

*LPA No.857 of 2012 in
CWP No.10334 of 1988*

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

*LPA No.857 of 2012 in
CWP No.10334 of 1988
Date of decision : October , 2013.*

Kesar Singh & Ors.

..... Petitioners

Versus

The Presiding Officer, Industrial Tribunal & others

..... Respondents

CORAM : 1.HON'BLE MR.JUSTICE RAJIVE BHALLA.
2.HON'BLE MR.JUSTICE DR. BHARAT BHUSHAN PARSOON.

Present : Mr. Virender Kumar, Advocate,
for the appellants.

Mr. P.K. Mutneja, Advocate,
for the respondent No.2.

DR. BHARAT BHUSHAN PARSOON, J.

This Letters Patent Appeal filed by the workmen under Clause X of the Letters Patent is directed against judgment dated 28.11.2011 passed by learned Single Judge of this Court in C.W.P. No.10334 of 1988 vide which their writ petition challenging impugned orders Annexures P-1 and P-5 has been dismissed.

2. Before advertizing to rival claims of the parties, it would be appropriate to refer to undisputed facts. The appellants and proforma respondents along with few others were serving the respondent-company.

Their services were terminated. As their request for reinstatement did not evoke any response from the management, a reference was sought and eventually made at the behest of the employees' union under Section 10 of the Industrial Disputes Act, 1947 (hereinafter, to be referred as the Act) to the Industrial Tribunal, Patiala for adjudication. Notices sent to the General Secretary of the Chemical Workers Union (Dera Bassi) District Patiala remained unserved. On 22.08.1984, when no one appeared on behalf of the workmen or individual before the Tribunal, the reference was dismissed for "non-prosecution".

3. After publication of the Award, in March 1985 an application was filed by workmen, for setting aside the ex-parte Award. The application met with tough resistance from the management on the ground of limitation and that the Tribunal is functus officio after 30 days of publication of the Award.

4. The workmen filed a rejoinder claiming that they had neither been served personally nor through their representatives, i.e., the employees' union nor had they any knowledge of pendency of the reference before the Tribunal. It was averred that they had no information about rendering of the impugned Award by the Tribunal and thus the application for setting aside the ex-parte Award, was not time barred.

5. The Tribunal dismissed the application by holding that it had no jurisdiction to entertain an application for setting aside the ex-parte Award after 30 days of publication of the Award. The application for setting aside Award dated 22.08.1984 was therefore dismissed on 23.09.1987.

6. Civil Writ Petitions No.10334 of 1988 and No.1440 of 1988 were filed by the workmen challenging correctness of orders passed by the Industrial Tribunal, Patiala. Hon'ble Single Bench dismissed the writ

petitions on 28.11.2011, by observing that the Management had ceased to exist and that the factory had closed. It was also noticed that workers of the factory had been transferred to another establishment which had also closed its operations. It was further observed that the whole exercise is purely academic as considerable time had elapsed and the respondent-management had closed its shutters. It was mentioned that neither the issue of reinstatement nor the issue of payment of compensation thus survived.

7. The appellant-workmen have claimed that dismissal of the reference for non-prosecution, is illegal. It is argued that notice allegedly issued by the Tribunal to the General Secretary, Chemical Workers Union Dera Bassi (District Patiala) had not been received by them as was evident from order dated 23.09.1987. It is averred that though subsequent attempts were made by the Tribunal to serve the General Secretary of the employees' union but he remained unserved and the information had not reached him and thus he had remained unserved and un-informed about pendency of the reference of this industrial dispute before the Tribunal.

8. It is claimed that when neither information had reached through the office bearer i.e. General Secretary of the workmen Union nor any effort was made by the Tribunal to serve the workmen personally, the reference made by the State Government on the initiative of the workmen and their Union to the Tribunal, could not have been dismissed for non-prosecution. It is asserted that neither the workmen had been served in the reference before the Tribunal nor they were heard and thus the Award was rendered at their back in hurry to oblige the management.

9. Even on facts, it is claimed that stand of the management that it had ceased to exist and its factories had been closed down, is wrong and misleading. It has been averred that the respondent-management is very much in existence and has deliberately and intentionally with a purpose to

prejudice rights of the workmen, frequently changed its identity as also name and nomenclature of the factory. Prayer for acceptance of the appeal and for setting aside judgment of 28.11.2011 passed by Hon'ble Single Bench of this Court, has been made.

10. During pendency of this appeal, an application moved by the management for bringing additional facts on record was allowed. Appellants-workmen had also been given opportunity to prove their stand which had been taken by them in their reply of 29.04.2013 to this application. In addition to the facts already on record, some additional facts have been introduced by the management on record. Counsel for the management has taken pains to take us through the record available on the Court file but has not been, able to show service of the General Secretary of the Chemical Workers' Union (Dera Bassi) District Patiala through whom the workmen had sought adjudication of the reference from the Industrial dispute. Counsel for the respondent has also contended that since the reference was made at the behest of the employees' union, the appellants have no locus standi to challenge the award.

11. Arguments have been heard. We have gone through the case file minutely with the able assistance of learned counsel for the parties.

