based on incorrect assumption rendering the award bad.

It is pleaded that the report of refusal was:- totally unfounded as no correct address was filed LPA No.1453 o

5. and on the self same address the report of it being an incorrect address was already there on record.

All this points out towards only one conclusion that the report of the refusal was stage managed, procured, concocted and doctored one having no authenticity at all and thus the impugned ex parte order or reward are totally illegal in the eyes of law and liable to be set aside.

Respondent No.1 no where records the observation to the extent that the petitioner was served or he refused to receive the summons.

The only observation which has come on record of the impugned order is, 4.

Respondent did not come present and he was proceeded Ex-parte.

I am afraid, paragraph 3(i) of the petition where the above words appear have unfortunately been verified on legal advise in the verification clause at page 20 of the paper book.

Therefore, no factual cognizance can be taken of the explanation offered by the petitioner with respect to service of summons.

Even when case of the appellant is evaluated on merits, it is found that the respondent was in the employment of the appellant and his services were terminated with effect from 27.12.2004.

Merely because no deduction had been made by the employer under the Employees State Insurance Act qua the respondent-workman, cannot be said to be sufficient evidence to prove that the workman was not an employee of the appellant management, for the preceding 12 months from the date of his termination on 27.12.2004.

There is reference to statement of a co-worker of respondent who had appeared as a witness (WW-1) and has proved a leave application dated 5.5.2004 (Annexure A-3) of respondent-workman Raja Ram which had been allowed by Mr.S.N.Chaterjee, Manager of the appellant-management.

This version alone negates the case of the appellant-management that respondent-workman was never in their employment.

Rather, it is established as a fact from record that he was continuing in their employment.

Keeping in view the facts and totality of the circumstances LPA No.1453 o

6. viewed from any angle, the impugned judgment cannot be faulted either in the facts or law.

The petition being devoid of merits is dismissed.

(Dr.

Bharat Bhushan Parsoon) Judge (Rajive Bhalla) Judge August 19, 2013 Malik

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