
(2005) 04 RAJ CK 0042

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2583 of 2003

Mahendra Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-04-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2006) 107 FLR 199 : (2005) 2 RLW 1382 : (2005) 3 WLC 655

Hon'ble Judges : R.P. Vyas, J

Bench : Single Bench

Advocate : Rakesh Arora, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

R.P. Vyas, J.—The instant petition has been filed by the petitioner against the impugned award dated 07.08.2001 (Annexure 4) and order dated 21.11.2002 (Annexure 6) may kindly be quashed and set aside.

2. Brief facts of the case are that against the termination of his service, the petitioner raised an industrial dispute before the Conciliation Officer vide application (Annexure 1. The conciliation proceedings failed and failure report on 24.07.1999 (Annexure 2) was submitted by the Conciliation Officer to the Appropriate Government.

3. The Appropriate Government made a reference to the Labour Court, Jodhpur vide Notification dated 24.11.1999.

4. On reference, notices were issued to the petitioner. On 10.01.2001, on behalf of the petitioner, his Counsel put in appearance and sought time to file claim. He continued to appear till 24.04.2001, but the claim petition was not filed. Thereafter, on 03.07.2001 and 07.08.2001, neither the Counsel appeared nor he filed claim petition on behalf of the petitioner, on which the learned Labour Court passed on dispute award on 07.08.2001 (Annexure 4).

5. After passing the no dispute award dated 07.08.2001 (Annexure 4) by the learned Labour Court, the Counsel for the petitioner submitted an application u/s 11A of the Act of 1947 for restoration of the claim case.

6. The learned Labour Court vide order dated 21.11.2002 (Annexure 6) rejected the application filed by the petitioner.

7. In the instant petition, the main submission of the learned counsel for the petitioner is that the counsel for the petitioner was operated for his disease in his teeth and the doctor has advised him to take rest. Therefore, the counsel for the petitioner could not appear before the Labour Court on 07.08.2001. It has also been submitted by the Counsel for the petitioner that for the fault on the part of the counsel for the petitioner, the litigant should not be made to suffer.

8. None appeared for the respondents despite service.

9. Heard the learned counsel for the petitioner and scanned and examined the material on record.

10. In the instant petition, the application u/s 11A of the Act of 1947 was filed, but no one put in appearance on behalf of the Municipal Board and in such circumstances, ultimately on 23.07.2002, ex parte proceedings were initiated against the respondents.

11. The application submitted by the petitioner before the learned counsel below has been supported by the affidavit of his counsel appearing before the Trial Court, in which it has clearly been stated that on account of operation of his teeth, he could not appear before the Labour Court as he was advised rest.

12. It is settled proposition of law that for the fault of the counsel, poor litigants should not be made to suffer on technical grounds. The Act of 1947 is a benevolent legislation and on mere technicalities or on account of fault on the part of the counsel for the workman, the workman should not be made to suffer, In the interest of justice, the matter should be decided on merits and should not be thrown out on technical grounds. The learned Labour Court has not considered this aspect of the matter in right perspective.

13. During the course of argument, the learned counsel for the petitioner has relied on the decision of this Court in the case of Abhay Singh v. State of Rajasthan and Ors., S.B. Civil Writ Petition No. 2589/2003, decided on 17.03.2005 wherein, in similar circumstances, this Court while allowing the writ petition, directed the petitioner to file claim petition before the learned Labour Court and the learned Labour Court was directed to decide the same on merits in accordance with law. The controversy involved in the instant petition is squarely covered by the decision of this Court rendered in the case of Abhay Singh (supra).

14. For the reasons mentioned above, the present writ petition is allowed. The award dated 07.08.2001 (Annexure 4) and order dated 21.11.2002 (Annexure 6) are quashed and set aside and the matter is remanded back to the learned

Labour Court. The petitioner is directed to file claim petition within one month from today and the learned Labour Court is directed to decide the same on merits in accordance with law after affording reasonable opportunity of hearing to both the parties.

15. With the above observations, the present writ petition is allowed. No order as to costs.