

Present:- None for the workman.
Shri Ajay Gupta, Ld. A/R for the management.

This order is to deal and dispose of the petition dated 28.02.2020 filed by the management praying to set aside the ex-parte award dated 22.07.2019 for the grounds mentioned in the petition. Copy of the petition was served on the claimant and the matter was argued by both the parties on 09.02.2022.

On hearing the argument advanced and on perusal of the record shows that on 22.07.2019 for non appearance of the management the ex parte award was passed and the same has been published in the Government of India Gazette dated 10.10.2019. Thereafter on 28.02.2020 the present petition was filed.

The learned AR representing the Management submitted that the matter was listed for workman evidence on 20.02.2017 when the claimant had filed and tendered his affidavit evidence. Thereafter the matter suffered several adjournments till 07.01.2019 for further evidence to be adduced by the claimant. On 07/1/19 the claimant closed his evidence .since on that day the AR for the Management was not present in the Tribunal an order was passed closing the right of the management to adduce evidence. On 24/3/19 argument was heard being advanced by the claimant only and the ex parte award dated 22.07.2019 was passed. The respondent could know about the award when claimant took steps for execution of the award. The subject matter of the dispute is likely to have a long standing effect on the functioning of the management who could not place the materials on record to support it's stand, it is desirable and expedient in the interest of justice to set aside the ex parte order and give an opportunity to the Management to lead evidence. The learned AR for the management in support of his submission has relied upon several pronouncements of the Hon'ble Apex Court and HC of Delhi.

In his reply the learned AR for the claimant submitted that the management was fully aware of the order dated 07/01/2019 i.e the preceding order of the one in which right of the management was closed. In the said order the Tribunal had directed both parties to come ready with their respective evidence. Since the claimant closed the evidence on 7.1.19, respondent should have adduced evidence. As the Respondent and his AR were found absent the order closing their right was rightly passed. He also submitted that the award having been published, the Tribunal has no power to set aside the same.

On perusal of the record it is found that on 07/1/19 claimant closed it's evidence and on .that day though no one was present on behalf of the respondent his right was closed and matter was adjourned for argument when too the Respondent did not participate. While the said order dated 7/1/19 appears prejudicial to the interest of the Respondent, the negligence on the part of the respondent cannot be ignored.

More over this is an old matter of 2015 and the claimants are litigating for regularization of their service. If this petition is allowed the claimants shall be pushed back to a stage causing further harassment on account of the ongoing litigation.

The objection taken by the claimants that the Tribunal has become functus officio for publication of the award is not accepted for the reason that the Hon'ble SC in the case of **M/S Haryana Suraj Malting Ltd vs. Phool Chand, 2018 LAB.I.C 2904** have held that:-

“in case a party is able to show sufficient cause for it's non appearance when it was set ex parte, the Tribunal is bound to consider it and it cannot be rejected on the ground that the application has been filed after publication of the award.”

Keeping that principle in view in this case it is felt proper to set aside the award and give an opportunity to the Respondent for adducing evidence subject to payment of cost of Rs. 5000/- to the claimants before adducing evidence.

Call this matter on 05.04.2022 for payment of cost and evidence to be adduced on that day by the management positively. If management would fail to conduct the proceeding on that day as directed in this order, the petition for setting aside the award would stand rejected without further reference the Award passed on 22.07.2019 shall survive for execution.

Presiding Officer
09.03.2022