
(1967) 06 KL CK 0014
In the High Court Of Kerala

Benjamin (M.J.)	Vs	APPELLANT
Industrial Tribunal and Another		RESPONDENT

Date of Decision : 28-06-1967

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 33, 33A

Citation : (1967) 2 LLJ 825

Hon'ble Judges : M.U. Isaac, J

Bench : Single Bench

Judgement

M.U. Isaac, J.—This is a petition filed under Articles 226 and 227 of the Constitution, by a person formerly employed in Harrisons & Crosfield, Ltd., Cochin-3, who is respondent 2 in this case, to quash an award of the Industrial tribunal, Calicut, In Industrial Dispute No. 61 of 1965. Tula award Is dated 17 January 1996, and has been published In Part I of the Kerala Gazette No. 7 dated 15 February 1966. The industrial tribunal is respondent 1, and the copy of the award la marked as Ex. P. 2 in this case. This award was passed on an application filed by the petitioner before respondent 1 on 17 August 1965 u/s 33A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), complaining of termination of his service in contravention of Section 33 of the Act, and praying for an award for his reinstatement. The application was opposed by respondent 2 on several grounds; and hence it was posted for evidence to 18 October 1065. On the application of the petitioner's counsel, respondent 1 adjourned the case to 15 November 1865, then to 16 December 1966 and from that date to 14 January 1966. These applications were opposed by respondent 2; and on 16 December 1965, respondent 1 adjourned the case "as a last chance." January 14, 1966, was a sectional holiday on account of" Pongal." The High Court declared It as a full holiday for the High Court. However, the tribunal held Its Court. Sri T.C. N. Menon, a senior advocate of that Court, was appearing for the petitioner before the Industrial tribunal. On 14 January 1966 when the case was called, neither the petitioner nor Sri T. C, N. Menon was present. But his

junior, advocate Sri F. Sankarankutti, represented to the tribunal that the petitioner happened to be absent on that day under a bona fide error that It was a holiday and that Sri T. C. N. Menon was responsible for this error. Sri F. Sankarankutti explained the whole circumstances, and orally moved for an adjournment of the case. The adjournment of the case for the examination of the petitioner was refused; and respondent 1 adjourned It for making the award. On the same day, Sri T. C. N. Menon appeared before respondent 1, and submitted a petition explaining the circumstances under which he was misled to believe that the tribunal was not sitting on that day, and his client happened to be absent, and prayed for reviewing the order, which declined to afford an opportunity to the petitioner for being examined in the case. Exhibit F. 1 is a copy of this petition. The petition was rejected; and three days later, respondent 1 passed the impugned award. This original petition has been filed to quash Ex. F. 2, and to direct respondent 1 to dispose of the petitioner's application on the merits.

2. Sri T. C. N. Menon appeared for the petitioner before me; and he raised two points in support of the reliefs sought for in this case:

(i) The industrial tribunal is bound to dispose of an application u/s 33A of the Act on the merits. An award passed for the non-appearance of parties or one of them or for non-prosecution is contrary to the provisions of the Act, and hence void.

(ii) The petitioner's application u/s 33A was dismissed by respondent 1 on the only ground of non-prosecution. This is an error apparent on the face of the records; and it vitiates the award.

3. Sri T. C. N. Menon submitted that Section 33A requires that an application made thereunder shall be adjudicated upon by the tribunal, "as if it were a dispute referred to or pending before it, in accordance with the provisions of the Act," and it shall submit the award to the appropriate Government. This requires, according to him, that a tribunal cannot pass an award, because of the absence of the parties, or for the non-prosecution of the case by any one of them. The tribunal has to pass an award on the materials available on the records, and in the absence of any materials, he has to pass an award to the effect that the claim has not been substantiated. Reliance was placed in support of the above position on a judgment of this Court in *Workmen of Travancore Rayons Ltd. Vs. Manager, Travancore Rayons Ltd. and Another*, . In this case, the learned Judge held:

... that a dismissal of a reference for non-prosecution cannot amount to an award within the meaning of Section 2(6).

The correctness of the above proposition was questioned by the learned Counsel for respondent 2. It is unnecessary for me to examine this question, because I am of the definite view that the petitioner must succeed on the second point. However, I may observe that the passage quoted from the above decision of this Court fully supports the petitioner's learned Counsel on the first point.

