

(2006) 11 P&amp;H CK 0128

## High Court Of Punjab And Haryana At Chandigarh

Case No: None

State of Punjab and Another

APPELLANT

Vs

Bhola Singh and Another

RESPONDENT

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**Date of Decision:** Nov. 2, 2006**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227
- Industrial Disputes Act, 1947 - Section 25F

**Citation:** (2007) 4 PLR 176**Hon'ble Judges:** J.S. Narang, J; Arvind Kumar, J**Bench:** Division Bench**Final Decision:** Allowed

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**Judgement**

Arvind Kumar, J.

Petitioner-department inducted respondent No. 1 - workman on the post of Beldar with effect from 1.4.1985 and worked as such till 29.12.1989. His services were terminated on 30.12.1989. Feeling aggrieved with his termination, the workman served a demand notice upon the department seeking reinstatement with continuity of service and back wages. On failure of the reconciliation proceedings, the appropriate Government referred the dispute to the Labour Court for adjudication." The workman filed his claim statement before the Labour Court taking the plea that his services have been terminated illegally on 30.12.1989 without service of any notice or payment of any compensation. Upon notice of the claim statement, the department did not put in appearance and accordingly, was proceeded against exparte. On production of exparte evidence by the respondent-workman, the Labour Court vide exparte award dated 3.4.2001 (Annexure P-3) held his termination to be arbitrary without compliance of Section 25F of the Industrial Disputes Act, 1947 (in short, the Act). Accordingly, it awarded reinstatement with continuity of service and full back-wages to the workman.

2. Thereafter, the department moved an application on 30.10.2001 seeking setting aside of afore-stated ex-parte award on the ground that they had no knowledge about the pendency of the afore-stated reference in the Labour Court and due to this, they did not put in appearance. However, the learned Labour Court vide order dated 30.5.2005 (Annexure P-4) dismissed the said application holding that the Court had become functus officio.

3. Now through the petition filed under Articles 226/227 of the Constitution of India, the petitioner-department has sought quashing of exparte award dated 3.4.2001 (Annexure P/3) and order dated 30.5.2005 (Annexure P-4) dismissing the application filed for setting aside ex-parte award.

4. On behalf of respondent-workman, no written statement has been filed.

5. We have heard the learned Counsel for the parties.

6. Needless to stress that the State Government, like any other litigant, has to be properly and duly defended. If, at any point of time, the State Government has not been duly defended because of some negligence of its officials or because of connivance of some of its officers/Officials with the opposite party, then the Court has to step in to see that no advantage is allowed to be taken because of the aforesaid negligence. Equally, even for ex-parte award the workman has to prove his case in accordance with law. Onus is on the workman to prove his case, duly supported with documentary evidence. However, a bare perusal of ex-parte award dated 3.4.2001 shows that the Labour Court merely relied upon the oral statement of the workman and co-worker. No documentary evidence had been produced by the workman in support of his claim. Further, the Executive Engineer, Construction Division, P.W.D. (B & R) Branch, Patiala, has sworn an affidavit that in the present case, Bhola Singh v. State of Punjab, no summons had been received from the Labour Court. In backdrop of these facts, we are of the opinion that the State deserves to be given a chance to put forward its defence.

7. Consequently, the writ petition is allowed, exparte award dated 3.4.2001 (Annexure P/3) and order dated 30.5.2005 (Annexure P/4) are set aside. The matter is remitted back to the Labour Court for decision afresh in accordance with law, after permitting the parties to lead evidence in support of their respective pleas.

8. It shall be appreciated if the learned Labour Court decides the matter expeditiously, preferably within six months from the date of appearance of the parties before it.

Parties through their counsel are directed to appear before the Labour Court, Patiala, on 4.12.2006.