Before Rajesh Bindal, J.

BALBIR SINGH—***Petitioner***

versus

PRESIDING OFFICER AND ANOTHER—***Respondents***

CWP No. 21 of 2011

5th February, 2013

*A. **Industrial Disputes Act, 1947 - Ss.10, 15, 17 & 25F - Industrial Disputes (Punjab) Rules, 1958 - Rl.10-B - Income Tax Act, 1961 - S.256 - Labour Tribunals/Courts - Practice and procedure - Reference of Labour Dispute - Non-appearance of Workman or his authorized representative - Proceeded ex-parte - award decided against him - Application to set aside exparte order also dismissed - Challenge in writ petition to both orders - Held, that such order will not amount to an Award - Party has option to move same Court for recalling of order by justifying its absence before it - Court/ Tribunal does not become functus officio and can entertain such an Application - Workman can even seek a second reference on the same facts from the appropriate Government - Writ allowed - Award set aside and matter remitted.***

Held, that in case a reference is returned unanswered, the party has an option to move an application before the same court for re-calling of the order justifying its absence on the date fixed for hearing. As such an order will not amount to an award, the same will not be published and the Labour Court/Tribunal will not become functus officio to entertain an application.

(Para 22)

Further held, that if the principles of law laid down in Virendra Bhandari's case are considered, a workman, in whose case, the dispute referred had not been decided on merits, still has a right to move the appropriate government for a second reference on the same facts. In my opinion, in the circumstances, where a question referred earlier had been returned unanswered, the workman will also have a right to move the

appropriate government for a second reference on the same facts, which may have to be considered in accordance with the provisions of the Act.

(Para 23)

B. Industrial Disputes Act 1947 - S. 2(6) - Award - What is - Means decision on merits - Award passed ex parte, in absence of a defaulting party - Can be recalled on justifiable grounds before submission of the Award by the Court/Tribunal for publication in the official gazette

Held, that the term "award" has been defined in Section 2(b) of the Act.

It reads:

> " 'award' means an interim or a final determination of any Industrial Dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10-A."

(Para 10)

Held, that it has been interpreted to mean decision of the reference on merits. Rule 10-B(9) of the Rules provides that in case a party fails to appear at any stage, the Labour Court or Tribunal may proceed with the reference ex-parte and decide the same in the absence of a defaulting party. However, such an order directing ex-parte proceedings can be re-called on justifiable grounds before submission of the award. Rule 22 of the Rules is also in the same lines.

(Para 11)

Further held, that the award can be passed by the Labour Court/ Tribunal on merits only after the parties to the dispute file their pleadings and assist the Labour Court/Tribunal by leading evidence and addressing arguments. In the absence thereof, it cannot be termed to be an award on merits. Hon'ble the Supreme Court in Virendra Bhandari's case (supra) opined that even if an earlier reference on the instance of the workman had been answered in his absence, it is no adjudication of the industrial dispute and fresh reference on the same issue is maintainable. Hon'ble the Supreme

Court also observed therein that in the absence of concerned party, the Tribunal should have recorded its inability to record a finding on the issue referred to it, and not that the dispute itself does not exist.

(Para 12)

Abha Rathore, Advocate, *for the petitioner.*

Sunil Panwar, Advocate for respondent No. 2.

RAJESH BINDAL J.

(1) The petitioner-workman has approached this court for setting aside of ex-parte award dated 15.1.2008 and further the order dated 7.9.2010 passed by Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat (for short, 'the Tribunal'), whereby the application for restoration of the reference before the Tribunal was dismissed.

(2) Briefly, the pleaded facts are that the petitioner-workman was appointed by respondent No. 2-management to operate power loom in 1993. He worked till 31.7.2006 when his services were terminated, allegedly in violation of the provisions of Industrial Disputes Act, 1947 (for short, 'the Act'). The petitioner got a demand notice dated 2.11.2008 served on the management. The matter having not settled before the Labour-cum-Conciliation Officer, the dispute was referred to the Tribunal by the appropriate government. As no one appeared on behalf of the petitioner workman before the Tribunal, he was proceeded against ex-parte and the reference was decided against him. After the petitioner came to know about the order passed by the Tribunal, he immediately filed an application for setting aside of ex-parte award. The same was also dismissed. Both the orders have been impugned before this court.

(3) Learned counsel for the petitioner submitted that in the demand notice got served by the petitioner, he had mentioned his permanent residential address as well as the address of the authorised representative, however, still when the matter was referred to the Tribunal by the appropriate government, no notice was sent to the petitioner at his permanent address, rather the same was sent only to the authorised representative, who had been engaged only for representing the petitioner before the Labour-cum-Conciliation Officer. Even if the authorised representative had received the

information about reference of dispute to the Tribunal, he was not interested in the matter. Even when the matter was taken up by the Tribunal, no notice was served upon the petitioner at his permanent address. It was again sent to the authorised representative only. In the absence of any intimation, the petitioner could not put in appearance before the Tribunal. He has been condemned unheard despite the fact that his services were terminated in violation of the provisions of Section 25-F of the Act after having served the management for a period of about 13 years.

