
(2000) 02 DEL CK 0005
In the Delhi High Court
Case No : CWP. No. 827 of 2000

Lal Chand	Vs	APPELLANT
Secretary (Labour) and Another		RESPONDENT

Date of Decision : 11-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 3 AD 715 : (2000) 85 DLT 303

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. H.K. Chaturvedi, for the Appellant;

Judgement

A.K. Sikri, J.—Ex-parte Award in this case was passed on 14.7.1998 which was published on 3.9.1998 and became enforceable on 3.10.1998. Application for setting aside ex-parte Award was filed by respondent No. 2 on 1.9.1998 admittedly even before it was to be published and the award became enforceable. There is no dispute that such an application was maintainable and Labour Court could entertain that application. However this application was dismissed in default on 20.11.1998. Another application dated 1.12.1998 was moved by Respondent No.2 on 2.12.1998 for setting aside order dated 20.11.1998 and restoration of application dated 1.9.1998 which was dismissed in default on 20.11.1998. This application was entertained by the Labour Court and finding sufficient justification for non-appearance on 20.11.1998 order dated 20.11.1998 was set aside by impugned order dated 3.12.1998. Effect of passing this order is that earlier application dated 1.9.1998 for setting aside ex parte Award stands restored which is to be heard on merits.

2.` Submission of learned counsel for the petitioner is that application dated 1.12.1998 filed on 2.12.1998 by respondent No. 2 could not have been entertained because as on that date Labour Court became functus-officio. He relies upon the judgment of Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, and submits that the entertainment of such an

application amounts to procedural review and the Court cannot entertain such an application after 30 days of the publication of the award when the award became enforceable.

3.` I do not agree with the submission of learned counsel for the petitioner. Admittedly, application for setting aside the ex-parte Award was filed within 30 days of the award became enforceable and Therefore there is no dispute that this application was maintainable and could be entertained by the Labour Court. Merely because this application was dismissed in default and another application is filed on 2.12.1998 that is 30 days after the publication of the award is no ground to contend that the labour Court had become functus-officio. Application filed on 2.12.1998 is not for setting aside ex-parte Award dated 14.7.1998 but for restoration of application dated 1.9.1998 which was dismissed in default. It is not second review as contended by the counsel for the petitioner. In fact if the first application was dismissed in default which was filed well within time, the Labour Court was only examining the question as to whether there was sufficient cause for non-appearance on 20.11.1998. Once it is so found that there was sufficient cause for non-appearance on 20.11.1998, as was found in the instant case, the effect of that is restoring the application dated 1.9.1998 which was dismissed in default on 20.11.1998 and it is the continuation of the proceedings initiated as a result of application filed on 1.9.1998 which application, admittedly, Labour Court has jurisdiction to entertain. It is pointed out time and again that the procedure is the hand made of justice(refer Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya,). Such an interpretation cannot be given which defeats justice rather than advancing the course of justice. The objection taken by the learned counsel for the petitioner appears to be hyper-technical. Moreover it may be stated that the case of Grindlays Bank (supra) was a case where the Supreme Court was dealing with the powers of the Labour Court in setting aside ex-parte award. It did not deal with the situation which has arisen in the instant case.

4.` The writ petition is without any merits and is Therefore dismissed.