
(2009) 10 AHC CK 0202
In the Allahabad High Court
Case No : C.M.W.P. No. 34240 of 1997

Aligarh Muslim University and Another	APPELLANT
Vs	
Industrial Tribunal (4) and Another	RESPONDENT

Date of Decision : 22-10-2009

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 16, 16(2)
Uttar Pradesh Industrial Disputes Act, 1947 — Section 17A, 4K, 6(3), 6(5), 6(A)

Citation : (2010) 5 AWC 4688

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ran Vijai Singh, J.—This writ petition has been filed for issuing a writ of certiorari quashing the orders dated 3rd May, 1997 and 22nd August, 1997, passed by Industrial Tribunal (4), Agra (respondent No. 1). Vide order dated 3rd May, 1997, the Tribunal had allowed the restoration application for setting aside an ex parte award dated 10th February, 1995 rendered in Adjudication Case No. 204 of 1994, whereas by the subsequent order dated 22nd August, 1997, the Tribunal had rejected the petitioners' application to recall the order dated 3rd May, 1997.

2. The facts giving rise to this case are that the respondent No. 2, claiming himself to be a workman has raised an industrial dispute. The dispute was referred u/s 4K of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as Act of 1947). The reference was registered as Adjudication Case No. 204 of 1994 before the Industrial Tribunal (4) Agra. The dispute referred was "whether the employers were justified in terminating the services of the workman from 16th April, 1993 and if not then to what relief the workman was entitled to."

3. The petitioners-employers appeared before the Tribunal and filed their written statement stating therein that the State had no jurisdiction to refer the dispute u/s 4K of the Act of 1947. It was also contended that the respondent No. 2 is not workman as his engagement was only for a fixed period and that had come to an

end after expiry of the aforesaid period.

4. The notices were issued to the parties through registered post but it appears the workman did not appear before the Tribunal and on 10th February, 1995, the Tribunal has passed an ex parte award deciding the reference against the workman.

5. The aforesaid award was published on 20th April, 1995 u/s 6 (3) of the Act of 1947 and it was also published on the notice board on 22nd May, 1995.

6. It appears thereafter the respondent No. 2 filed an application on 25th October, 1996 before the Tribunal for setting aside the ex parte award dated 10th February, 1995 with a prayer to restore the Adjudication Case No. 204 of 1994 to its original number. The petitioners-employers have filed a detailed reply to the restoration application supported with an affidavit stating therein that the application itself was not maintainable as it was filed beyond the period of limitation as prescribed under Rule 16 of the Rules framed under the Act. It was also stated that the Tribunal had sent registered letters to both the parties on 24th December, 1994 fixing 9th February, 1995 but the workman did not appear. It was also stated that the workman had not stated in his application as to on which date he had acquired knowledge of the ex parte award. It was also contended that the award attained finality u/s 6 (5) of the Act on its publication u/s 6 (3) of the Act and u/s 6 (A) of the Act of 1972, the award became enforceable after the expiry of 30 days from the date of its publication.

7. The Tribunal after hearing both the parties had allowed the restoration application by the impugned order dated 3rd May, 1997. While allowing the application, the Tribunal has observed that the limitation shall start from the date of the knowledge of the award and not from the date of its publication.

8. Thereafter, the petitioners-employers have filed an application on 21st June, 1997 for recalling the order dated 3rd May, 1997 on the ground that the workman had not disputed the address indicated in the summons sent by the Tribunal through registered cover which had not returned back after service. The presumption goes that there was sufficient service on the workman. The Tribunal thereafter hearing the parties had rejected the application of the petitioners vide order dated 22nd August, 1997. Hence, this writ petition.

9. Ms. Sunita Agarwal learned Counsel appearing for the petitioners has assailed the impugned orders on following grounds:

(1) Because the ex parte award dated 10th February, 1995 was published in accordance with Section 6 (3) of the U.P. Industrial Disputes Act, 1947 on 20th April, 1995 and was also put on the notice board on 22nd May, 1995, therefore, it became enforceable after 30 days from its publication as per provision contained u/s 6A of the Act of 1947.

(2) Because the Tribunal had become functus officio after 30 days from the date of publication of award and it had no jurisdiction to proceed any further.

In support of her submissions she has placed reliance upon the few judgments of the Apex Court, namely Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, and Sangham Tape Company Vs. Hans Raj,

(3) Because under Rule 16(2) of the U.P. Industrial Disputes Rules, 1957 an application to set aside an ex parte award could be filed within ten days from the date of the ex parte award and even if it be assumed that the said application could be made within 30 days from the date of publication of the ex parte award even then the restoration application filed on 25th October, 1996 was barred by time.

