

(1998) 11 P&H CK 0036

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 10426 of 1997

Ex-Serviceman Cooperative
Transport Society Limited

APPELLANT

Vs

The Presiding Officer, Labour
Court and Others

RESPONDENT

Date of Decision: Nov. 10, 1998

Acts Referred:

- Industrial Disputes (Punjab) Rules, 1958 - Rule 18, 22

Citation: (1999) 121 PLR 239

Hon'ble Judges: V.S. Aggarwal, J

Bench: Single Bench

Advocate: Sumeet Mahajan, for the Appellant; Harinder Sharma, for the Respondent

Final Decision: Allowed

Judgement

V.S. Aggarwal, J.

M/s Ex-Serviceman Co-operative Transport Society Limited seeks quashing of the ex-parte award dated 8.5.1996 and also the order passed by the Presiding Officer, Labour Court, Bhatinda dated 27.3.1997 by which the application of the petitioner for setting aside the ex-parte award had been dismissed.

2. The relevant facts which draws the petitioner to file the present petition in this Court are that respondent Jagtar Singh was working with the petitioner as a driver since January, 1990. His services were stated to have been terminated w.e.f. 30.11.993. As per the respondent-workman it had been done without notice, charge sheet, enquiry or compensation and had been further done with mala fids intentions. He claimed that persons junior to him had been retained in service and new hands had been employed after termination of his services. A reference u/s 10 of the Industrial Disputes Act, 1947 was made by the Government of Punjab. The learned Presiding Officer, Labour Court proceeded ex-parte against the petitioner

and held that termination of the services of the workman by the petitioner-management was not justified. The workman was held entitled to reinstatement with continuity of service and full back wages from 2.12.1993. An application was filed by the petitioner-management for setting aside of the ex-parte award. The learned Presiding Officer, Labour Court dismissed the same holding that it was not competent. Even the application seeking review of the order was dismissed.

3. The petitioner's claim is that before the learned Labour Court, the case was fixed for 22.2.1996 for service of the petitioner. The process Server is alleged to have visited the house of, the President of the petitioner-society. The President of the society was not available. The Presiding Officer, Labour Court despite that had proceeded ex-parte and passed the ex-parte award. It is, therefore, alleged that service of the summons had not been effected and consequently, the Labour Court was not justified in passing the ex-parte award or subsequently dismissing the application for setting aside the same.

4. Respondent No. 2 workman contested the petition assertion that the same has been filed with the sole object to delay the execution of the award. The application for setting aside the ex-parte award was dismissed followed by review application. The application in any case was stated to be barred by time. It was reiterated that service of the notice had been effected on the petitioner and the Labour Court, therefore, was justified in proceeding ex-parte.

5. As is apparent from the resume of the facts given above, the short question arises for consideration is as to if the Labour Court was justified in passing the ex-parte award and subsequently rejecting the application for setting aside the same. Some of the facts on the record can conveniently be delineated. The learned Labour Court had issued notice to the petitioner and the report of the Process Server is Annexure P-1. It reads:-

"It is submitted that I visited and enquired about Shri Bhoom Raj, M.D. of Ex-Serviceman Cooperative Transport Society Limited, at Village Samad Bhaikhe.

On the spot it was learned that he has gone to Chandigarh in connection with some work. He was not found present on the spot. Therefore, a copy was pasted on the house of Bhoom Raj, alongwith order of the Court. Report is submitted." On 22.2.1996 the Presiding Officer, Labour Court recorded that service had been effected and, therefore, proceeded ex-parte against the petitioner. The exparte evidence was recorded and it was followed by the award dated 8.5.1996, copy of which is Annexure P-2. On 25.9.1996 the Labour Inspector Grade-II, Moga had written to the petitioner that the award has not been implemented and threatened initiation of legal proceedings. It reads:-

"Your attention is invited to the award of Labour Court, Bhatinda, noted in the subject, you are hereby informed that you be present in this office on 30.9.1996 at

11.00 a.m. in connection with implementation of the award. Failing which action u/s 29, challan u/s 33(C)(1) of Industrial Disputes Act, shall be recommended for initiation of legal action against you. Recovery of the amount shall be made from you as per provisions of Land Revenue Act."

