
(1997) 08 MP CK 0072
In the Madhya Pradesh High Court
Case No : M.P. No. 81 of 1993

Kartik Ram

APPELLANT

Vs

State Industrial Court and Another

RESPONDENT

Date of Decision : 06-08-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 1, Order 17 Rule 2, Order 17 Rule 3, Order 9 Rule 13
Industrial Disputes (Central) Rules, 1957 — Rule 22, 24
Industrial Disputes Act, 1947 — Section 10, 17, 17A, 20(3)
Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Madhya Pradesh Industrial Disputes Rules, 1957 — Rule 55, 57, 85
Madhya Pradesh Industrial Relations Act, 1960 — Section 31(3), 67

Citation : (1998) ILR (MP) 386 : (1998) 2 JLJ 196 : (1998) 1 MPJR 451

Hon'ble Judges : D.M. Dharmadhikari, J

Bench : Single Bench

Advocate : R.K. Gupta, for the Appellant; H.N. Vyas and O.P. Namdeo, for the Respondent

Final Decision : Allowed

Judgement

D.M. Dharmadhikari, J.

The Petitioner was in the services of B.N.C. Mills, Rajnandgaon as a Drill Man. His services were terminated after disciplinary enquiry on 4.5.82. He approached the Labour Court u/s 31(3) of the M.P.I.R. Act (for short the "Act") for relief of reinstatement in service and back wages.

The record of the Labour Court shows that evidence was recorded in the case by the parties and the case was fixed on 8.10.94 for arguments. On that day the Petitioner and his counsel both were absent. The Labour Court, therefore, dismissed his case on 8.10.94.

The Petitioner filed an application for restoration of his case after 20 months on 18.6.86. The cause shown for not making the application within a reasonable

time was that the Petitioner after recording his evidence had left the matter for argument to his counsel. His counsel did not send him any communication about the result of the case. He waited and when made enquiries, came to know that the Presiding Officer of the Labour Court was not available. According to him for a long time the Court was vacant. Thereafter he made enquiries from his counsel and discovered that his case was dismissed in default. That is how the application for restoration, according to him, came to be filed after such delay. The Labour Court by order passed on 28.2.89 accepted the explanation for delay submitted by the Petitioner and passed order of restoration of the case.

The employer (Respondent No. 2) invoked the powers of the Industrial Court of Superintendence u/s 67 of the Act. The Industrial Court by the impugned order made on 14.9.92 (Annex. J) held that the application for restoration could have been filed within a period of 30 days in accordance with the provisions of Order 9 Rule 13 of the Code of Civil Procedure. It was barred by limitation. It is also held that the employee having not explained such a long delay of 20 months satisfactorily it was not liable to be condoned.

Shri R.K. Gupta, learned Counsel appearing in this petition for the employee disputes that provisions of Order 9 CPC are applicable to restoration proceedings and any period of limitation is prescribed for making application for the purpose. According to him the Labour Court has power under Rule 55 read with Rule 85 of the Rules to consider such application and order restoration if there is found no unreasonable and unexplained delay in making approach for restoration. It is submitted that the Labour Court has assigned cogent reasons for condoning long 20 months delay and in restoring the case. Reliance is placed on the case of Smt. Lachi Tewari and Others Vs. Director of Land Records and Others, and Rafiq and Another Vs. Munshilal and Another, , in support of the submission that failure of the counsel engaged by the employee to inform him about the stage of proceedings is good ground to condone the delay.

On behalf of the employer Shri H.N. Vyas learned Counsel took pains to take this Court through the relevant provisions of the Act and the Rules. He also referred to the comparable Rules in the provisions of the I.D. Act and the Rules framed thereunder as applicable to M.P. On behalf of the employer strong reliance has been placed on the decision in the case of Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, . It is submitted that in that case the Supreme Court held that the provisions of Order 9 are applicable to proceedings in the Labour Court. Such a provision was read into the Rules framed under the I.D. Act which are in pari materia with the Rules in the present Act under consideration.

The relevant provisions in Rules 55, 57 and 85 from which the source of power of restoration of a case or setting aside an ex parte award can be traced are as under:

55. If, without sufficient cause being shown, any party to the proceedings, before

a Labour Court, the Industrial Court or a Board fails to attend or represent the Labour Court, the Industrial Court or the Board may pass such order as it may think fit or may proceed as if the party had duly attended or represented.

In addition to the powers conferred by the Act, a Labour Court, the Industrial or a Board shall have the same powers as are vested in Civil Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters:

- (a) Granting adjournments.
- (b) Joinder and adding of parties.
- (c) Amendment of pleadings.

