
(2004) 01 DEL CK 0038
In the Delhi High Court
Case No : CW No. 7315 of 2000

Dinesh Mishra

APPELLANT

Vs

The Management of Simplex Security Services

RESPONDENT

Date of Decision : 06-01-2004

Acts Referred:

Citation : (2004) 01 DEL CK 0038

Hon'ble Judges : Madan B. Lokur, J

Bench : Single Bench

Advocate : Sunita Bhardwaj, for the Appellant; Rajendra Dhawan and Shafali Dhawan, for the Respondent

Final Decision : Allowed

Judgement

Madan B. Lokur, J.—The Petitioner (workman) is aggrieved by a "No Dispute" Award dated 17th July, 1998 passed by Labour Court No. 1 in ID No. 59 of 1994 as well as an order dated 15th September, 1999 dismissing an application for setting aside the "No Dispute" Award.

2.An industrial dispute between the parties was listed before the learned Labour Court on 12th May, 1998. According to the Petitioner, on that day he was required to file his affidavit by way of evidence and so he had gone for having the affidavit attested. He says that by the time he got it attested and came to the Labour Court, the case was adjourned and he was given to understand that it would be taken up on 20th November, 1998. It is stated that to his surprise he came to know subsequently that an "o Dispute" Award was passed on 17th July, 1998. Thereafter on 19th November, 1998, he moved an application for setting aside the "No Dispute" Award which was published on 27th October, 1998. The application was contested by the Respondent (Management) and by an order dated 15th September, 1999 the learned Labour Court dismissed the application holding, inter alia,

"Admittedly the claimant did not appear on 12.5.1998 and made out a case in

regarding (sic) attestation of the affidavit so as to cover up the lapses in filing the application filed about more than six months after 12.5.1998 which cannot be believed."

3.Learned counsel for the Petitioner has filed a photocopy of the original affidavit and shown me a certified copy of the original affidavit dated 12th May, 1998, which was prepared by the Petitioner for filing in the Labour Court as his affidavit by way of evidence. There is nothing to show that the affidavit was not prepared or attested on 12th May, 1998. In fact, learned counsel for the Respondent has not seriously doubted the fact that an affidavit was prepared by the Petitioner on 12th May, 1998 for the stated purpose.

4.Learned counsel for the Respondent has, however, submitted that in terms of sub Rule 9 of Rule 10-B of the Industrial Disputes (Central) Rules, 1957, the learned Labour Court could not have entertained the application since it was filed after submission of the Award. The relevant sub rule relied upon by learned counsel reads as follows:-

"In case any party defaults or fails to appear at any stage the Labour Court, Tribunal or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party:

Provided that the Labour Court, Tribunal or National Tribunal, as the case may be, may on the application of either party filed before the submission of the award revoke the order that the case shall proceed ex-parte, if it is satisfied that the absence of the party was on justifiable grounds."

5.On a purposive reading of this Rule, it is quite clear that the time for making an application for having the Award revoked would commence only from the date of knowledge that an ex parte Award had been made. Otherwise, in a case such as the present, if the Award had been made on 12th May, 1998 itself, and published soon thereafter, the Petitioner would have been left without any remedy. This is certainly not the intention of the Rule. All that the Rule requires is that the application for revocation has to be made within a reasonable period of time if the applicant does not know that an Award has been made and if the applicant has knowledge of making of the Award, then before it is published. The applicant has also to satisfy the Labour Court, Tribunal or National Tribunal that there was sufficient and justifiable ground for non-appearance.

6.Looking to the facts of the present case it does appear that unless a purposive interpretation is given to the Rule relied upon by learned counsel for the respondent it may cause undue hardship to a litigant, who may have no knowledge of the making of an ex parte Award until its publication.

7.Learned counsel for the Respondent has relied upon U.P. State Road Transport Corporation Vs. State of U.P. and Others, to contend that the application should have been made within the time prescribed. Reliance is placed up on paragraphs

5,6 and 7 of the aforesaid decision, which read as follows:-

"5. There can be no manner of doubt that the Labour Court or Tribunal has the requisite power to deal with an application properly made before it for setting aside the ex-parte award and pass suitable orders. However, Rule 16(2) of the U.P. Industrial Disputes Rules 1947 provides that the Labour Court may set aside the order passed against a party in its absence if within ten days of such order, the party applies in writing for setting aside such order and shows sufficient cause for the absence. From the observation made by the Apex court in its decision in the case of Satnam Verma Vs. Union of India (1985) 1 LLJ 79 (SC) there can be no manner of doubt that a Labour Court or Tribunal has the power to deal with an application properly made before it for setting aside ex-parte award and pass suitable orders even if the ex-parte award has become enforceable as no finality is attached to an ex-parte award because it is always subject to its being set aside on sufficient cause being shown.

6. However, taking into consideration the implications arising under Rule 16(2) of the U.P. Industrial Disputes Rules, 1957 this Court in its decision in the case of U.P. State Electricity Board and another Vs. Presiding Officer, Industrial Tribunal (1985(51) FLR 551 had indicated that the Labour Court may set aside the order passed against the party in his absence, if within ten days of such order, the party applies in writing for setting aside such order, and shows sufficient cause for his absence.

7. In the present case what I find is that the Tribunal has clearly observed that although the application for setting aside the award was drafted on November 20, 1981 yet for unexplainable reasons, it was presented on December 5, 1981. In the award itself, the Tribunal had noticed that the employer had been sufficiently served."

8.As already indicated by me above, the Rule relied upon by learned counsel for the Respondent cannot be given a literal interpretation without any reference to knowledge of the date of making the Award, otherwise it will cause undue hardship in a given case. I see no discussion on this aspect of the matter in the judgment referred to by learned counsel. In fact, in paragraph 7 of the judgment rendered by the Allahabad High Court, one of the considerations for rejecting the application was that the application was drafted on 20th November, 1981 but filed on 5th December, 1981 without any Explanation.

9. Under the circumstances, I am unable to accept the contention urged by learned counsel for the Respondent.

10. The writ petition is, accordingly, allowed and the impugned order dated 15th September, 1999 as well as the "No Dispute" Award dated 17th July, 1998 are set aside.

11. The parties will appear before the learned Labour Court on 3rd February, 2004 for further proceedings.

12. The learned Labour Court will be entitled to take into consideration the delay caused by the Petitioner in the disposal of the industrial dispute from 12th May, 1998 till today while passing the final Award.

No costs.