

**(2011) 03 P&H CK 0756**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** C.W.P. No. 1248 of 2010

Arvind Kumar

APPELLANT

Vs

Presiding Officer, Industrial  
Tribunal-cum-Labour Court-II  
and Others

RESPONDENT

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**Date of Decision:** March 16, 2011

**Hon'ble Judges:** Mahesh Grover, J

**Bench:** Single Bench

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### **Judgement**

Mahesh Grover, J.

The Petitioner has impugned the award of the Industrial Tribunal-cum-Labour Court-II, Gurgaon dated 29.1.2009. His sole grievance is that the award was passed ex-parte which has resulted in a serious prejudice to him, more so when the zimni orders reflect a completely perverse approach adopted by the Tribunal.

2. By virtue of the impugned award the dispute which was referred to the Tribunal regarding the validity of the termination of services of the Petitioner, was dismissed. The Respondent - management opposed the prayer of the Petitioner by saying that the impugned order is justified in the given set of circumstances and that once an award has been passed and published, it becomes enforceable, and thus there is no occasion to interfere with the same. The Petitioner has also attached the zimni orders passed by the Tribunal.

3. The issues were struck on 23.4.2001 and thus the subsequent zimni orders are necessary to be extracted here below:

P.O. is on leave. Case is adjourned to 8.10.2001 as per previous order.

Reader 2/7/2001

Present: Sh.P.S. Rao A.R. for the Petitioner.

Sh.M.M. Kaushal A.R. for the mgt.

Adjourned to 18.2.2001 for evidence of the mgt.

Dasti summons be given to the mgt.

P.O.L.C.

8.10.2001

Present: Sh. Subhash Diwan A.R. for the Petitioner.

Sh.M.M. Kaushal A.R. for the mgt.

Adjourned to 18.11.02 for evidence of the mgt.

subject to cost of Rs. 150/-.

P.O.L.C.

22.7.2002

The Presiding Officer has been transferred. Case adj.to 17.2.03 as per previous order.

Dated 18.11.02        sd/- Reader

Present: Sh. Subhash Diwan A.R. for the Petitioner.

Sh.S.K. Verma A.R. for the mgt.

Case is fixed for the proper orders for today. So, adjourned to 7.7.03 for evidence of the mgt. Previous cost not yet paid.

P.O.L.C.

17.2.2003

Present: None.

Since I was on summer vacations on 7.7.03 so, the file has been put up before me today. Case stands adjourned to 17.5.04 for evidence of the mgt. Previous cost not yet paid.

P.O.L.C.

9.7.03

Present: Sh.P.S. Rao A.R. for the Petitioner.

Sh.M.M. Kaushal A.R. for mgt.

A.R. for mgt. placed on record the affidavit of Sh. Pawan Singh alongwith records. Copy supplied. Now to come up on 19.01.05 for tendering the affidavit and cross examination of Sh. Pawan Kumar witness of mgt.

P.O.L.C.

17.5.04

Present: ARs for parties.

Case is adjourned fixed for statement of Mr. Pawan Singh Advocate (R.O.). He is away to Chandigarh in Pb. and Hr. High Court to appear in a case and they requested adjournment. To come up on 19.9.05 for evidence of the mgt. List of documents filed.

P.O.L.C.

10.1.05

Present: ARs for parties.

E.D. Mr. Pawan Singh Adv. is to be examined. He is busy in Court, at Delhi (His hazari requested). Request not opposed.

To come up on 10.4.06 for statement of Mr. Pawan E.O.

P.O.L.C.

19.9.05

Present: None.

Since I shall be on leave on 10.4.06 so, the file has been taken up today and stands adjourned to 19.2.07 for statement of Mr. Pawan, E.O.

P.O.L.C.

5.4.06

Present: Sh.P.S. Rao A.R. for W/M.

Sh.M.M. Kaushal A.R. for mgt.

No MW is present. Adjournment opposed. Request of A.R. for management, now to come up on 22.3.07 for M Ws subject to cost of Rs. 100/- with last opp.

P.O.L.C.II

19.2.07

Present: Sh.P.S. Rao H/R for W/M

Sh.M.M. Kaushal A.R. for mgt.

Previous cost paid. No MW is present. On the request of A.R. of Mgt., now to come up on 26.7.07 for evidence of Mgt. subject to cost of Rs. 200/- with last opp.

P.O.L.C.II

22.3.07

Present: Sh.P.S. Rao A.R. for workman.

Sh.M.M. Kaushal A.R. for management.

Previous cost paid.

No evidence of management is present and last opportunity and giving 6th opportunity. So, no further opportunity is possible and as such evidence on the issue of enquiry is ordered to be closed.

