

(2004) 11 AHC CK 0201

In the Allahabad High Court

Case No : Civil Miscellaneous Review Petition No. 121525 of 2004 in Civil Miscellaneous Writ Petition. No. 9203 of 1983

Garg Plastics

APPELLANT

Vs

The Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 30-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : (2005) 1 UPLBEC 618

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : V.B. Singh, K. Shailendra and Vijay Sinha, for the Appellant; K.P. Agarwal, R.D. Singh and S.C., for the Respondent

Judgement

Anjani Kumar, J.—By means of present writ petition under Article 226 of the Constitution of India, the employer-petitioners have challenged the Order passed. by the Labour Court dated 28th April, 1983, in adjudication case No. 64 of 1978, whereby the Labour Court has recalled the Order dated 10th July, 1981, copy whereof is annexed as Annexure-"VIII" to the writ petition.

2. The following dispute was referred to the Labour Court for adjudication by the Order dated 31st June, 1973 in exercise of power u/s 4-K of the U.P. Industrial Disputes Act, 1947, here-in-after referred to as the "Act":

"KYA SEVA YOJKON DWARA PARISMISHT MEN ULLIKHIT SHRAMIKON KO DINANK 25.11.72 SE 8.12.72 TAK KARYA SE VANCHIT RAKHNA TATHA DINANK 11.1.73 SE PUNAH KARYA SE VANCHIT RAKHNA UCHIT TATHA/ATHWA VAIDHANIK HAI? YADI NAHIN, TO SAMBANDHIT SHRAMIK KYA LABH/KSHATIPURTI PANE KA ADHIKARI HAI TATHA ANYA KIS VIVRAN SAHIT?"

3. The Labour Court vide his ex-parte award dated 16th December, 1980 answered the aforesaid reference in favour of the workman concerned.

Thereafter, aggrieved by the aforesaid award of the Labour Court, the employer-petitioner filed Misc. Writ Petition No. 6865 of 1981, which was admitted by this Court and interim Order was granted. It appears that simultaneously the employer have also filed an application before the Labour Court that the ex-parte award may be recalled and the matter may be heard on merits. After the Writ Petition No. 6865 of 1981 was admitted by this Court and this Court pleased to grant an interim Order, the Labour Court vide its Order dated 10th July, 1981 recalled the ex-parte award. As a consequence of the recall of the ex-parte award by the Labour Court vide its Order dated 10th July, 1981, the employer-petitioner withdrew the aforesaid writ petition on 29th July, 1981. The relevant portion of the Order dated 29th July, 1981, passed by this Court is reproduced below:

"Shri V.B. Singh, learned Counsel for the petitioner has filed an application as well as has stated before me that the petition has become infructuous and as such he does, not press the same. The petition is accordingly dismissed. Parties are directed to bear their own costs. A copy of this Order be given to the learned Counsel on payment of usual charges today.

Sd/-

Dated 29.7.1981. S.D.A."

4. After the restoration of the award by the Labour Court when this case was re-open before the Labour Court on merit, an amicable settlement between the petitioner-employer and the workman was arrived at before the Labour Court and the settlement was signed by the parties. This settlement is dated 13th October, 1980. It is stated that pursuant to the aforesaid settlement, the workman concerned was paid a lump sum amount, which the workman is agreed that it is full and final payment towards the claim of the workman. It appears that after the dispute was settled by settlement, as stated above, between the petitioner-employer and the workman, the award was given by the Labour Court, which was sent by the State Government for publication. The State Government vide its Order impugned in the present writ petition dated 29th April, 1983 refused to publish the aforesaid award and remanded back the same to the Labour Court. As a consequence of the remand of the award without publication, the proceedings were started before the Labour Court. The Labour Court by his Order dated 28th April, 1983, which is impugned in the present writ petition has recalled its Order dated 10th July, 1981. It is this Order dated 28th April, 1983, which is challenged by means of present writ petition by the petitioner-employer inter alia on various grounds. This writ petition was heard by me and decided vide my judgment and Order dated 9th July, 2004, whereby the writ petition was dismissed.