It is from this date that petitioner had come to know about the ex-parte award that has been passed. In this regard it is convenient also to refer to the order passed by the learned Labour Court while proceeding ex-parte dated 22.2.1996 which is to the following effect:-

"Summons sent for service to the management received back with the remarks that the concerned man not met and copy of the summons was affixed at the residential house of the said man. The service is proper. The management is proceeded ex parte. To come up for ex parte evidence of the workman on 11.4.1996."

The above said facts show that the Process Server had visited the house of the President of the petitioner. He was not available. He affixed the summons and this was taken to be good service. The Industrial Disputes (Punjab) Rules, 1958 (Rule 18 and 22) are relevant and the same read:-

"18 (Service of summons or note-subject to the provisions contained in Rule 20, any notice, summons, process or order issued by a Board, Court, Labour Court, Tribunal, or an Arbitrator, empowered to issue such notice, summons, process or order may be served either personally or by registered post and where it is not practicable to effect service in any of the manners aforesaid the notice summons, process or orders, as the case may be, shall be served by affixing a copy thereof on the outer door or some other conspicuous part of the house or the place where the party upon whom service is to be effected, ordinarily resides or carries on business or personally works for gain).

22. Board, Court, Labour Court, Tribunal or Arbitrator may proceed ex-parte.- If without good cause shown, any part to proceedings before a Board, Court, Labour Court, Tribunal or Arbitrator fails to attend or to be represented, the Board, court, Tribunal or Arbitrator may record as if he had duly attended or had been represented."

The relevant rules clearly show that in accordance with well recognized principles, the service must be effected personally or by registered post. Where it is not practicable to effect the service personally, in that event, the Labour Court can direct affixation of a copy of the notice on the outer door or some conspicuous part of the house or place of business. In any case first thing must come first. The first attempt necessarily has to be that service is to be effected in person, failing which when a finding is recorded that it is not practicable to effect service personally or by registered post, it can be directed to affix it on some conspicuous place as mentioned above. In the present case in hand, the president of the petitioner-society was not available. The service was not effected in person because

the person concerned was not available. It is not shown that the Labour Court had directed that it be affixed at some conspicuous place. There is no finding of the Labour Court that it is not practicable to effect the service in person or by registered post. In the absence of any such finding indeed the Labour Court was not justified in proceeding ex-parte. The order, therefore, proceeding ex-parte cannot be sustained.

6. Reference in this connection can well be made with advantage to the decision of this Court in the case of State Transport Commissioner, Punjab v. Bhajan Singh and Anr. 1992(5) SLR 783. Herein the notice had been sent by registered post. The same had not been received back. The Labour Court had drawn the presumption that service had been effected. This Court held that this presumption is rebuttable and in the peculiar facts, the Court held further that it cannot be termed that there was good service and the award passed ex-parte could not be sustained. A Division Bench of this Court in the case of Adarsh Foundry and Engineering Works v. Presiding Officer and Anr. 1994(3) RSJ 417 was also dealing with a similar situation. Herein an ex-parte award was passed by the Labour Court. The award did not indicate as to how the service was effected. It "only mentioned that the management is being proceeded ex-parte. There was no finding that summons were served on the management. It was held that if the petitioner had not been served, then all proceedings leading to the rendering of the award are void.

7. The same would be the position herein. It indicates as already mentioned above that service was not effected in person. The President of the society was not available. There was no finding recorded that it is not practicable to effect the service in person. The service by affixation, therefore, could not be taken to be a good service. To this effect, therefore, the award in question cannot be sustained.

8. Another fact agitated was that the application seeking setting aside the ex- parte award was barred by time. As already pointed out above, the case of the petitioner is that it came to know of the ex-parte award when notice was served on 27.9.1996 from the Labour Inspector Grade-II, Moga. On the same day, the management rushed and submitted an application but there was no Presiding Officer, Labour Court available. This fact that at that relevant time, there was no Presiding Officer, Labour Court available had not been disputed at the bar. In that view of the matter merely because in the absence of the Presiding Officer, it was not filed will not be a good ground to reject the application. It would be a sufficient cause unless there are mala fides that have been shown. Consequently, this defence of the respondent indeed will not cut much ice. As a result thereto the writ petition must be allowed.

9. For these reasons, the writ petition is allowed and the impugned order is quashed. The learned Labour Court will retrace the steps already taken and proceed from the stage the appearance of the petitioner was required. The parties are directed to appear before the learned Labour Court on 4th December, 1998.