Let the matter be put up on 25.10.07 for evidence of workman.

P.O.L.C.II, GGN,  
26.7.07

Present: Sh.P.S. Rao A.R. for the workman.

Sh.M.M. Kaushal A.R. for the Mgt.

No P.W. present. Date sought. Already sufficient opportunities have been granted. Hence, last opportunity is granted for 14.2.08 for completing workman evidence at responsibility.

P.O.L.C.II GGN  
25.10.07

Present: Sh.P.S. Rao A.R. for the workman.

Sh.M.M. Kaushal A.R. for the Mgt.

One P.W. Arvind Kumar (workman) is present, but his cross-examination is deferred on the request of authorized representative for the mgt. on the ground that he needs time to go through the contents of the voluminous documents tendered in the examination in chief of the P.W. The P.W. present today is discharged, but bound down for 8.5.08 with the direction to the workman to complete his evidence at responsibility.

P.O.L.C.II, GGN  
14.02.08

Present: Sh. P.S. Rao A.R. for the workman.

Sh.M.M. Kaushal A.R. for the Mgt.

One P.W. Arvind Kumar is present but his cross is not completed as date sought by AR for the mgt. on the ground that there are three connected cases including Umesh Kumar v. Manak Shoe concerning the same charges for the inquiry are pending in the court for 14.2.08 and accordingly requested that in all three cases, the date beyond 14.2.08 be given, so that the mgt. evidence is not disclosed and evidence is recorded together in all the cases. In view of the matter, the adjournment is granted in the interest of justice. The PW present today is discharged but bound-down for 24.7.08. It is directed that the evidence be recorded simultaneously in the three connected cases. The workman shall bring the remaining evidence at responsibility and complete the same. However, the cost of

Rs. 100/- is imposed on the mgt. in order to reimburse the expenses incurred by the workman.

P.O.L.C.II, GGN

8.5.08

Present: Sh.P.S. Rao A.R. for the workman.

Proxy for Sh.M.M. Kaushal A.R. for the Mgt.

One P.W. Arvind Kumar is present, but he could not be examined as a date sought by Id. proxy on the ground that Sh.M.M. Kaushal AR for the mgt. is receiving treatment. Hence PW present today is discharged but bound down for 6.11.08. Last cost of Rs. 100/- is not paid. Instead of now, the Respondent shall be burdened with a cost of Rs. 150/- to be paid on the next date of hearing.

P.O.L.C.II, GGN

24.7.08

Present: Sh.P.S. Rao A.R. for the workman.

Sh.M.M. Kaushal A.R. for the Mgt.

The last cost of Rs. 150/- paid. There is talk of settlement. Now to come up on 27.11.08 for settlement.

SP.O.L.C.II, GGN

6.11.08

Present: As before.

Date of settlement. To come on 11.12.2008 for settlement.

P.O. L.C.II, GGN

27.11.2008

Present: As before.

Date sought jointly for settlement which is granted. Now to come on 18.12.2008 for settlement.

P.O.L.C.II, GGN

11.12.08

Present: As before.

Parties failed to arrive at settlement today in the pre Lok Adalat. Now to come up on 29.1.2009 for completing w/m evidence at responsibility.

P.O.L.C.II, GGN

18.12.2008

4. It is evident from the perusal of the above that when the parties failed to arrive at a compromise, the matter was adjourned to 29.1.2009 on which date the impugned award was passed.

5. The evidence of the management was closed by an order on 26.7.2007 which was never impugned by them. The Petitioner, who was the workman, on the other hand, participated in the proceedings and examined himself, but he was not cross-examined despite several opportunities being availed of by the representatives of the management. Finally, they resorted to adopt a course of settlement which did not materialise. The Tribunal thereafter simply passed the impugned award resulting in substantial injustice to the Petitioner who was participating in the proceedings all throughout.

6. A perusal of the zimni orders does not reveal any laxity on the part of the Petitioner. In this view of the matter, I am of the opinion that a serious prejudice has been caused to the Petitioner on account of passing of the impugned award as it has not only robbed him of the opportunity to lead his evidence but his entire claim has been erroneously negated. Accordingly, the writ petition is allowed and the matter is remitted back to the Tribunal in order to enable the Petitioner to complete his evidence. Similar opportunity to the Respondent-management cannot be given for the simple reason that their evidence was closed by an order in the year 2007, which order was accepted by them since it was never challenged. The Tribunal shall give time to the Petitioner to adduce his evidence in not more than three opportunities spreading out in a period of one month each and shall conclude the same and decide the matter in accordance with law.