
(2004) 03 PAT CK 0039

In the Patna High Court

Case No : C.W.J.C. Nos. 10826 and 10851/1999

Dayanand Sharma

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 25-03-2004

Acts Referred:

Citation : (2004) 03 PAT CK 0039

Final Decision : Allowed

Judgement

Chandramauli Kumar Prasad, J.—In both the writ applications, common questions of law with little variation on fact arise and as such they are heard together and are being disposed of by this common order.

2. Petitioner claims to be a workman engaged by respondent No. 2 B.S.A. Corporation, a Gun Factory/situated in the town of Munger. He filed application claiming certain monetary benefits u/s 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). This led to registration of Misc. Case No. 30 of 1994. By an ex parte order dated July 21, 1998 relief sought for by the petitioner was granted. Respondents 2 to 4 filed application on June 2, 1999 under Order IX Rule 13 of the Code of Civil Procedure, hereinafter referred to as the Code for setting aside the ex parte order and for restoration of Misc. Case No. 30 of 1994, which was registered as Misc. Case No. 6 of 1999. The Labour Court by order dated December 15, 1999 set aside the ex parte order and restored the Misc. Case.

3. In C.W.J.C. No. 10826 of 1999 the petitioner has challenged the said order.

4. The competent authority in exercise of power u/s 10 of the Industrial Disputes Act, by order dated July 21, 1998 made the following reference:

"Whether the order passed by the management of B.S.A. Corporation, Gun Factory, Munger terminating the service of Sri Dayanand Sharma, workman is just and proper? If not, to what relief he is entitled?"

5. This led to registration of Reference Case No. 21 of 1994. The Labour Court by an ex parte award dated July 21, 1998 found that termination of the service of the petitioner is not just and proper and accordingly directed for his reinstatement with entire back wages from the date of termination i. e., June 25, 1993, till reinstatement. The award dated July 21, 1998, was sent to the State Government on the same day which acknowledged its receipt by letter dated December 15, 1998 and the Labour Court by order dated April 24, 1999 fixed May 3, 1999 as the date for pronouncing the award as contemplated under Rule 33 of the Industrial Disputes (Bihar) Rules, 1961. Petitioner on June 2, 1999 filed application under Order IX, Rule 13 of the Code for setting aside the award which led to registration of Misc. Case No. 5 of 1999. By order dated December 15, 1999 the ex parte award has been set aside.

6. Said order has been challenged by the petitioner in C.W.J.C. No. 10851 of 1999.

7. It is relevant here to state that while setting aside the award as also the order passed u/s 33C(2) of the Industrial Disputes Act, the Labour Court is purported to have exercised its power under Order IX, Rule 13 of the Code.

8. Mr. Balbhadra Singh appearing on behalf of the petitioner contends that the power conferred on a Civil Court under Order IX, Rule 13 of the Code is not available to the Labour Court after it has become enforceable on the expiry of 30 days from the date of its publication as contemplated u/s 17A of the Act. He points out that the award is dated July 21, 1998 and it shall be deemed to have been published on expiry of 30 days u/s 17 of the Act and enforceable on the expiry of 30 days from the date of its publication and as such the Labour Court had become functus officio to entertain an application under Order IX Rule 13 of the Code for setting the award. In support of his submission he has placed reliance on a judgment of the Supreme Court in the case of Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, and my attention has been drawn to the following passage from paragraph 14 of the judgment, which reads as follows at p. 331 of LLJ:

"14..... In the instant case, the Tribunal made the ex parte award on December 9, 1976. That award was published by the Central Government in the Gazette of India dated December 25, 1976. The application for setting aside the ex parte award was filed by respondent No. 3, acting on behalf of respondent Nos. 5 to 17 on January 19, 1977 i.e., before the expiry of 30 days of its publication and was, therefore, rightly entertained by the Tribunal. It had jurisdiction to entertain it and decide it on merits. It was, however, urged that on April 12, 1977 the date on which the impugned order was passed, the Tribunal had in any event become functus officio, we cannot accede to this argument. The jurisdiction of the Tribunal had to be seen on the date of the application made to it and not the date on which it passed the impugned order. There is no finality attached to an ex parte award because it is always subject to its being set aside on sufficient cause being shown....."

9. Mr. Shivajee Pandey appearing on behalf of respondents 2 to 4, however, contends that the very assumption of the petitioner that the award shall be deemed to have been published on expiry of 30 days from the date of award is erroneous and in fact the same was published on May 3, 1999 and thus had become enforceable on expiry of 30 days but before that application under Order IX Rule 13 of the Code was filed. In any view of the matter, Mr. Pandey submits that nothing prevents the Labour Court in setting aside the award even after its publication on an application filed under Order IX Rule 13 of the Code. In support of his submission, he has placed reliance on the judgment of the Supreme Court in the case of Grindlays Bank Ltd. (supra) relied on by the petitioner itself. He has drawn my attention to paragraph 13 of the said judgment, which reads as follows 1981 1 LLJ 327 :

"13. We are unable to appreciate the contention that merely because the ex parte award was based on the statement of the manager of the appellant, the order setting aside the ex parte award, in fact, amounts to review. The decision in Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, is distinguishable. It is an authority for the proposition that the power of review is not an inherent power, it must be conferred either specifically or by necessary implication. Sub-sections (1) and (3) of Section 11 of the Act themselves make a distinction between procedure and powers of the Tribunal under the Act, while the procedure is left to be devised by the Tribunal to suit carrying out its functions under the Act, the powers of civil Court conferred upon it are clearly defined. The question whether a party must be heard before it is proceeded against is one of procedure and not of power in the sense in the words are used in Section 11. The answer are clearly defined. The answer to the question, therefore, to be found in Sub-section (1) of Section 11 and not in Sub-section (3) of Section 11. Furthermore, different considerations arise on review. The expression "review" is used in two distinct senses, namely, (1) a procedural review which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in Narshi Thakershi's case held that no review lies on merits unless a statute specifically provides for it, obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be, corrected ex debito justitiae to prevent the abuse of its process and such power inheres in every Court or Tribunal."

