

(2006) 11 DEL CK 0017
In the Delhi High Court
Case No : WP (C) No. 7625 of 1999

Mrs. Shanti Rani

APPELLANT

Vs

The Presiding Officer and Others

RESPONDENT

Date of Decision : 21-11-2006

Acts Referred:

Citation : (2006) 11 DEL CK 0017

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : D.N. Vohra, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has challenged the validity of order dated 16th October, 1991 passed by the Industrial Tribunal I whereby the Tribunal recalled the so called award dated 10th January, 1991, passed by its predecessor.

2. Briefly the facts are that the two workmen Gajraj Singh and Chokhey Lal raised an industrial dispute in the year 1985. This dispute was referred for adjudication vide a notification No. F.24(624)/85/Labour/12578 dated 29th July, 1985. The Tribunal, of the relevant period, issued a notice to the parties. Both the workmen appeared and filed their statements of claims. None appeared on behalf of the management. Again notice was issued to the management with copy of statement of claim. However, the management did not appear on 25.7.1985. Notice were sent to management through registered post again and again. On 7th December, 1987, notice was received back with the remarks that management has refused to accept service of notice. The Tribunal proceeded ex parte against the management and ex parte evidence was recorded on 22.7.1988 and an ex parte award was passed on 26.7.1988. By this award, the workmen were directed to be reinstated with 50% back wages. The award was published and became enforceable. A recovery order No. 418/88 for a sum of Rs.

37,200/-w as sent to the Collector.

3. The management moved an application dated 10.8.89 for setting aside the award dated 26.7.1988. The Tribunal, at that time, issued notice of this application to the workmen returnable for 7.9.1989. On 7.9.1989, the workmen could not appear for want of service. However, the Tribunal stayed the recovery proceedings in pursuance of recovery certificate subject to management furnishing a bank guarantee of Rs. 30,000/- within a week. A fresh notice was sent to the workman for 18.10.1989. The management did not deposit the amount nor furnished bank guarantee in terms of the order. So the stay was vacated and the following issues were framed:

1. Whether there is sufficient reason for setting aside the ex parte award? OPP.

2. Relief.

4. The workmen were being represented by Mr. A.K. Ahuja and management was being represented by Mr. Pankaj Malik, advocate. During pendency of application, the parties sought time for settlement but no settlement could be arrived at between the parties till 14.11.1990 and the case was fixed for evidence of the management on 28.1.1991. However, in between, on 7.1.1991, the workmen made an application to the Tribunal stating that general secretary of the union Mr. Chauhan and Mr. A.K. Ahuja, their AR, got mixed up with the management. They refused to return their case files. The workmen had lost faith and confidence in the two. They requested the Tribunal that their case file be got returned. This application was fixed for date already given. However, on 9.1.1991, Mr. D.N. Vohra, advocate of the management and Mr. A.K. Ahuja, AR of the workmen, appeared and made an application for recording compromise. The case was adjourned to 10.1.1991. On 10.1.1991, it was recorded by the Tribunal that parties along with respective ARs were present and Shri. A.P. Ahuja, AR of the workmen had no objection to the setting aside of the ex parte award, so the impugned award dated 26.7.1988 was set aside. It was also recorded that parties have settled the dispute and it was agreed that the management would pay Rs. 4000/- to each of the aforesaid two workmen in full and final settlement of their claim of reinstatement, unemployment, past wages, leave wages, overtime, bonus and all other claims whatsoever. The management was to pay this amount on 11.1.1991. In terms of this settlement, an award dated 10.1.1991 was passed. It would be worthwhile to note that an order of attachment had already been made by Tehseeldar for 15.1.1991 and recovery proceedings were in progress at that time.

5. The workmen made an application on 22.1.1991 that the AR Mr. Ahuja had bluffed them. They were told that they have to sign so that file be returned to them. They were not told that a settlement of their entire claim in a sum of Rs. 4000/- each, was being recorded. They did not receive any amount against the alleged settlement. They raised objections against the settlement immediately before the Presiding Officer but the Presiding Officer kept the file away so they

had to make an application dated 22.1.1991.

6. The application dated 22.1.1991 made by the workmen was decided by the Tribunal on 16th October, 1999, and it is this order of the Tribunal, which has been challenged.