Nothing in these rules shall be deemed to limit or otherwise affect the powers of a Labour Court, the Industrial Court or the Board to make such orders as may be necessary for the ends of justice or to prevent an abuse of the process of such Labour Court, the Industrial Court or the Board.

The ratio of decision in *Grindlays Bank* (supra) of the Supreme Court cannot be deduced and divorced from the facts and legal provisions which came up for interpretation therein. In that case request for adjournment was made on behalf of the employees' association which was not accepted and the Tribunal passed an ex parte award. An award passed by the Tribunal becomes enforceable u/s 17A of the I.D. Act on the expiry of 30 days from the date of publication in accordance with Section 17. Sub-section (3) of Section 20 of the I.D. Act provides that proceedings before the Tribunal would be deemed to continue till the date on which the award becomes enforceable. In view of the Supreme Court decision, because of the above provisions, proceedings with regard to a reference u/s 10 of the I.D. Act would be deemed to be continuing till the expiry of 30 days from the publication of the award. The Tribunal, therefore, retains jurisdiction over the dispute referred to it for adjudication upto that date it has power to entertain an application in connection with such dispute. In the case before the Supreme Court, the facts were that on the date the application for setting aside ex parte award was made, the award had not become enforceable for want of publication. It is on the above facts that the Supreme Court held that the Tribunal had jurisdiction to entertain the application for setting it aside in exercise of powers under Order 9 Rule 13, Code of Civil Procedure. In applying the provisions of Order 9 Rule 13, CPC the Supreme Court placed reliance on Rule 24(b) of the Central Rules framed under I.D. Act which are pari materia and correspond to Rule 57 of the State Rules. It was held that by virtue of Rule 24 (analogous to Rule 57) the provisions of Code are available to the Labour Court or Industrial Court in exercising powers of granting or refusing adjournments. The provisions of Order 17 of CPC and through them the provisions of Order 9 Rule 13, CPC can be exercised by the Court. The reasoning of the Supreme Court in applying the provisions of Order 9 Rule 13, CPC to a situation obtaining on the facts of that case is contained paragraph 12 and reads as under:

Under Rule 24(b) a Tribunal or other body has the power of a Civil Court under Order XVII of the Code of Civil Procedure, relating to the grant of adjournments. Under Order XVII, Rule 1, a Civil Court has the discretion to grant or refuse an adjournment. Where it refuses to adjourn the hearing of a suit, it may proceed either under Order XVII Rule 2 or Rule 3. When it decides to proceed under Order XVII Rule 2, it may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX, or to make such other order as it thinks fit. As a necessary corollary, when the tribunal or other body refuses to adjourn the hearing, it may proceed ex parte. In a case in which the tribunal or other body makes an ex parte award, the provisions of Order IX Rule 13 of the Code are clearly attracted. It logically follows that the tribunal was competent to entertain an application to set aside an ex parte award.

In the case before this Court there was no question of exercising any powers of granting or refusing adjournments and thereby exercising any powers under the Code such as Order 17 or Order 9 of the Code. In the instant case on the date fixed for arguments the employee and his counsel were absent. The Labour Court in proceeding ex parte and in dismissing the case exercised powers under Rule 55 (analogous to Rule 22 of the Central Rules).

The power to entertain an application for setting aside an ex parte order passed in exercise of powers in Rule 55, is implicit in that Rule itself. That is how the Supreme Court has interpreted Rule 22 of the Central Rules (analogous to Rule 55 of the State Rules), in subsequent decision *Satnam Verma Vs. Union of India (UOI)*, . In construing the scope and extent of power of Labour Court under Rule 22 (equivalent to Rule 55) the Supreme Court has held as under:

The language of Rule 22 unequivocally makes the jurisdiction of the Tribunal to render an ex parte award, conditional upon the fulfilment of its requirements. If there is no sufficient cause for the absence of a party, the Tribunal undoubtedly has jurisdiction to proceed ex parte. But if there was sufficient cause shown which prevented a party from appearing, then under the terms of Rule 22, the Tribunal will have had no jurisdiction to proceed and consequently, it must necessarily have power to set aside the ex parte award. In other words, there is power to proceed ex parte, but this power is subject to the fulfilment of the condition laid down in Rule 22. The power to proceed ex parte under Rule 22 carries with it the power to enquire whether or not there was sufficient cause for the absence of a party at the hearing.

The case in *Grindlays Bank* (supra) of the Supreme Court therefore, is distinguishable on facts, for the aforesaid reason. In the case before this Court, the Labour Court has dismissed the application in exercise of powers under Rule 55 of the State Rules. It had the jurisdiction to entertain application for restoration of the case in exercise of the powers implicit in the said Rules itself. The power to proceed ex parte under Rule 55 inheres in its power to set aside the order and to restore the case. In addition the Industrial and Labour Courts have been conferred expressly with inherent powers under Rule 85 of the Rules

which reads as under:

85. Nothing in these rules shall be deemed to limit or otherwise affect the powers of a Labour Court, the Industrial Court or the Board to make such orders as may be necessary for the ends of justice or to prevent an abuse of the process of such Labour Court, the Industrial Court or the Board.

