

(2007) 01 RAJ CK 0085
In the Rajasthan High Court

Baldev Singh

APPELLANT

Vs

The Judge, Central Govt. Industrial Tribunal and Labour Court
and Others

RESPONDENT

Date of Decision : 29-01-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 17, 17A

Citation : (2007) 113 FLR 777 : (2007) 2 RLW 1692

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.R. Panwar, J.—By the instant writ petition under Articles 226 and 227 of the Constitution of India, the petitioner seeks quashing of the order Annx.P/2 dated 7.11.2001 made by the Central Government Industrial Tribunal and Labour Court, Shyamnagar, Jaipur (for short, "the Labour Court" hereinafter) , as also the order Annx.P/5 dated 4.9.2002.

2. I have heard learned Counsel for the parties.

3. The facts and circumstances giving rise to the instant writ petition are that on a reference made by the Appropriate Government to the Labour Court regarding industrial dispute, the petitioner filed a statement of claim. Reply to the claim petition was filed by the non-petitioners. The matter was posted for recording the evidence of the petitioner-workman on 7.11.2001. The matter was called in the early hours of the Labour Court but neither the petitioner-workman nor his representative appeared and the Labour Court passed a "no dispute award" vide order Annx.P/2 dated 7.11.2001. At 12:00 O'clock on the very day, Mr. P.C. Sharma, Advocate, appeared on behalf of Mr. J.S. Yadav, the Advocate and representative of the petitioner workman and filed an application stating therein that Mr. J.S. Yadav fell ill and he has been asked to appear for him. By that time he appeared at 12:00 O" Clock, it appears that the order was dictated to the

Stenographer. Thereafter an application seeking setting-aside the ex-parte "no dispute award" was made, which came to be dismissed by the Labour Court vide order Annx.P/5 dated 4.9.2002 on the ground that after publication of the award, the Labour Court became functus officio. Hence this writ petition.

4. It is contended by the learned Counsel for the petitioner that non-appearance of the workman cannot be conclusive that there is no dispute between the parties. What the Labour Court was required is to answer the reference made to it. The Appropriate Government made a reference to the Labour Court, which reads as under:

Whether the action of the management of State Bank of Bikaner & Jaipur, Regional Office, Jaipur in terminating the services of Shri Baldev Singh w.e.f. 7.2.1990 is justified ? If not, what relief he is entitled?

5. Learned Counsel has relied on a decision of the Hon"ble Supreme Court in Virendra Bhandari Vs. Rajasthan State Road Transport Corporation and Others, and a Division Bench decision of this Court in Pappu Ram v. The Labour Court, Jodhpur and Anr. 2005 (3) RRD 513 ((Raj.).

6. Learned Counsel for the non-petitioners contended that after 30 days of publication of the award, the Labour Court becomes functus officio and, therefore, the Labour Court was justified in declining to set aside the ex parte award. He has relied on a decision of the Hon"ble Supreme Court in M/s. Sangham Tape Company v. Hans Raj AIR 2004 SC 4776.

7. I have given my thoughtful consideration to the rival submissions made by the learned Counsel for the parties.

8. It is not in dispute that the Appropriate Government made a reference to the Labour Court, as noticed above, u/s 10 of the Industrial Disputes Act, 1947 (for short, "the I.D. Act, 1947" hereinafter) requiring the Labour Court to answer the reference. From the award Annx.P/2, it is clear that the Labour Court did not answer the reference and even stated in the award itself that it is not required to see the statement of claim and the. reply filed by the non-petitioner employer. That shows that the "no dispute award" Annx.P/2 has been made by totally non-application of mind. The Labour Court even did not care to see the statement of claim and the reply filed by the nonpetitioner employer. It could have been open for the Labour Court to answer the reference on the basis of statement of claim and the reply whatever in either way.