(4) Learned counsel further submitted that once the dispute referred had not been decided by the Tribunal on merits, it cannot be termed as an award, which was required to be published. It can be said to be an award only after the dispute referred is decided on merits. Under these circumstances, it should not have been sent to the appropriate government for publication making it *functus officio*, as it adds to the miseries of a workman. If order passed by the Labour Court/Tribunal is not published, it does not become *functus officio*. In these circumstances, the workman can file an application for restoration before the Labour Court/Tribunal which can be considered on its own merits, but after publication of the award in the official gazette, the workman can only approach this court for setting aside of the award. In support of her argument that an ex-parte order passed by the Tribunal is not an award, reliance was placed upon on a Division Bench judgment of this court in ***Technological Institute of Textiles, Bhiwani*** versus ***Labour Court, Rohtak and another (1)*** and a Single Bench judgment of Gujarat High Court in ***Chandrakant Devgiri Giri*** versus ***Porbandar Nagarpalika, Porbandar (2).*** It was further submitted that even if the first reference has been decided against the workman in his absence, the second reference on the same facts is maintainable. In support, reliance was placed upon ***Virendra Bhandari*** versus ***Rajasthan State Road Transport Corporation and others (3).***

(5) On the other hand, learned counsel for respondent No. 2-management submitted that the workman who had raised the demand notice is required to be aware of the proceedings either before the Labour-cum-Conciliation Officer or the appropriate government. He was required to

(1) (1994) III LLJ (Suppl.) 1065
(2) 2009 Lab. I.C. 2532
(3) (2002) 9 SCC 200

follow up his case. Once the address of authorised representative had been given in the demand notice, service of notice on him would be sufficient. The appropriate government had sent the order referring the dispute to the Tribunal, to the authorised representative of the petitioner and further even the Tribunal had also served the notice at the same address. In the absence of any representation on behalf of the petitioner before the Tribunal, it had no option but to pass the award accordingly. The petitioner had got the dispute referred to the Tribunal. Onus was on him to prove his case. In the absence of any material produced by him, the Tribunal did not have any option but to pass the award against him. Any final decision taken by the Tribunal is required to be sent to the government and the government is duty-bound to publish the same. He further submitted that there is no other option available, which could enable a workman to dig up a stale claim at a belated stage by raising the plea that he was not aware of the proceedings, hence, could not put in appearance. The delay even in raising the dispute is fatal now with the amendment carried out in the Act. The cause shown by the petitioner for his non-appearance was not found to be justifiable.

(6) Heard learned counsel for the parties and perused the paper book.

(7) The issue involved in the present petition is of quite importance, namely, as to the procedure to be adopted by the Labour Courts or Industrial Tribunals in the cases where the petitioner-workman, at whose instance a reference has been made to the Labour Court/Tribunal, does not appear for any reason? It is especially in the cases where no pleadings have been filed and consequently no evidence led on behalf of the petitionerworkman. In such cases, the Labour Courts/Tribunals are dismissing the references by passing the awards against the petitioner-workman therein, which are sent to the appropriate government for publication in the official gazette. After the award is published, the Labour Court/Tribunal becomes *functus officio* and if there are good reasons for non-appearance of the petitioner-workman before the Labour Court/Tribunal, the only remedy available to him is to approach this court, which is not only expensive but time-consuming.

(8) Section 10 of the Act provides for reference of dispute to the Court/Tribunal. Sub-section (2-A) thereof provides that at the time of reference of dispute, the appropriate government shall specify the period

within which the Court/Tribunal shall submit its award of such dispute. Section 15 of the Act throws light on the duties of the Labour Court/Tribunal. It envisages expeditious disposal of the cases and submission of award to the appropriate government, which is required to be published in the official gazette within a period of 30 days from the receipt in terms of Section 17 of the Act.

(9) Rule 10-B of the Industrial Disputes (Punjab) Rules, 1958 (for short, 'the Rules') provides for procedure to be adopted by the Labour Court/Tribunal. It envisages that while referring the dispute for adjudication to the Labour Court/Tribunal, the appropriate government shall direct the party to file a statement of claim along with requisite documents within a period of 15 days of the receipt of order of reference and forward a copy thereof to the opposite party involved in the dispute. The opposite party has liberty to file written statement to the claim. Thereafter, replication can be filed and after both the parties lead their evidence, the Court/Tribunal is to pass the award after hearing arguments.