12. The record reveals that General Secretary of the Chemical Workers Union registered at Dera Bassi (Patiala) through whom workmen of the respondent-management had espoused their cause in the nature of a reference qua the Industrial dispute in terms of Section 10 of the Act, had never been served in this reference i.e. No.9 of 1984. When the workmen neither through General Secretary nor personally had any information about pendency of reference of the industrial dispute before the Industrial Tribunal, Patiala, they were not expected to join proceedings. When there was neither any information nor knowledge with the appellants or with proforma-respondents or with their other colleagues, they were not

expected to come forward to prosecute their cause, despite their keenness in this behalf as is evident from the later developments which took place in this matter.

13. Observations of the Hon'ble Single Bench of this Court that the respondent-management had ceased to exist and their factory had since been closed, were apparently based on wrong facts given by the management before the learned Single Judge. When averments in the application filed by the management for bringing additional facts on record vide CM No.1246 of 2013 (which had been allowed by this Court on 06.03.2013) are gone through, it transpires that neither the management is non-existent nor the company has stopped conducting its business. Merely because the company had stopped production of 'Malthein', is not enough to conclude that the factory had been shut down. It is rather evident by their admission that it had started production of 3 other additional products viz. Diethyl Oxalate, Ibuprofein and Sodium Nitrate. The company has however changed its name to Punjab Chemical and Pharmaceuticals Limited from Punjab United Pesticides and Chemicals Limited.

14. In the same tone, it may be mentioned that stoppage of production of 'ibuprofein' in one of its plants, whereas two other products viz. Ethyl Oxalate Chloride & Ethyl Phenylgly Oxalate were being produced in two other plants of the company, is of no factual or legal significance.

15. The matter, however, does not end here. It is the stand of the management that later on, it had also started producing Ethyl Oxalate Chloride, Ethyl phenylgly Oxalate, MMHC, Ferric ammonium Oxalate etc. This time company had changed its name to Punjab Chemicals and Crop Protection Limited. It was in the year 2004. Change of its name cannot be used by the management to adversely affect interests of the workmen in adjudication of the dispute.

16. Contention of the learned counsel for the respondent that the company had stopped production of Ferric Ammonium Oxalate and Ferric Sodium Oxalate since the year 2006, again is of no substance. It may be observed that changes brought by the company in the range of products earlier being manufactured by it as also in the name (under which it had carried on businesss) rather shows that the compay is in existence and has merely changed its production profile. The product range having been changed from pesticides to pharmaceuticals which later was further changed to speciality in chemicals and then to crop protection cannot be taken to annihilate rights of and benefits to its workers, who were on its rolls right from the very beginning, when the company was producing only 'malthine'.

17. Stand of learned counsel for the management that there is complete change in quantum of its share holding and identity as also in the nature of products it manufactured and further that there is multi-dimensional shift in the style of its management, is not the circumstance sufficient to close the doors of the company for its workers who had nurtured it with their blood and sweat when it needed them the most, as those were the initial days when the company had just come into existence. Plea of the management that the appellants by now have got employed in other industries, also remains unsubstantiated.

18. Looking at the matter from another angle, Industrial Tribunal could not have dismissed the reference for non-prosecution. Specific reference made to the Industrial Tribunal was in the following terms: -

“Whether the action of the management is not allowing 49 workmen (list enclosed) to join their duties is justified and in order? If not, what directions are necessary in this behalf?”

19. This reference was to be answered either in favour or against the workmen. Reference made at the instance of workmen could not have been dismissed for absence of their employees' union. A Division Bench judgement of this Court reported as K.K. Rattan vs. Presiding Officer, Labour Court & Ors. 1994 (II) LLJ 378 in similar circumstances, has held that a Labour Court is bound to decide a reference on merits even if the workman is absent.

20. The Tribunal firstly did not get service effected on the workmen either through their representative i.e. General Secretary of their employees Union or personally on them and without effecting service on them proceeded to dismiss the reference for non-prosecution.

21. Even in case of non-appearance of workmen after due service on them, which is not even the case here, their non-appearance could not have resulted in dismissal of the reference as the same was to be answered, on the facts available before the Tribunal, either in favour or against the workmen.

22. As regards the plea of locus standi, contention of counsel for the management has no merit. Merely because their Union had espoused their cause for adjudication of the industrial dispute by the Tribunal and reference was accordingly made, locus standi of the workmen to approach the court singly or in multiples cannot be questioned. Workmen are the sufferers from adjudication of dispute by their Tribunal, they are thus the main stake-holders. Locus standi of the workmen to agitate their cause, even in absence of their employees' Union, cannot be negated.

23. In conclusion there being merit in the appeal, the same is accepted. Order dated 28.11.2011 in CWP No.10334 of 1988 as also Award dated 22.08.1984 of the Industrial Tribunal Chandigarh are set aside.

24. The reference is remitted to the Industrial Tribunal Chandigarh for answering the same in accordance with law.

25. Parties to appear before Presiding Officer Industrial Tribunal Chandigarh on 29.11.2013.

(DR. BHARAT BHUSHAN PARSOON)
JUDGE

October , 2013.
kadyan

(RAJIVE BHALLA)
JUDGE