
(1962) 03 AHC CK 0039
In the Allahabad High Court

Jaswant Sugar Mills Ltd.

APPELLANT

Vs

Labour Court

RESPONDENT

Date of Decision : 16-03-1962

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1962) 2 LLJ 1

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

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Srivastava, J.—This a petition under Article 226 of the Constitution The circumstances in which it has arisen are these: The petitioner is a public limited company and the respondent 2 was one of its employees. The services of the respondent 2 were terminated. A dispute between the petitioner and its employees was pending on the date of termination. The respondent 2 then filed a claim before the labour court u/s 6F of the Uttar Pradesh industrial Disputes Act praying that the order terminating his services should be set aside and he should be reinstated. The ground was that the termination should have been made after obtaining prior approval of the labour court in which an earlier dispute was pending. On this application being made a notice was issued to the petitioner in which it was required to put in appearance at 10-30 a.m. on 16 March 1961. It was also directed by that notice that the petitioner should file its written statement by that date. The gentleman who was to represent the petitioner in that dispute on that date could not be present before the labour court at 10-30 a.m. and the labour court thereupon purported to pass an ex-parte order as contemplated by Rule 16 of the Uttar Pradesh industrial Disputes Rules. Half an hour later the representative of the petitioner appeared but was told that an ex-parte order had been passed and he could not file a written statement. Subsequently under Clause (2) of Rule 16 the petitioner filed an application for the setting aside of the ex-parte order and showed cause but the application was rejected. It was directed that the petitioner could if it liked cross-examine the

witnesses of the respondent 2 when they were produced. By the present petition the petitioner wants the orders of 16 March and 4 May 1961 to be quashed by a writ of certiorari. It also claims a writ of mandamus directing the labour court not to hold ex-parte proceedings against the petitioner but to treat the petitioner company as having entered appearance duly in accordance with law and to permit the petitioner to file its written statement and to participate in the proceedings.

2. The petition is contested on the ground that no one put in appearance on 16 March, the date fixed, and no attempt was made to file a written statement on the date fixed. It is also said that as no sufficient cause had been made out the subsequent application of the petitioner was rightly rejected.

3. Rule 16 of the Uttar Pradesh Industrial Disputes Rules under which the ex-parte order was passed reads:

16.(1) if on the date fixed or on any other date to which the hearing may be adjourned, any party to the proceedings before the labour court or tribunal or an arbitrator, is absent, though duly served with summons or having the notice of the date of hearing, the labour court or tribunal or the arbitrator, as the case may be, may proceed with the case in his absence and pass such order as it may deem fit and proper.

(2) The labour court, tribunal, or an arbitrator 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. The labour court, tribunal or an arbitrator may require the party to file an affidavit, stating the cause of absence. As many copies of the application and affidavit, if any, shall be filed by the party concerned as there are persons on the opposite side. Notice of the application shall be given to the opposite parties before setting aside the order.

4. An analysis of the first clause will show that an order under that clause can be passed only on a date fixed for hearing or to which the hearing has been adjourned. It is also necessary that the party concerned should have either been served with summons or have notice of the date. The word "hearing" is not defined in the rules but an idea of what a hearing is expected to be can be had from Rules 12 and 13. The former rule provides that at the first sitting of the labour court the presiding officer shall call upon the parties in such order as he may think fit to state their case. Rule 13 then headed as "Place and time of hearing" and provides that the sitting of a labour court or tribunal or of an arbitrator, shall be held at such times and places as the presiding officer or the arbitrator, as the case may be, may fix and the presiding officer or arbitrator, as the case may be, shall inform the parties of the same in such manner as he thinks fit. The summons mentioned in the first clause of Rule 16 is provided for in Rule 10 and there is a form 6 prescribed in which summons must be issued.

5. Notice in the present case was not issued in form 6 as prescribed by Rule 10.

The notice did not say that 16 March was to be the date of hearing. The only thing which it said was that the petitioner should put in appearance on that date at 10-30 a.m. It also said that it must file its written statement on that date but the time for filing the written statement was not fixed.

6. The question is whether in the circumstances the 16 March was a date for "hearing" which had been fixed in the case or to which the case had been adjourned within the meaning of the expression as used in Rule 16 on which the ex-parte order could be passed. It appears to me that this question in the circumstance of the present case must be answered in the negative. If the date was only for putting in appearance, it cannot be held to be a date for hearing and if it was not a date for hearing Clause (1) of Rule 16 did not apply. The notice sent to the petitioner itself mentioned that the case would be heard on such date thereafter as may be subsequently notified. This means that it was under contemplation that a date for hearing would be fixed later. Only on that date of hearing an ex-parte order could be passed under Rule 16. The ex-parte order passed in the present case by the labour court was therefore not valid and should not have been passed.

7. If the order was passed without Justification, the proper thing for the labour court was to set it aside when it was moved in that respect. A representative of the petitioner filed an affidavit stating the circumstances in which he was prevented from appearing before the labour court at the exact hour that was fixed in the notice and prima facie there was nothing on the basis of which that explanation could be rejected. The order refusing to set aside the ex-parte order was also therefore not justified.

8. The petition must, therefore succeed. It is allowed and the ex-parte order as well as the subsequent order refusing to set aside the ex-parte order are quashed. The proceedings will now start afresh before the labour court from the stage at which the notice was issued to the petitioner. The petitioner must now put in appearance before the labour court in obedience to that notice after three weeks from today and file written statement and then the hearing of the dispute will proceed in the presence of both the parties. In the circumstances of the case there will be no order as to costs.