4. I now proceed to consider the second point; and the only question for determination is whether -the dismissal of the petitioner's application by respondent 1 for non-prosecution is an error apparent on the face of the records. It is obvious that, If the petitioner was present on 14 January 1966, he would not have been at default, and the tribunal could not have disposed of the application for non-prosecution. So if the petitioner's non-appearance on the above date was justified, the dismissal of the application on the ground of non-prosecution is totally unwarranted. It was within the tribunal's jurisdiction to hold on some relevant material that there was no sufficient ground for the petitioner's non-appearance. If there was such a finding, this Court will not Interfere with his decision. But if the finding is not based on any material, or is one which no reasonable judge of facts could arrive at, it is an error on the face of the records; and a decision based on such a finding is liable to be quashed by this Court. The grounds for the petitioner's non-appearance on 14 January 1956 are stated in Es. P. 1, an application which Sri T. C. N. Menon filed before respondent 1 on that day.

5. This application reads as follows;

Petition submitted by Sri T. C. N. Menon, advocate for applicant

1. The above case was posted for evidence on 14 January 1966. As the High Court declared a holiday for today, I informed the appellant that the tribunal will not be sitting today and that he need not come to the Court to be examined.

2. Only this morning at 10 a.m. I knew that the holiday is only for the High Court and that this tribunal will be sitting. By the time it was impossible for me to inform the applicant that he should come to Court as he is residing at Fort Cochin.

3. When the case was called, Sri P. Sankarankutti, the advocate appearing for the appellant along with me, represented the above facts but as the opposite party opposed any adjournment, the case was posted for disposal.

4. I submit that the applicant was not present in Court as I informed him by a misunderstanding that today would be a holiday for the tribunal and his non-appearance was not due to any fault of his. If the case is disposed of without examining the applicant, the same would cause serious prejudice to him. I submit that it is necessary in the interests of justice to review the order passed and post the case for evidence.

Hence, it is prayed that this Court be pleased to review or set aside the order passed posting the above case for disposal and post the case for evidence.

Dated 11 January 1966.

The averments contained in the above application are very probable. It is not possible to think that a senior counsel like Sri T.C. N. Menon would file an application making untrue averments for the purpose of getting an adjournment

of case for a poor client like the petitioner in this case. The counter-affidavit filed on behalf of respondent 2 states that the petitioner was intentionally protracting the trial of the application before the tribunal, as he was ill and unable to present himself for examination. If so, that by Itself was a sufficient ground-for adjourning the hearing. I am also unable to appreciate the particular hurry shown by respondent 1 for an expeditious disposal of this case. It Is highly desirable that all oases should be disposed of expeditiously, and more so, Industrial disputes. But the pendency of Industrial disputes before industrial tribunals shows a different picture. Cases are pending trial before them for years. After all, this case came up for evidence for the first time only on 18 October 1965; and it has been dismissed for non-appearance of the petitioner on 14 January 1966, which was the third adjourned date, even though his counsel was present and applied for an adjournment on the grounds stated la Ex. P. 1. Respondent 1 did not even case to consider the grounds stated in Ex. P. 1 for the non-appearance of the petitioner. Exhibit P. 2, the Impugned award, does not contain any finding to the effect that there was no sufficient ground for the petitioner's non-appearance on 14 January 1966, nor is there any material on record to justify such a finding. On the other band, the averments made by Sri T. C. N. Menon in the application, Ex. P. 1, which he filed before respondent 1, conclusively establish that it was due to a bona fide error that the petitioner did not appear before respondent 1 on-that day. Sri P. K. Kurlen, the learned Counsel appearing for respondent 2, contended that, if Ex. P. 2 cannot be sustained on the ground that, before dismissing the petitioner's application for non-prosecution, respondent 1 did not consider whether there was sufficient ground for the petitioner's non-appearance, I should remit the matter to respondent 1 to consider that question and decide again whether the petitioner's application should be dismissed for non-prosecution by his failure to appear on 14 January 1966. I am unable to appreciate this contention, especially because his clients grievance before respondent 1 was that this application was being deliberately protracted by the petitioner by seeking adjournments. If Ex. P. 2 cannot be sustained for the reason that the dismissal of the petitioner's application for non-prosecution was wrong on the face of It, the only course open to me Is to quash Ex. p. 2, and direct respondent 1 to hear and dispose of afresh the petitioner's application u/s 33A of the Act according to law; and I order and direct accordingly.

6. In the result, I allow this original petition. Respondent 2 will pay the petitioner's costs.