
(2005) 03 RAJ CK 0029
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1838 of 1998

Omi Lal Saini	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 21-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2005) 3 RLW 2156 : (2005) 3 WLC 287

Hon'ble Judges : Gyan Sudha Mishra, J

Bench : Single Bench

Advocate : Rajeev Surana, for the Appellant; O.P. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Gyan Sudha Misra, J.—This writ petition has been filed for issuance of a writ of mandamus to the respondents to give effect to the award passed in favour of the petitioner on 25.10.1997 specifying the nature of reliefs. The respondents inspite of this award have failed to give effect to the award passed in favour of the petitioner although their application for setting aside the ex-parte award has been rejected up to the Division Bench.

2. The counsel for the respondents Mr. Sharma overlooking the fact regarding dismissal of the writ petition and appeal against the impugned award before the Single Bench as also up to the Division Bench respectively, has sought to assail the award on its merit, but it hardly needs to be emphasized that if the award—although ex-parte in nature, has not been set aside, up to the Division Bench of the High Court, the same cannot be permitted to be challenged on merit at the instance of the respondents when the beneficiary moves the court for its implementation. The respondents under the circumstance cannot be permitted to assail the award on merit for if they had any grievance against the award, they ought to have challenged the same on merit only after succeeding in getting the ex-parte award set aside by the appropriate Court. That having not been done, it is not legally permissible for this Court to permit the respondents to assail the

award on merit.

3. Hence the direction sought by the petitioner for granting the relief in terms of the award cannot be denied to him as it would not be in the interest of justice to direct the petitioner to take recourse to the provisions under the industrial Disputes Act as he cannot get the relief in terms of the award merely by prosecuting the Officers. Therefore while an alternative remedy is available to the petitioner under the Industrial Disputes Act 1947, the relief of the award in actual terms which has been granted to the petitioner by the Labour Court, cannot be denied to him on the ground that he has a remedy under the Act of 1947 to prosecute the officers who fail to give effect to the award. The Court under Articles 226 and 227 of the Constitution is competent and would be well within its jurisdiction to issue appropriate relief in the nature of writs, if it is satisfied that denial of the relief would result into grave miscarriage of justice.

4. In my view this case falls within that bracket, as the petitioner having succeeded before the Labour Court in seeking the appropriate relief even though it was *ex parte* in nature, the same cannot be denied merely on account of the plea that the award is *ex-parte* in nature specially when the employee-Management had failed to assail the same before the Appellate Forum up to the Division Bench.

5. The writ petition under the circumstance is allowed and accordingly the respondents are directed to grant the relief to the petitioner in terms of the award passed in favour of the petitioner expeditiously. If infact the respondents were serious in challenging the relief granted to the petitioner by virtue of the award, they at least could have challenged the same by taking it to its logical conclusion before the highest forum but if the respondents have failed to do so, it is not possible to deny the relief in terms of the award. The respondents, therefore, are directed to grant the appropriate relief to the petitioner expeditiously but not later than a period of four months from the date of receipt of the order.

6. The writ petition accordingly stands allowed but without any order as to costs.