
(2016) 05 SHI CK 0084
In the High Court Of Himachal Pradesh
Case No : L.P.A. No. 69 of 2011

Harbans Singh

APPELLANT

Vs

Industrial Tribunal-cum-Labour Court and another

RESPONDENT

Date of Decision : 25-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 11A, 17, 17A

Citation : (2016) 2 CLR 691 : (2016) 150 FLR 735 : (2016) LabLR 802 : (2016) LatestHLJ(HP) 879 : (2016) 3 LLN 653 : (2016) 3 SimLC 1549

Hon'ble Judges : Mansoor Ahmad Mir, C.J. and Sandeep Sharma, J.

Bench : Division Bench

Advocate : Mr. Subhash Sharma, Advocate, for the Appellant; Mr. Rahul Mahajan, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.(Oral) - Challenge in this appeal is to judgment and order, dated 12th November, 2010, made by the learned Single Judge/Writ Court in CWP No. 1910 of 2009, titled as Harbans Singh v. Ld. President, H.P. Industrial Tribunal-cum-Labour Court and another, whereby the writ petition filed by the appellant-writ petitioner came to be dismissed (for short "the impugned judgment").

2. The appellant-writ petitioner approached the concerned authority for redressal of his grievance, which culminated into a reference. An ex-parte award was made by the H.P. Industrial Tribunal-cum-Labour Court, Shimla (for short "the Labour Court") on 13th November, 2006, perhaps without recording evidence as, in terms of para 6 of the award, only the appellant-writ petitioner has stepped into the witness box.

3. On noticing the ex-parte award, respondent No. 2-company filed an application for setting aside the ex-parte award, which was granted vide order, dated 28th April, 2009. The Labour Court has specifically mentioned in paras 13

and 14 of order, dated 28th April, 2009, what was the foundation for recalling/setting aside the ex-parte award and relegating the parties to contest the reference.

4. Feeling aggrieved, the appellant-writ petitioner questioned order, dated 28th April, 2009, made by the Labour Court by the medium of CWP No. 1910 of 2009, met with the same fate in terms of the impugned judgment.

5. Learned counsel for the appellant-writ petitioner argued that the Labour Court as well as the Writ court has fallen in an error in recalling/setting aside the ex-parte award. The argument is devoid of any force for the following reasons:

6. The Industrial Disputes Act, 1947 (for short "the Act") contains the mechanism how a reference is to be made and when an award become enforceable in terms of the mandate of Section 17 of the Act. While going through the mandate of the Act, it appears that the award includes ex parte award also.

7. It also provides that an award becomes enforceable after thirty days of its receipt by the appropriate Government. Meaning thereby the aggrieved party has to seek appropriate remedy.

8. The Industrial Disputes (Central) Rules, 1957 (for short "the Rules") were framed by the Legislatures and Rule 18 of the Rules provides how service of the summons is to be effected, is suggestive of the fact that the mandate of Code of Civil Procedure (for short "CPC") is not applicable. It specifically provides that summons is to be served personally or by registered post.

9. While going through the reasons recorded by the Labour Court in para 13 of order, dated 28th April, 2009, it appears that notice was not served personally upon respondent No. 2-Company through its General Manager, but has been served upon the Factory Manager, which, on the face of it, is not as per the mandate of the Rule 18 of the Rules.

10. The same question arose before the Apex Court in the case titled as Grindlays Bank Ltd. v. Central Government Industrial Tribunal and others, reported in 1980 (Supp) SCC 420, wherein it has been held that the Industrial Tribunal is competent to set aside its ex-parte award. It is apt to reproduce para 14 of the judgment herein:

"14. The contention that the Tribunal had become functus officio and, therefore, had no jurisdiction to set aside the ex parte award and that the Central Government alone could set it aside does not commend to us. Subsection (3) of Section 20 of the Act provides that the proceedings before the Tribunal would be deemed to continue till the date on which the award becomes enforceable under Section 17-A. Under Section 17-A of the Act, an award becomes enforceable on the expiry of 30 days from the date of its publication under Section 17. The proceedings with regard to a reference under Section 10 of the Act are, therefore, not deemed to be concluded until the expiry of 30 days from the

publication of the award. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication and up to that date it has the power to entertain an application in connection with such dispute. That stage is not reached till the award becomes enforceable under Section 17-A. 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 Dec. 25, 1976. The application for setting aside the ex parte award was filed by respondent No. 3, acting on behalf of respondents 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. 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."

11. Applying the test to the instant case, the Labour Court was within its jurisdiction to set aside the ex-parte award.

12. It is also a moot question ? whether the Writ Court in a writ petition or an Appellate Court in an appeal can interfere with the finding of facts, which was made foundation by the Labour Court while making the award? The answer is in the negative for the following reasons:

13. The Apex Court in the case titled as Bhuvnesh Kumar Dwivedi v. M/s. Hindalco Industries Ltd., reported in 2014 AIR SCW 3157, held that the findings of fact reached by Tribunal as a result of the appreciation of evidence cannot be questioned in writ proceedings and the Writ Court cannot act as an Appellate Court. It is profitable to reproduce para 18 of the judgment herein:

"18. A careful reading of the judgments reveals that the High Court can interfere with an Order of the Tribunal only on the procedural level and in cases, where the decision of the lower courts has been arrived at in gross violation of the legal principles. The High Court shall interfere with factual aspect placed before the Labour Courts only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts. The High Court granting contrary relief under Articles 226 and 227 of the Constitution amounts to exceeding its jurisdiction conferred upon it. Therefore, we accordingly answer the point No. 1 in favour of the appellant."

14. This Court has also laid down the same principle in a batch of writ petitions, CWP No. 4622 of 2013, titled as M/s Himachal Futuristic Communications Ltd. v. State of HP and another, being the lead case, decided on 04.08.2014. It is

worthwhile to reproduce para 13 of the judgment herein:

"13. Applying the test to the instant case, the question of fact determined by the Tribunal cannot be made subject matter of the writ petition and more so, when the writ petitioner(s) have failed to prove the defence raised, in answer to the references before the Tribunal."

15. This Court in a series of cases, being CWP No. 4622 of 2013 (supra); LPA No. 485 of 2012, titled as Arpana Kumari v. State of H.P. and others, decided on 11th August, 2014; LPA No. 23 of 2006, titled as Ajmer Singh v. State of H.P. and others, decided on 21st August, 2014; LPA No. 125 of 2014, titled as M/s. Delux Enterprises v. H.P. State Electricity Board Ltd. & others, decided on 21st October, 2014; LPA No. 143 of 2015, titled as Gurcharan Singh (deceased) through its LRs v. State of H.P. and others, decided on 15th December, 2015, and LPA No. 207 of 2015, titled as State of H.P. and another v. Gagan Singh, decided on 16th December, 2015, while relying upon the latest decision of the Apex Court in Bhuvnesh Kumar Dwivedi's case (supra), has held that question of fact cannot be interfered with by the Writ Court. However, such findings can be questioned if it is shown that the Tribunal/Court has erroneously refused to admit admissible and material evidence or has erroneously admitted inadmissible evidence, which has influenced the impugned findings.

16. Having said so, the Labour Court as well as the Writ Court has not fallen in an error while making the orders and the impugned judgment.

17. In view of the above, the appeal merits to be dismissed and is dismissed accordingly. However, keeping in view the sufferings of the appellant-writ petitioner, we deem it proper to direct the Labour Court to take the reference to its logical end within six weeks with effect from 1st June, 2016, and report compliance. Parties to cause appearance before the Labour Court on 1st June, 2016.

18. Pending applications, if any, are disposed of accordingly.