5. The petitioner-employer filed a review petition being 121525 of 2004. After hearing learned Counsel for the petitioner on the aforesaid review petition and on the basis of the statement made by Shri K.P. Agarwal, learned Counsel appearing

on behalf of the concerned workman that he does not want to file any counter affidavit to the review petition filed by learned Counsel for the petitioner-employer. The review petition was heard and ultimately allowed by me vide Order dated 30th September, 2004. Sri K.P. Agarwal, learned Counsel for the workman made a statement at Bar that the workman has since taken away file from him and further his claim has already been settled by the Labour Court when the settlement was filed before the Labour Court, therefore, he has no instructions to argue any further. Learned Counsel for the petitioner-employer submitted that since the State Government has not published the award dated 14th December, 1981, which answers the reference made to Labour Court, the Labour Court as a consequence of the Order of the State Government to refuse to publish the award, has recalled the Order dated 10th July, 1981. The effect of recall of the Order dated 10th July, 1981 according to the learned Counsel for the petitioner is that the ex-parte award would automatically revive which has already been recalled and because of the recall of the Order dated 10th July, 1981, the petitioner withdrew Civil Misc. Writ Petition No. 6865 of 1981. Learned Counsel for the petitioner submits that the Order dated 28th April, 1983 deserves to be quashed for the reasons that the Labour Court is not vested with the power to recall of the Order dated 10th July, 1981. At the most, the Labour Court should decide the matter on merits as a consequence of refusal of the State Government to publish the award. In view of the aforesaid set of facts, the Order of the Labour Court dated 10th July, 1981, which was perfectly inconsonance of law laid down by the Apex Court reported in *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, and therefore, the Order dated 28th April, 1983 deserves to be quashed.

6. I find force in the contention of learned Counsel for the petitioner-employer. The Order dated 28th April, 1983 deserves to be quashed and is hereby quashed for the reasons that the Labour Court has no power to recall the Order dated 10th July, 1981 and further that too without affording any opportunity to the petitioner, which is admitted. In this view of the matter, after the Order dated 28th April, 1983 is quashed, normally the matter should have been remanded back to the Labour Court, but in the facts and circumstances of the case, particularly the fact that the reference was made way back in the year 1973 and the ex-parte award was made on 16th December, 1980, which was recalled on 10th July, 1981 and the impugned Order was passed in the year 1983, coupled with the fact, as stated at the Bar by learned Counsel for the petitioner-employer that the petitioner-employer has already closed its factory. The workman, as would be clear from Annexure-"7" to the writ petition, has already settled his disputes and have been paid all his dues and application for settlement was filed before the Labour Court, I do not think that the matter should be remanded back to the Labour Court for adjudication. A perusal of Annexure-"7" to the writ petition clearly demonstrates that before the Labour Court, the workman has already entered into a settlement that all his dues have been paid by the employer and nothing remains due after settlement. I instead of remanding back

the matter to the Labour Court, direct that in the facts and circumstances of the present case as agreed by learned Counsel for the petitioner-employer that the workman concerned shall be paid a further amount of Rs. 10,000 (rupees ten thousand) as, compensation by the employer within three months from today and the amount so deposited before the Labour Court by the employer, the workman is permitted to withdraw the same or paying it directly to the workman within the same period and obtain a receipt for the same.

7. In view of what has been stated above, this writ petition is disposed of finally with the direction that the workman concerned shall be entitled for a further sum of Rs. 10,000/- (rupees ten thousand) over and above what has already been paid to him as compensation without entering into further controversy, particularly in view of the settlement arrived at by the workman as well as by the employer, which has been annexed as Annexure-"7" to the writ petition and which has not been disputed by learned Counsel for the workman. The aforesaid amount of Rs. 10,000/- will be paid, as stated above, to the workman concerned within a period of three months from today.