9. In Virendra Bhandari v. Rajasthan State Road Transport Corporation and Ors. (supra), a reference of certain industrial dispute was made to the Industrial Tribunal cum Labour Court. The workman did not appear before the Tribunal, therefore, the Tribunal held that there remains no industrial dispute. However, subsequently, the Appropriate Government again referred the dispute to the Tribunal on the same question and on this occasion, the Tribunal adjudicated the matter and made an award. The High Court held that the finding recorded by the

Tribunal in the first reference amounted to an "award" and, therefore, second reference was incompetent. The Hon''ble Apex Court held that all that was stated was that the parties concerned 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 on 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 u/s 10 of the I.D. Act as 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. Therefore, it was permissible for the Government to have made the second reference. The Apex Court held that the duty of the Industrial Tribunal is to note its inability to record a finding on the referred issue and not that the dispute itself did not exist. In the instant case, the Labour Court, instead of showing its inability or recording its inability to record a finding on the issue referred, made a "no dispute award", meaning thereby that the dispute itself did not exist, which runs contrary to the decision of the Hon''ble Supreme Court.

10. A Division Bench of this Court, in Pappu Ram v. The Labour Court, Jodhpur and Anr. (supra), held as under:

Thus, when an appropriate Government makes a reference to the Industrial Tribunal or Labour Court u/s 10 (1) (c) it seeks opinion on an industrial dispute referred to it. The Tribunal is required to adjudicate on the dispute after taking necessary evidence and hearing the parties. Such an opinion is expressed in the form of award which becomes final only after its publication by the appropriate Government u/s 17 of the Act. Once the award becomes final, it cannot be altered or modified by the parties. Sub-section (8) of Section 10 lays down that by reason of the death of a workman who was a party to an industrial dispute pending * adjudication before a Labour Court, Tribunal or National Tribunal, the proceedings before such adjudicatory authority will not affect. Thus, it is evident that an industrial dispute cannot be closed even by reason of death of a workman. Thus, the provision implies that the effective hearing of dispute must continue despite the death of one of the parties and an order on merit of the rival contentions should be pronounced and that in award dismissing the reference or rejecting the claim simplicitor should be passed by reason of death. It must not be forgotten that the Industrial Dispute Act has been enacted with an object to provide provision for investigation and settlement of industrial disputes which means adjudication of such disputes also. The powers of the authority deciding the industrial dispute under the Act are very extensive much wider than the power of civil Court while adjudicating a dispute which may be industrial dispute.

11. In The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, , the Hon''ble Apex Court held that a Tribunal cannot answer an

award made by appropriate Government u/s 10(l)(c) in the name of no industrial dispute award. The reference proceeding does not abate even on the death of workman what to talk of absence of workman. Thus, it is obligatory on a Labour Court or a Tribunal to answer a reference made u/s 10(l)(c) on merit after proper adjudication. It is for the Tribunal to evolve its own procedure in conformity with the rules and exercise the power vested with it to make an award on the basis of material available on record. The Court or the Tribunal with a view to settle the industrial dispute keeping in mind the sense of doing complete justice to the parties concern, may obtain additional material, if so required.

12. In *Sangham Tape Company v. Hans Raj* (supra), the Hon"ble Apex Court held that the Labour Court can exercise the jurisdiction within a limited time-frame, namely, within thirty days from the date of publication of the award. Once an award becomes enforceable in terms of Section 17A of the Act, the Labour Court or the Tribunal, as the case may be, does not retain any jurisdiction in relation to setting aside of an award passed by it. In other words, upon the expiry of 30 days from the date of publication of the award in the Gazette, the same having become enforceable, the Labour Court would become functus officio.

13. So far as the order Annx.P/5 dated 4.9.2002 by which the Labour Court declined to set aside the "no dispute award" Annx.P/2 dated 7.11.2001, is concerned, the proposition is not in dispute that after expiry of thirty days from the date of publication of the award in the Gazette, the Labour Court becomes functus officio. But so far as the award EX.P/2 dated 7.11.2001 is concerned, that runs contrary to the decision of the Hon"ble Supreme in *Virendra Bhandari v. RSRTC and Ors.* (supra) and a decision of the Division Bench of this Court in *Pappu Ram v. The Labour Court, Jodhpur and Anr.* (supra). In the circumstances, therefore, in my view, the writ petition deserves to succeed.

14. In the result, the writ petition is allowed. The award Annx.P/2 dated 7.11.2001, as also the order Annx.P/5 dated 4.9.2002 are set aside and the matter is remanded to the Central Government Industrial Tribunal and Labour Court, Shyamnagar, Jaipur to adjudicate the reference made to it by the Appropriate Government by affording opportunity to both the parties to lead evidence and hearing. No order as to costs.