In *Connelly v. D.P.P.* (1964) AC 1280 at P. 1301, Lord Morris of Borthy-Gest. on inherent powers said as under:

There can be no doubt that a Court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. I would regard them as powers which are inherent in its jurisdiction. A Court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process....

In the instant case the power to set aside an ex parte dismissal of the application could be exercised under Rule 55 itself and by recourse to Rule 85 of the Rules. There was no question of application of the provisions of Order 9 or Order 17 of the Code. Recourse to Rule 57, which makes certain limited provision of the Code applicable including granting adjournments was not at all necessary in the facts of the case before me.

It was faintly argued that provisions of Order 9 should in principle apply on the basis of decision of the Supreme Court in *Grindlays* case (*supra*) and, therefore, the provisions of Limitation Act prescribing a period of 30 days should also held to be applicable to such application for restoration. The contention that provisions of Limitation Act would apply to the proceedings before the Labour Court in the matter of restoration of a case dismissed in default, cannot be accepted in view of the following quoted provisions contained in Section 29(2) of the Limitation Act, 1963:

29 (2). Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 - 24 (inclusive) shall apply only in so far as, and to extent to which, they are not expressly excluded by such special or local laws.

As would be evident from the language of Section 29(2) that the provision of Limitation Act including those contained in Sections 3, 4 - 24 of the Limitation Act are attracted only in a case where any special or local law prescribes period of limitation different from the period prescribed in the Limitation Act. The provisions of Limitation Act cannot, therefore, be made applicable in a case where special or local law does not prescribe for any period of limitation. As has been found in the provisions of the Act and the Rules, there is no express

provision for making application for restoration and no period of limitation is prescribed. The provision of Section 29 of the Limitation Act and through it the provisions of Section 3 and Sections 4 - 24 of Limitation Act, therefore, are not applicable to proceedings in the Labour or Industrial Court. I rely on the case of Brij Bhukan Kalwar and Others Vs. S.D.O. Siwan and Others, Pat 1.

The scheme of the Act and the Rules thereunder, particularly Rule 55 read with Rule 85 make it evident that the Labour and Industrial Court are empowered to consider applications for restoration of a case dismissed in default and to restore it. As is expected from them as Judicial Authorities, however, the Courts and Tribunals have to exercise the powers under the Rules judiciously, on facts of each individual case and with due regard to delay, if any, caused in seeking restoration. This power by the Courts and Tribunals under the Act can be exercised without any inhibition or restriction with regard to any period of limitation. The Courts and Tribunals are expected to exercise the power of restoration reasonably and keeping into consideration all relevant facts and circumstances of each individual case.

The only prohibition, as held in Grindlays Bank and Satnam Verma's cases (supra) of the Supreme Court is that the Labour Courts or Tribunals cannot entertain an application for setting aside any award if it is published and on expiry of period of 30 days from its publication when it has become enforceable u/s 17A of the I.D. Act. It is so because such Courts and Tribunals become functus officio after such events and period in accordance with the provisions of Section 20(3) of the I.D. Act.

In the absence of applicability of the provisions of Limitation Act, the Labour Courts and Industrial Courts are empowered to consider an application for restoration without any restriction of time and can excuse any delay caused in making such application. The cause shown for delay may be held by the Labour Court or Industrial Court as reasonable or unreasonable for granting or denying the relief. In the instant case there were two factors which were considered by the Labour Court in ordering restoration. Firstly, on the date fixed for arguments the application of employee could not be dismissed only for his non-appearance or that of his counsel. On that day the Court could have proceeded to decide the case on merits. So far as the delay of 20 months is concerned, the Labour Court accepted the cause shown as sufficient that the employee was waiting for communication from his lawyer and did not take any steps as the Presiding Judge of the Court was not available for very long time.

Since the Labour Court has exercised its jurisdiction well within its powers conferred under the Act and Rules, there was no justification for the Industrial Court, much less in exercise of its powers of superintendence, to interfere with such an order.

Consequently, this petition succeeds and is hereby allowed. The impugned order passed by the Industrial Court dt. 14.9.92 (Annex. J) is hereby quashed and the

order of the Labour Court dt. 28.2.84 (Annex. M) is restored with directions to the Labour Court to set down the case, after due notice to the parties, for decision on merits. In the circumstances, I make no order as to costs.