
(2008) 10 BOM CK 0107

In the Bombay High Court

Case No : C.A.J. Writ Petition No. 2543 of 2007

Armament Officers Mess and Institute

APPELLANT

Vs

Vitthal Pundil Khadale and others

RESPONDENT

Date of Decision : 07-10-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 17

Citation : (2009) 120 FLR 346

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : Kiran S. Bapat Jayesh Desai instructed by Avinash Fatangare, for the Appellant; Gayatri Singh Amicus Curiae, for the Respondent

Judgement

Dr. D.Y. Chandrachud, J.—Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the respondent waives service. By consent of Counsel and at their request taken up for hearing and final disposal.

The services of the petitioner were terminated on 15th February, 2001. On a reference to adjudication u/s 10 of the Industrial Disputes Act, 1947, the Labour Court passed an ex parte award granting reinstatement with back wages and continuity of service on 14th July, 2005. The petitioner took out an application for restoration stating that knowledge of the proceedings was received on 21st August, 2006 when it received a notice of hearing of Misc. (ULP) 11 of 2006 taken out by the workman for the enforcement of the award. The application for restoration was filed on 20th September, 2006, within a period of 30 days" of the receipt of a certified copy of the award. The Labour Court dismissed the application for restoration on 4th October, 2006. Thereupon an application for review was dismissed on 31st October, 2006. The Labour Court has come to the conclusion that upon the expiry of 30 days of the publication of the award, it was rendered functus officio and the application for restoration could not have been entertained.

2. In South Seas Distilleries and Breweries Pvt. Ltd. Thane v. Deepak R. Patne

2003 LIC 262, a learned Single Judge of this Court has held that under the Industrial Disputes (Bombay) Rules, time for setting aside the award is 30 days from the date of the receipt of the award; this provision being in Rule 26(2). Under Rule 31-A, the State Government has, together with the publication of the award, to forward a copy of the award to the parties. The judgment in South Seas Distilleries was followed by a learned Single Judge of this Court in Radhakrishna Mani Tripathi v. L.H. Patel 2006 (110) FLR 244 (Bom.).

3. Section 17 of the Industrial Disputes Act, 1947 provides that every award of a Labour Court has to be published by the appropriate Government within a period of thirty days from the date of its receipt. Subject to the provisions of section 17-A, the award published under Sub-section (1) is final and cannot be called into question in any Court. Section 17-A provides that an award shall become enforceable on the expiry of thirty days from the date of its publication u/s 17. Section 20(3) provides that the proceedings before Labour Court shall be deemed to have been concluded on the date on which the award becomes enforceable u/s 17-A.

4. These provisions specify that the proceedings before the Labour Court are deemed to be concluded once the award becomes enforceable. The award becomes enforceable on the expiry of thirty days from the date of its publication. The manner in which the award is to be published is not specified in Sub-section (1) of section 17, but it is to be published in such a manner as the appropriate Government thinks fit. In so far as the Bombay Rules are concerned, the requirement of Rule 31-A is that together with the publication of the award in the Official Gazette, or as the case may be, on the Notice Board of the Court, a copy of the award has to be forwarded to the parties to the dispute by the appropriate Government. Sub-rule (2) of Rule 26 specifically provides that when an award is passed ex-parte the aggrieved party may within 30 days from the receipt of a copy, make an application to the Court for setting aside the award.

5. In Grindlays Bank Ltd. v. The Central Government Industrial Tribunal 1981 (42) FLR 88 (SC), the Supreme Court held that proceedings with regard to a reference u/s 10 of the Industrial Disputes Act, 1947 are not deemed to be concluded until the expiry of thirty days from the publication of the award. In Sangam Tape Company v. Hans Raj 2004 (103) FLR 699 (SC), the Supreme Court dealt with a case which was initially decided by the Labour Court in the State of Punjab. The judgment of the learned Single Judge of this Court in Radhakrishna Main's case (supra) takes note of the fact that Rules 22 and 24 of the Punjab Rules were identical with Rules 23 and 24 of the Central Rules. As against this, Rules 26(2) and 31-A of the Bombay Rules are distinct in that there is a requirement that a copy of the award should be sent to the parties and an application for setting aside an ex parte award can be made within thirty days from the date of the receipt of the award.

6. In view of the aforesaid provisions of law and the judgment of the learned Single Judge of this Court referred to hereinabove, the view of the Tribunal is

unsustainable. The impugned orders dated 4th October, 2006 and 31st October, 2006 are quashed and set aside. In view of the reasons which weighed with it, the Tribunal has not determined when as a matter of fact the petitioner had knowledge of the award or when the petitioner had received a copy thereof. Hence, it is necessary to order that Exh.1 in Misc. I.D.A. No. 98 of 2006 shall stand restored to the file of the third Labour Court at Pune for a fresh decision. All the rights and contentions of the parties are kept open. It is needless to clarify that this Court has not rendered any finding of fact on the date of the knowledge of the award or as regards the receipt of the award and it would be open to the Labour Court to arrive at a decision on the application for restoration in accordance with law after parties have been permitted to lead evidence, if they desire. The parties shall appear before the Labour Court for receiving directions on 20th October, 2008. The Labour Court is requested to dispose of the application for restoration within a period of two months thereafter. The petition shall stand disposed of in the aforesaid terms. No order as to costs.