
(2001) 04 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8231 of 2000

Hans Raj

APPELLANT

Vs

Presiding Officer, Labour Court, Jalandhar

RESPONDENT

Date of Decision : 30-04-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 17, 17(1), 17(2)

Citation : (2001) 04 P&H CK 0008

Hon'ble Judges : S.S. Sudhalkar, J; Mehtab S. Gill, J

Bench : Division Bench

Advocate : Raman Sharma, for the Appellant; Atul Sethi, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sudhalkar, J.—By this writ petition, the workman had challenged the order of the Labour Court dated 11.5.2000 (copy Annexure P-3), vide which it set aside its ex parte award which was in favour of the petitioner. Certain dates will be material in this case, The ex parte award was passed on 5.2.1996. It was published in official gazette on 23.8.1996. The application for setting aside the award was given on 19.11.1997. The copy of the application is produced at Annexure P-1. Counsel for the petitioner argued that the Labour Court has no jurisdiction after one month of the publication of the award to set aside the ex-parte order. He has relied on Section 17 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). According to Section 17(2) of the Act the award published u/s 17(1) of the Act shall become final subject to the provisions of Section 17-A. It shall not be called in question by any Court in any manner whatsoever. He has also relied in Section 17-A of the Act in which it is provided that the award shall become enforceable on the expiry of 30 days from the date of its publication u/s 17 of the Act.

2. Learned counsel for the petitioner has relied on the case of the Waring Co-operative Agriculture Services Society Limited v. The State of Punjab, reported in 1986-2 PLR 238. It is the judgment of the Division Bench of this Court wherein it

was held that an application for setting aside an ex parte award of a Labour Court can be made only upto the expiry of 30 days after the publication of the said award u/s 17-A of the Act and after that the Court becomes functus of-ficio and does not retain the jurisdiction to set aside the ex parte award.

3. The Labour Couit has relied on two judgments of the Supreme Court. Leaned counsel for the respondents has relied on the same judgments. The judgments are :

1. Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, .

2. Satnam Verma Vs. Union of India (UOI), . The case of Grindlays Bank (supra) has been referred to in the case of Satnam Verma (supra).

4. In the case of Grindlays Bank (supra) it has been held that the award in that case was published in the Central Government Gazette of India dated 25.12.1976 and an application for setting aside the award was filed on 19.1.1977 i.e. before the expiry of 30 days of its publication. Hence, it was held that the same was rightly entertained by the Tribunal and it had jurisdiction to decide the same on merits. In that case, it was argued that on 12.4.1977 i.e. the date on which the impugned order was passed, the Tribunal had in any event become functus officio. The Supreme Court did not accede to this argument. It held that the jurisdiction of the Tribunal had to be seen on the date of the application made to it and not on the date on which it passed the impugned order. It further held that there was no finality attached to an ex parte award because it is always subject to its being set aside on sufficient cause being shown.

5. In the case of Satnam Verma (supra) the Supreme Court has discussed the case of Grindlays Bank (supra) and has held that in the case of Satnam Verma the ex-parte award was passed on 23.2.1982. The appellant came to know about it on 26.2.1982 and on the same day he moved an application. In both these cases, there is no finding that an ex parte award can be set aside by an application given after one month of the publication of the award.

6. Both these cases have been considered in the case of the Waring Co-operative Agriculture Services Society (supra) by the Division Bench of this Court. In the said case, another case Ram Samp Jiwan Lal v. Gundas Ram & others, CWP 2157 of 1983 was also cited and discussed. The Division Bench held as under:

"A reading of the whole of para 14 of the report in Grindlays Bank"s case leads to an irresistible conclusion that proceedings in a reference u/s 10 of the Act are not deemed to be concluded until the expiry of 30 days after the publication of the award. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication and upto that date it has the power to entertain an application in connection with such dispute. Im-pliedly thereafter it becomes functus officio and cannot entertain an application for setting aside an ex parte award. In this situation we are in respectful disagreement with the view taken in M/s Ram

Sarup Jiwan Lal's case (supra). It does not lay down correct law. It runs counter to the ratio of this Court's decisions in Sarabjit Singh's case (supra) and Ved Parkash's case (supra), and the two decisions of the Final Court in Grindlays Bank's case (supra) and Satnam Verma's case (supra). We overrule it."

It appears from para 9 of the judgment that the case of M/s Ram Sarup Jiwan Lal (supra) was decided by a Single Judge because it has been observed that other cases of Sarabjit Singh and Ved Parkash were not brought to the notice of the learned Single Judge.

7. This being the position, we find that the interpretation of the principles laid down in the cases of Grind- lays Bank and Satnam Verma (supra), made by the Labour Court is not correct. The Division Bench of this Court, in the case of the Waring Co-operative Agriculture Services Society had discussed both these cases and came to the conclusion. The interpretation of these two cases by the Division Bench is binding to us. Even otherwise, these two cases relied upon by the Labour Court do not lay down the law as contended by the learned counsel for the respondents.

As a result, this writ petition deserves to be allowed. It is hereby allowed and the impugned order dated 11.5.2000 (copy Annexure P-3), is set aside.

8. Petition allowed.