

(2003) 07 GAU CK 0061
In the Gauhati High Court
Case No : Civil Rule No. 2886 of 1994

Manager Tarajuli Tea Estate

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 21-07-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2003) 3 GLR 708

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : P.K. Goswami and S.N. Sarma, for the Appellant; S. Medhi and P.K. Bora, G.A. Assam, for the Respondent

Judgement

Ranjan Gogoi, J.—An exparte award dated 4.1.1994 passed by the learned Labour Court at Guwahati in reference Case No. 9/89 as well as an order dated 29.6.1994 refusing to set aside the aforesaid exparte award is the subject matter of challenge in the present proceeding.

2. The facts, in brief, may be noted at the outset:

By Government Notification dated 8.9.1989, the following two questions were referred for adjudication to the learned Labour Court, Assam at Guwahati :

(a) Whether the management of Tarajuli Tea Estate, P.O. Rangapara, District Sonitpur are justified in dismissing sarbashri (i) Herod, (ii) Lashman, (iii) Bishnath, (iv) Suderson, (v) (2) Rabindra, (vi)(i) Munno, (vii) Ajoy, (viii) Amti (2) Asha (ix) Smti (1) Champa, (x) Smti Rajkali and (xi) Smti. Anyadhani with effect from 2.9.88?

(b) If not are the said workmen entitled to reinstatement or any other relief in lien thereof?

3. After the notification referring the aforesaid two questions was received by the learned Labour Court notices were issued to the parties asking them to file their

respective written statement. After the written statements of the parties were filed, a preliminary issue, i.e., whether the domestic enquiry was fair and proper was framed and on 12.11.1991 the management examined its witnesses on the aforesaid preliminary issue where after the matter was closed and orders were reserved on the preliminary question raised. On 13.11.1991, the workmen approached the learned Court for permission to cross-examine the management witnesses examined on the preliminary issue, which appears to have been allowed and it was recorded in the order dated 13.11.1991 that the next date of hearing would be intimated from Guwahati. It may be noticed at this stage that by an earlier order passed on 9.10.1991, the learned Labour Court had fixed the hearing of the case at Tezpur.

4. After the order dated 13.11.1991 was passed no further progress appears to have been made in the case and it is on 14.6.1993 that the case was fixed at the Tezpur Circuit House on 14th and 15th July, 1993. On 6.7.1993, the Circuit Court proposed at Tezpur was cancelled and the parties were directed to be informed telegraphically. Such intimation appears to have been sent to the parties. However, on the date earlier fixed, i.e., 14.6.1993, the case was taken up at Guwahati, at the instance of the workmen, and the prayers made on behalf of the workmen for hearing of the case at Guwahati was allowed and 23.8.1993 was fixed as the next date in the case. The management on being informed of the said order by the learned Labour Court, filed an application, sent by registered post, for hearing of the case at Tezpur and for adjournment. By order dated 23.8.1993, the prayer of the management for adjournment was allowed but no specific order for hearing of the case at Tezpur was passed. The next date was fixed on 27.9.1993 for hearing. The said order was not communicated to the management. Consequently the management remained absent on the date fixed. The case was taken up *ex parte* and orders were passed holding the domestic enquiry held by the management not to be fair and just. Thereafter 3.11.1993 was fixed for hearing on merits. The management was again absent. The workmen, however, participated and examined witnesses in support of its case. Thereafter the impugned award dated 4.1.1994 was passed. The management having been intimated about the aforesaid award, filed an application dated 16.3.1994 for setting aside the award. The said application was, however, rejected by the learned Labour Court by order dated 29.6.1994 giving rise to the present writ proceedings at the instance of the management. It may be noticed herein that the short ground on which the application of the management for setting aside the *ex parte* award was refused is that the management could not have claimed any legal right to be informed of the adjourned date of hearing of the case.

5. I have heard Mr. S.N. Sarma, learned counsel appearing on behalf of the writ petitioner - management and Mr. S. Medhi, learned counsel for the respondents - workmen.

6. Mr. Sarma, learned counsel for the writ petitioner has advanced a two-fold

argument. Firstly, it is contended that the exparte award is a nullity in law, inasmuch as, the petitioner management was unaware of the date fixed in the case as no intimation was sent to the management by the Office of the Labour Court. Learned counsel has contended that at the relevant point of time, it was a practice prevailing in the Labour Court to inform the parties about the next date of the case. In the present case also such intimations were regularly sent and, therefore, the petitioner management was expecting that the fate of its application for transfer of the case to Tezpur and for adjournment would be communicated in due course by the Labour Court, which was not done. Consequently, the petitioner management was unaware of the date fixed and the exparte award having been passed in the aforesaid circumstances, learned counsel has argued that the present would be a fit case for setting aside the same. The learned Labour Court having committed manifest errors of law in rejecting the application of the management for setting aside the exparte award, the same, it is submitted, needs to be appropriately corrected.

7. Mr. Sarma, learned counsel for the petitioner has further submitted that in any event the exparte award dated 4.1.1994 is vitiated by errors apparent on the face of the record, inasmuch as, though the conditions precedent were conspicuously absent, the learned Labour Court thought it proper invoke the powers u/s 11A of the Industrial Dispute Act (hereinafter referred to as the Act) and on that basis to reduce the quantum of punishment imposed. Learned counsel by referring to the decision in the case of Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others, has contended that while deciding on the quantum of punishment, the Labour Court cannot sit as a Court of Appeal; its jurisdiction to interfere with the punishment imposed under the provisions of Section 11A of the Act is hedged by certain well understood and well defined limitation. As none of the aforesaid conditions precedent is present in the present case, the invocation of the power u/s 11A of the Act, it is argued, was erroneous and, therefore, appropriate interference of the writ Court is warranted.