10. Mr. Pandey has also drawn my attention to the judgment of the Supreme Court in the case of Satnam Verma Vs. Union of India (UOI), and submits that the Labour Court can set aside an ex parte award under Order IX Rule 13 of the Code. He has drawn my attention to the judgment, which reads as follows at p. 81 of LLJ:

"7. It needs hardly to be pointed out that Rule 22 and Rule 24(b) of Industrial

Disputes (Central) Rules, 1957 are in pari materia with Rules 22 and 24 of the Industrial Disputes (Punjab) Rules, 1958 which are applicable to the facts of the present case. Therefore, the decision of this Court would mutatis mutandis apply in the matter of interpretation of the Punjab Rules. It must follow as a necessary corollary that the Labour Court as well as the High Court denied to itself the jurisdiction vested in it to entertain an application for setting aside an ex parte award and reached an erroneous conclusion."

11. Having considered the rival contention I do not find any substance in the submission of Mr. Singh. In fact the award was published on May 3, 1999 and before it became enforceable on the expiry of thirty days, the application for setting aside the ex parte award was filed on June 2, 1999. Therefore the Labour Court was not functus officio on the date when the application for setting aside the ex parte award was filed. In the case of Grindlays Bank Ltd. (supra) Supreme Court had clearly held that the proceeding with regard to reference u/s 10 of the Act cannot be said to be concluded until the expiry of thirty days from the publication of the award. Not only this, the Supreme Court in the case of Grindlays Bank had not held that the Labour Court shall have no jurisdiction to entertain an application for setting aside the award after it has become enforceable. Further in the case of Satnam Verma (supra) the Supreme Court was faced with the situation as to whether an ex parte award can be set aside in exercise of the power under Order IX Rule 13 of the Code by the Labour Court even after its publication which would be evident from paragraphs 3 and 7 of the said judgment. In the said case the Labour Court held that once the award was published in the Gazette it has no jurisdiction to recall the award or to set aside the ex parte award and restore the case to its file. The High Court did not interfere with the said order. While considering the aforesaid question, the Supreme Court held that the Labour Court had the authority to set aside an ex parte award which would be evident from the judgment referred to above. In this connection it is worthwhile to quote the following passage from the said judgment Satnam Verma Vs. Union of India (UOI),

"6. The Court then proceeded to examine the contention that once an award is published in the Official Gazette, be it an ex parte one, does the Tribunal become functus officio and, therefore, will have no jurisdiction to set aside the ex parte award and that as contended before us the appropriate Government alone could set it aside and rejected it holding that no finality is attached to an ex parte award because it is always subject to is being set aside on sufficient cause being shown. The Court held that the Tribunal had the power to deal with an application properly made before it for setting aside the ex parte award and pass suitable orders. We have extensively referred to this decision because it effectively answers all the limbs of the contention canvassed before us and which unfortunately, found favour with the Labour Court and the High Court."

12. Thus I overrule the submission of Mr. Singh that power under Order IX Rule 13 of the Code was not available to the Labour Court.

13. Mr. Singh then contends that the Labour Court had set aside the ex parte award and the order on the ground that summons were not duly served on the respondents. He submits that an ex parte order or an award can be set aside only when it is established that the party praying for setting aside the ex parte order or the award satisfies to the Court that for sufficient cause he did not participate in the proceeding. He submits that the finding recorded by the Labour Court while passing the impugned orders in regard to non-service of summons is perverse, which calls for interference by this Court in exercise of its writ jurisdiction. In this connection Mr. Singh has referred to an application filed by respondents in both the cases (Annexures- 4). He contends that the documents referred to above clearly show that the respondents were aware of the proceeding and as such the finding recorded to the contrary by the Labour Court is perverse. Mr. Pandey however submits that this Court in exercise of its power of judicial review does not appraise evidence and as such the finding recorded by the Labour Court is not fit to be interfered with by this Court.

14. It is well settled that this Court while exercising its power of judicial review under Articles 226 and 227 of the Constitution of India does not act as a Court of appeal and interferes with the finding of fact only when it is shown that the same is perverse; meaning thereby that the finding has been recorded without considering the relevant material or on consideration of irrelevant material or a person duly instructed in law shall not come to that finding. The documents (Annexure-4) placed on record is a relevant document for adjudication of this question. What value is to be attached to these documents is not to be seen by this Court but it cannot be said that the document aforesaid is not relevant. Said document has not been considered by the Labour Court while recording its finding. Thus the finding has been recorded without considering the relevant document which renders its finding perverse and thus vitiated in law. As the Labour Court has recorded the finding without considering the relevant material, I have no option but to set aside those orders and remit the matter back to him for re-consideration in accordance with law bearing in mind the observation aforesaid.

15. In the result, both the applications are allowed and the impugned order set aside. No cost.