10. In the submissions of learned Counsel for the petitioners, the language used in Section 6 (A) of the U.P. Industrial Disputes Act is identical to Section 17A of the Industrial Disputes Act, 1947 (Act No. 14 of 1947), (Central Act) (hereinafter referred to as Act No. 14 of 1947) and in the cases referred above, it has been held that the award becomes enforceable after expiry of 30 days from the date of its publication and the Tribunal/labour court retain their jurisdiction within thirty days from the publication and thereafter, the Tribunal/labour court becomes functus officio. In her submissions, although cases referred above are related to u/s 17A of the Act No. 14 of 1947 but it will be fully applicable with respect to Section 6A of the U.P. Industrial Disputes Act, 1947.

11. Refuting the submissions of learned Counsel for the petitioners, Sri J. J. Munir learned Counsel appearing for the respondent No. 2 submitted that an application for setting aside an ex parte award can be entertained by the Tribunal and Tribunal does not become functus officio as argued by learned Counsel for the petitioner. In support of his submissions, he has placed reliance upon the judgment of the Apex Court in Satnam Verma Vs. Union of India (UOI),

12. I have heard learned Counsel for the parties and perused the record.

13. It has not been disputed by the learned Counsel for the parties that the matter was referred by the State Government u/s 4K of the Act of 1972 for adjudicating the reference as mentioned above and the said reference was registered as Adjudication Case No. 204 of 1994 before the Industrial Tribunal (4) Agra. The notices were issued to the parties through registered post but the respondent No. 2 did not appear and the Tribunal has passed an ex parte award on 10th February, 1995 deciding the reference against the workman. The aforesaid award was published on 20th April, 1995 u/s 6 (3) of U.P. Industrial Disputes Act, 1947. The respondent No. 2 has filed an application for setting aside the ex parte award and that was allowed vide order dated 3rd May, 1997 and the application to recall the order dated 3rd May, 1997 was rejected by the Tribunal vide order dated 22nd August, 1997.

14. Rule 16 (2) provides that- an application to set aside the ex parte award can be filed within 10 days of such award. From the pleadings of the parties, it transpires that the factum of sending of notices through registered post has not been denied and it has also not been stated that on which date the respondent

No. 2 acquired knowledge of the ex parte award. Further, the application for setting aside ex parte award was filed after 30 days of its publication. In these circumstances, it cannot be said that the application filed by the respondent No. 2 to set aside the ex parte award was within time or there was a reasonable reason to not apply for the same.

15. The Apex Court, in the case of Grindlays Bank (supra) has held that the Tribunal/Court retained its jurisdiction to set aside an ex parte award provided the application has been filed within 30 days of its publication. In the case of Sangham Tape Co. (supra), the Apex Court has held that once the award becomes enforceable, the Industrial Tribunal or labour court becomes functus officio.

16. Here in the present case, as has been mentioned above, the award was given on 10th February, 1995 and it was published on 20th April, 1995 and it was also published on the notice board on 22nd May, 1995, whereas the respondent No. 2 has filed the application for setting aside the ex parte award on 25th October, 1996 apparently this was beyond 30 days from the date of its publication, i.e., 20th April, 1995 or 22nd May, 1995. Section 6A of the U.P. Industrial Disputes Act provides that the award becomes enforceable after 30 days of its publication. The language used in Section 6A of the U.P. Industrial Disputes Act is identical to the language used in Section 17A of the Industrial Disputes Act, 1947. In the cases of Grindlays Bank (supra) and Sangham Tape Co. (supra), the Apex Court has held that once the award becomes enforceable, the Industrial Tribunal or labour court become functus officio. Although in the case of Satnam Verma, (the case cited by respondent's counsel) the Apex Court has held that the labour court has jurisdiction to entertain the application for setting aside the ex parte award but the facts of this case are totally different as in the case of Satnam Verma the application was filed prior to the publication of the award and was well within time, therefore, the case cited by the respondent's counsel is distinguishable on facts.

17. Under these facts and circumstances, since the application for setting aside the ex parte award was filed after the expiry of 30 days of its publication, therefore it could not be entertained as the Tribunal had become functus officio and lost its jurisdiction to entertain any application.

18. This Court has also taken the same view in the cases of State of U.P. Vs. The Presiding Officer, Labour Court (II) and Mohd. Islam, and District Panchayat (Zila Parishad) Vs. Presiding Officer, Labour Court 4 and Krishna Deo Chaturvedi,

19. In view of that, the impugned order passed by the Tribunal cannot be sustained. The writ petition succeeds and is allowed. The impugned orders dated 3rd May, 1997 and 22nd August, 1997, passed by Industrial Tribunal (4) Agra (respondent No. 1) are hereby quashed. There shall be no order as to costs. However, dismissal of this writ petition will not preclude the respondents to approach the appropriate forum if any available under law against the ex parte

award.