8. Refuting the arguments, Mr. S. Medhi, learned counsel for the respondents workmen has argued that in the present case, the petitioner management had engaged counsels to conduct the case before the Labour Court and such counsels had entered appearance before the Court. If that be so, even if it may be a practice in the Labour Court to send intimations of the dates fixed, to the parties directly, a duty and obligation is cast on the counsels representing a party before Labour Court to follow up the progress of the case by taking note of the various orders passed by the Court from time to time. In the instance case, as an application for adjournment was filed and orders were passed on the side application, there was a duty on the part of the learned counsel for the management to take note of the orders passed by the learned Labour Court on the application of the management. The same was not done and the apparent lapses on the part of the management's counsels, it is submitted, cannot be overcome by casting a duty on the learned Labour Court to intimate to the

management about the next date of hearing of the case. Coming to the merits of the award, Mr. Medhi, learned counsel for the respondents-workmen submitted that the learned Labour Court, in the facts of the case, found the punishment imposed on the workmen-respondents by the management-writ petitioner to be excessive and disproportionate and, therefore, modified the same by imposing lesser punishment and by directing reinstatement of the workmen concerned. There is no illegality apparent on the face of the record, which would justify interference with the award passed by the learned Labour Court.

9. The rival contentions of the parties have been duly considered. The materials on record, though capable of supporting the contentions of the writ petitioner that a practice was in force in the Labour Court with regard to intimation of dates to the party directly, such a practice at best can be understood to be a rule of convenience. Under the provisions of the Assam Industrial Disputes Rules, 1958, no obligation is cast on the Labour Court to communicate to the parties the various orders passed from time to time by the Court. The practice prevailing cannot also be understood to have conferred on any party before the Labour Court a legal right to insist on such a notice, nor can the absence on the part of the learned Labour Court to issue such notice be understood to vitiate an award passed by it. After all, reasonable prudence would demand that if an application was filed before the learned Labour Court by a counsel, there is a duty to follow up the matter and take note of the order(s) that may have been passed.

10. In view of the aforesaid conclusion reached, it will be difficult for this Court to recognise that any legal right had accrued to the petitioner management, as claimed and that the impugned award is vitiated on account of breach of a fundamental rule of procedure. The conclusion that would logically follow is that the absence of the management before the learned Labour Court cannot be held to be on account of sufficient cause thereby warranting interference with the award of the learned Labour Court dated 4.1.1994. The order dated 29.6.1994, therefore, deserves to be upheld, which I hereby do.

11. Coming to the merits of the award, what is discernible from a mere reading of the award is that the punishment of dismissal from service has been substituted by the punishment of deduction of Rs. 100 from the back wages of each of the workmen and for their reinstatement in service. The aforesaid order has been passed in exercise of the power under the provisions of Section 11A of the Industrial Dispute Act, 1947. The power to interfere with the punishment imposed can only be exercised when the charge levelled against, is established. It is upon finding(s) of guilt being recorded or sustained that the question of proportionality of the punishment would come in and consideration with regard to the exercise of powers u/s 11A of the Act would arise. The workmen had not challenged the findings contained in the award dated 4.1.1994 passed by the learned Labour Court. The reasons for that appears to be obvious. A perusal of the award would go to show that there is hardly any finding to the effect that the workmen are guilty of any particular offence or charge. Two witnesses were

examined by the workmen in the ex parte proceeding before the learned Labour Court and DW 2 had stated that he had heard that the manager was assaulted. As to who had committed the assault, had not been stated by the witnesses. The learned Labour Court by taking into account the aforesaid evidence of DW 2, assumed the charge to be proved and on that basis punishment imposed on the workmen was held to be disproportionate. The approach and the reasoning is curious. To consider the question as to whether the punishment imposed is just, fair and adequate, the charge must be held to be proved and no charge can be assumed to be proved to decide on the proportionality of the punishment. If this is the manner in which the Court had proceeded in the matter, the workmen cannot be held to be responsible for not challenging the findings. There were no findings at all with regard to the guilt of the workmen to be challenged. In such a situation, what inevitably follows is that the substitution of the punishment by invoking Section 11A of the Act appears to be wrong for the reason that there is no finding recorded with regard to the guilt of the workmen.

12. The only conclusion that can be reasonably possible from the above discussion is that the ex parte order dated 4.1.1994, as it stands, cannot be upheld. The matter will require more positive finding(s) by the learned Labour Court. Consequently, the award is set aside and the matter is remitted to the learned Labour Court for a de novo adjudication to be completed within a period of 6 months from the date of receipt of the records. As the matter is being sent back to the learned Labour Court for a de novo consideration, naturally, the petitioner management will be at liberty to participate in the de novo proceeding.

13. Before parting with the record, another feature of the case must be noticed. The workmen had filed an application u/s 17B of the Act with a prayer to direct the writ petitioner to pay the last drawn monthly wages to the respondents workmen. This application was registered as Misc. Case No. 846/1995. But no orders were passed on the aforesaid application till date. Section 17B of the Act imposes upon the Court a judicial duty to order payment of the last drawn wages in favour of the workmen provided the conditions precedent to the applicability of Section 17B of the Act are present. There is no material before this Court to come to any conclusion regarding the gainful employment or otherwise of the workmen during the period the present case has remained pending. That apart, the aforesaid application u/s 17 of the Act has not been pressed by the workmen. The inaction on the part of the workmen to press the application would be suggestive of the fact that the workmen may have been gainfully employed. The conditions required to attract the provisions of Section 17B of the Act remained unfulfilled for which reason this Court does not consider it appropriate to pass any orders on the said application filed u/s 17B of the Act.

14. Writ application shall stand allowed as indicated above.