(10) The term "award" has been defined in Section 2(b) of the Act. It reads:

> " 'award' means an interim or a final determination of any Industrial Dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10-A."

(11) It has been interpreted to mean decision of the reference on merits. Rule 10-B(9) of the Rules provides that in case a party fails to appear at any stage, the Labour Court or Tribunal may proceed with the reference ex-parte and decide the same in the absence of a defaulting party. However, such an order directing ex-parte proceedings can be re-called on justifiable grounds before submission of the award. Rule 22 of the Rules is also in the same lines.

(12) The award can be passed by the Labour Court/Tribunal on merits only after the parties to the dispute file their pleadings and assist the Labour Court/Tribunal by leading evidence and addressing arguments. In the absence thereof, it cannot be termed to be an award on merits. Hon'ble the Supreme Court in Virendra Bhandari's case (supra) opined that even

if an earlier reference on the instance of the workman had been answered in his absence, it is no adjudication of the industrial dispute and fresh reference on the same issue is maintainable. Hon'ble the Supreme Court also observed therein that in the absence of concerned party, the Tribunal should have recorded its inability to record a finding on the issue referred to it, and not that the dispute itself does not exist. Relevant paragraph 4 thereof is extracted below:

> "4. A perusal of the award made on the earlier occasion will clearly indicate that there is no adjudication of the dispute at all. All that was stated was that the concerned parties had not appeared before the Tribunal and in such an event, the Tribunal should have noted its inability to record the finding on the issue referred to it not that the dispute itself does not exist. When there is no adjudication of the matter of merits, it cannot be said that the industrial dispute does not exist. If the industrial dispute still exists as is opined by the Government such a matter can be referred under Section 10 of the Industrial Disputes Act. What is to be borne in mind in proceedings of this nature is that the industrial disputes are referred to the Labour Court or the Industrial Tribunal for maintenance of industrial peace and not merely for adjudication of the dispute between two private parties. That aspect seems to have been lost sight of by the Tribunal on the first occasion and by the High Court in the order under appeal. In this background, it was certainly permissible for the Government to have made the second reference on which occasion after inquiring into the matter, the Tribunal adjudicated the matter finally." *[Emphasis supplied]*

(13) There are many cases in which the workman either does not appear or is not represented before the Labour Court/Tribunal when the reference is made. There are many reasons therefor and if given opportunity, the workman may be able to satisfy the Labour Court/Tribunal that there were good reasons for his non-appearance. One of the reason, which was noticed by this court was non-service of order of reference by the appropriate government and/or notices issued by the Labour Court/Tribunal on the workmen. It was on account of the fact that permanent addresses of the workmen were not being furnished and the notices used to be served only on their representatives, who may or may not be interested at a subsequent

stage or may have shifted their office. Considering the said fact, this court in C.W.P. No. 11257 of 2011—P. L. Goyal and sons Ltd. v. Authority Appointed under the Payment of Wages and others, decided on 3.11.2012, had directed as under:

> "23. To streamline the working of various authorities under the different Labour Laws, it is directed that in future in all the cases which are to be filed and in all the pending cases, the parties shall be directed to furnish their permanent address(es). Even if the representative of the workman is continuously appearing, he shall furnish permanent address of the workman. Even in proceedings subsequent to first stage, it shall be mandatory to provide permanent address of the party for his service. Merely mentioning through Labour union or authorised representatives, who are some times union leaders or legal practitioners, will not be sufficient. Sevice of notice will have to be effected on the permanent address of the workman."

(14) In the absence of pleadings and evidence, the Labour Court/ Tribunal will not be able to pass award on merits. The provisions of the Act and the Rules envisage that the reference cannot be dismissed in default. In case the Labour Court/Tribunal proceeds to decide the case on merits in the absence of the workman and answers the issue holding that no industrial dispute exists and the award is sent to the appropriate government, which is published in the official gazette, the only remedy with a workman may be to approach the higher court, which is expensive and time consuming.

(15) The scheme of the Act is that the appropriate government after finding that the industrial dispute exists between the workman and the management refers the same to the Labour Court/Tribunal for its opinion, the Labour Court/Tribunal can effectively opine on the issue if the parties file pleadings, lead evidence and assist the Labour Court/Tribunal. In the absence thereof, the Labour Court/Tribunal will not be able to opine on the merits of the controversy.