7. The Tribunal, in its order dated 16th October, 1999, noticed all the above facts and contention of the management that the workmen had voluntarily settled the dispute, but later on, under provocation of the new AR of the workmen, they retracted from the settlement. The Tribunal observed that the workmen, vide an application dated 7.1.991, had apprised the Tribunal about loss of confidence and faith in Mr. Ahuja, Therefore, the presence of Mr. Ahuja on 10.1.1991 leads to conclusion that he had little care for the workmen. The workmen had deposed before the Tribunal that on 10.1.1999 they were given an impression by Mr. Ahuja that they had to sign the order sheet so that their file be returned to them, but later on, it was revealed that their case has been settled for a sum of Rs. 4000/- each. They asserted that this settlement was never agreed nor accepted by them. The Tribunal found that the workmen had been misled during the pendency of earlier proceedings. The workmen had not accepted the amount as mentioned in the alleged settlement of 10.1.1991. Therefore, the settlement dated 10.1.1991 was invalid and non est and so the order dated 10.1.1991 was set aside.

8. It is argued by counsel for the petitioner that the Tribunal had no power to review its own order dated 10.1.1991. The Tribunal wrongly assumed jurisdiction to review its order dated 10.1.1991 vide order dated 16th October, 1999, was non est, null and void.

9. The facts leading to passing of order dated 10.1.1991 are narrated by the Tribunal in its order dated 16th October, 1999. At the very outset, it may be observed that the Tribunal, had no jurisdiction to entertain application dated 10.8.1989 for setting aside the ex parte award dated 26.7.1988. It is settled law that once an award is published and becomes enforceable, the Tribunal becomes functus officio and cannot entertain an application for setting aside an ex parte award. The Tribunal can entertain an application for setting aside an ex parte award only within 30 days of its publication. After 30 days, the award becomes final and enforceable. The Supreme Court in AIR 2004 SC 4776 Sangam Tape Company's case, surveyed the entire case law on powers of Tribunal/Labour Court, after passing an award and reaffirmed the legal position that after 30 days of the publication of award, the Labour Court/Tribunal becomes fructuous officio. The entertaining of application dated 10.8.1989 by the Tribunal, framing of issues and entire proceedings in respect of the application dated 10.8.1989, were, Therefore null and void being without jurisdiction. The Tribunal/Labour Court had no authority to set aside the ex parte award dated 26.7.1988, either by consent or by settlement. The order dated 10.1.1999, passed by the Tribunal was non est.

10. However, the facts revealed in the case give a painful picture of the exploitation by the labour union officials of the workmen and unethical and unprofessional attitude and behavior of the unions" as well as representatives of the management. The order sheet shows that one of the workmen was an illiterate, had put his thumb impression and the other had barely put his signatures. Both the workmen had informed the Tribunal about loss of faith in Mr. Ahuja and made an application. Their application dated 7.1.1999 was fixed for 28.1.1991 i.e. the date fixed. The application for settlement was made by Mr. Ahuja and the AR of management jointly and the workmen were called Mr. Ahuja to the Tribunal on that day. The attachment orders were already in progress. The attachment orders were of Rs. 37,500/- and perhaps the recoverable amount with interest would have been much more than that. This amount showed only 50% of the back wages up to date of award only. There was no reason for the workmen to agree to settlement for Rs. 4000/- each only. The contention of the workmen that both the ARs took benefits of their illiteracy, was found to be true. It only shows that union representative got consideration for entire operation from the management and in order to deprive the workmen of their dues. representative of the management and the union colluded. The case shows that some of the unions functioning in the field, do not represent the interests of the workmen but these unions somehow trap the workmen for their own interest and can go to any extent in polluting the industrial atmosphere and industrial peace.

11. I consider that the Labour Court, who set aside the order/award dated 10.1.1991, was functioning perfectly within its jurisdiction in considering the validity of the order dated 10.01.1991. Though the ground on which the order dated 10.1.1991 has been set aside, is the ground of misleading the workmen and retraction of the compromise by the workmen, but since the order dated 10.1.1991 was itself a void order, it could have been set aside by the Labour Court for that reasons as well.

12. In view of my above discussion, I find no force in the writ petition. The writ petition is dismissed with cost of Rs. 10,000/- to each of the workman.