
(1996) 07 AHC CK 0029
In the Allahabad High Court
Case No : C.M.W.P. No. 1760 of 1983

Deen Dayal Sodh Sansthan	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 03-07-1996

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 16, 16(2)

Citation : (1996) 74 FLR 2682 : (1997) 1 LLJ 982

Hon'ble Judges : A.B. Srivastava, J

Bench : Single Bench

Advocate : Ajay Kumar Dwivedi and K.P. Shukla, for the Appellant; S.C. and Shyam Narain, for the Respondent

Final Decision : Allowed

Judgement

A.B. Srivastava, J.—The simple question involved in this writ petition is regarding the powers and jurisdiction of the Labour Court to recall an ex-parte Award. In this case, the Labour Court, Gorakhpur which was seized of the Reference, rendered its Award on September 30, 1982, which was published on November 5, 1982, reinstating the employee, the respondent No.3, and awarding compensation. On November 17, 1982 an application on behalf of the petitioner employer was moved under Rule 16 of the Rules framed under the U.P. Industrial Disputes Act, 1947, for setting aside the Award on the ground that the petitioner's representative Shri Om Pra-kash Srivastava was ill and as such the non-appearance on behalf of the petitioner was for sufficient cause. This application was opposed by the other side.

2. By the impugned order dated January 25, 1983 the Labour Court rejected the said application under Rule 16 on the sole ground that the Labour Court is not competent to set aside an ex-parte Award once the same has been published. It is this order of the Labour Court which has been assailed in this writ petition.

3. Having heard both the parties' learned counsel and gone through the record,

this Court is of the opinion that the Labour Court in refusing to entertain the recall application under Rule 16 on the ground of lack of jurisdiction, failed to exercise a jurisdiction vested in it.

4. Rule 16(2) of the U.P. Industrial Disputes Rules, 1957 very clearly says that Labour Court, Tribunal or an Arbitrator may set aside the order passed against a party in his absence, if within ten days of such order it applies in writing for setting aside such order and shows sufficient cause for his absence. Clearly therefore, there vests in the Labour Court jurisdiction to set aside an *ex parte* Award, the only condition being that such an application should be moved within ten days of the order and cause shown is sufficient. In the instant case the ten days' period from the date of publication of Award was to expire on November 15, 1982. As per uncontroverted plea of the petitioner, November 14, 1982 to November 16, 1982 were holidays, as such, the last day of limitation would be November 17, 1982. If as claimed by the petitioner, the application was actually filed on November 17, 1982, it would be well within time. But if factually it was filed after the said date, the position would be different. On the facts as contended by the petitioner and not found by the Labour Court in the impugned order to be incorrect, therefore, the said Court had jurisdiction to entertain and dispose of the recall application on merits. There is a catena of decisions on the point that under Rule 16(2) of the U.P. Industrial Disputes Rules, 1957 Labour Court has jurisdiction to set aside an *ex parte* Award. Reference in this connection may be made to decisions rendered in cases reported in *Kisan Sewa Sahkari Samiti Ltd. Vs. Presiding Officer, Labour Court I and Others*, . No different principle has been laid down in 1996 (1) Local Bodies and Educational Service Reporter 521 and 1982 (45) F.L.R. 20 relied on behalf of the contesting respondents.

5. In view of above stated legal position therefore, the rejection of the application under Rule 16 by the Labour Court on the ground of lack of jurisdiction is unsustainable.

6. The writ petition is accordingly allowed. The impugned order dated January 25, 1983 is quashed and the Labour Court is directed to dispose of the application of the petitioner under Rule 16 of the U.P. Industrial Disputes Rules, 1957, moved by the petitioner, on merit. The Labour Court shall endeavour to dispose of the said application expeditiously, preferably within three months as the case has become quite old.

No Costs.