(16) Under Section 256 of the Income-tax Act, 1961, after an order is passed by the Income-tax Appellate Tribunal (for short, 'ITAT'), any of the aggrieved party had the right to move an application before ITAT for referring a question of law for opinion of the High Court. In case such an

application was rejected, the aggrieved party had a right to file a petition in the High Court for a direction to ITAT to refer the question of law arising out of the order passed by ITAT. It is how the disputes were referred to the High Court under the Income-tax Act, 1961. At times, when the case was taken up for hearing, in case the counsel for the party, which had sought the reference, was not available to assist, the courts had been returning the questions referred, unanswered. Reference can be made to the judgment of this Court in ***Commissioner of Income Tax*** versus ***Amritsar Sugar Mills Co. Ltd. (4),*** the relevant part of which is extracted below:

> "7. ..... We also feel that the relevant material, referred to by the Tribunal in its order has not been made part of the statement of the case, with the result that the questions referred cannot be answered. Therefore, the options available at this juncture are either to call for a supplementary statement of the case or to return the reference unanswered. We are of the opinion that keeping in view the fact that by now a fresh assessment must have been framed, which information, learned counsel for the Revenue was unable to obtain from the Department, despite sufficient time having been granted for the purpose, we should prefer the latter option." *[Emphasis supplied]*

(17) Similar order was passed in ***New Dewan Oil Mills*** versus ***CIT (5).***

(18) Madhya Pradesh High Court in ***Estate of late Tukojirao Holkar*** versus ***Commissioner of Wealth-tax (6),*** held as under:

> "For the foregoing reasons, we are of the opinion that if the party at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, this court is not bound to answer the reference. We refuse to answer the reference and also saddle the assessee with the costs of the Department quantified at Rs. 150."

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(4) (2006) 284 ITR 312
(5) (2008) 296 ITR 495
(6) (1997) 223 ITR 480

(19) Delhi High Court in ***Commissioner of Income Tax*** versus ***Shri Ram Fibers Ltd. (7),*** held as under:

> "2. Mr. R. D. Jolly, learned senior standing counsel for the Revenue, submits that since all the relevant documents are available in the file of ITC No. 10/95, the Revenue may be exempted from filing the documents and the paper books in this case. We are afraid, we cannot accede to the prayer made by learned counsel for the petitioner. Once a party chooses to have a reference made to this court, it is under obligation to comply with all the rules which are applicable to the regular references. As noted above, the Revenue has not only failed to file the requisite paper books, it has also failed to take steps even to take out notice to the respondents. In view of the above, we return the reference unanswered."

(20) Madras High Court in ***K.M.N. Nagappa Chettiar*** versus ***Commissioner of Wealth Tax (8),*** held as under:

> "3. This matter is pending since 1992. Seeing that the assessee was still not on record and there was no appearance on behalf of the assessee, we had directed the Registry to serve the assessee by registered post with acknowledgement due. Accordingly, the notice was sent and it is obvious from the acknowledgement card that the applicant was served on 11.7.2002. Still, when the matter came up today before us, it was found that the assessee has not taken any steps either to file Vakalatnama or the typeset etc., and there is no appearance on behalf of the assessee also. It is therefore obvious that the assessee is not interested in carrying on with the reference. The reference is therefore sent back without any answers."

(21) Similar order was passed by Bombay High Court in ***Nemmal Champalal Shah and others*** versus ***Commissioner of Income Tax (9).***

(22) In case a reference is returned unanswered, the party has an option to move an application before the same court for re-calling of the order justifying its absence on the date fixed for hearing. As such an order

(7) (2005) 272 ITR 562
(8) (2003) 130 Taxman 61
(9) (1999) 238 ITR 266

will not amount to an award, the same will not be published and the Labour Court/Tribunal will not become *functus officio* to entertain an application.

(23) If the principles of law laid down in Virendra Bhandari's case are considered, a workman, in whose case, the dispute referred had not been decided on merits, still has a right to move the appropriate government for a second reference on the same facts. In my opinion, in the circumstances, where a question referred earlier had been returned unanswered, the workman will also have a right to move the appropriate government for a second reference on the same facts, which may have to be considered in accordance with the provisions of the Act.

(24) If the facts of the case in hand are considered, the case set up by the petitioner is that he was not served with the notice as only his authorised representatives was sent a notice by the Tribunal. This is despite the fact that the petitioner had furnished his permanent address in the pleadings before the authorities. The authorised representative had been engaged only for representing the petitioner before the Labour-cum-Conciliation Officer and not before the Court. As the petitioner did not receive any intimation from the Tribunal, he was unable to put in appearance. In the absence of any pleadings or evidence, the issue was decided against him, hence, such an order passed by the Tribunal deserves to be set aside.

(25) Accordingly, the award dated 15.1.2008 and order dated 7.9.2010 passed by the Tribunal, are set aside. The matter is remitted back to be decided on merits.

(26) The parties through their counsels are directed to appear before the Tribunal on 4.3.2013.

(27) The petition stands disposed of.

(28) Copy of the order be circulated to all the Labour Courts/ Industrial Tribunals in the States of Punjab and Haryana and Union Territory, Chandigarh.

S. Gupta