

(2018) 12 RAJ CK 0297

In the Rajasthan High Court

Case No : Special Appeal Writ No. 1631 Of 2018 In Civil Writ Petition No.8314 Of 2018

Omprakash Sharma

APPELLANT

Vs

Assistant Engineer

RESPONDENT

Date of Decision : 12-12-2018

Acts Referred:

Industrial Disputes Act, 1947 — Section 17, 17A, 25F, 25G, 25H
High Court Of Judicature for Rajasthan, 1952 — Rule 99
Code Of Civil Procedure, 1908 — Order 9 Rule 13

Citation : (2018) 12 RAJ CK 0297

Hon'ble Judges : Mohammad Rafiq, J;Goverdhan Bardhar, J

Bench : Division Bench

Advocate : Kailash Chander Sharma

Final Decision : Dismissed

Judgement

This appeal has been filed by appellant-Om Prakash Sharma assailing the judgement of the learned Single Judge dated 28.11.2018 by which the writ petition filed by the respondent Assistant Engineer, Public Works Department, Sub-Division Sawaimadhopur has been allowed and the ex-parte award passed by the Labour Court dated 20.04.2005 and the order dated 8.12.2017 whereby the application for setting aside the ex-parte award was dismissed, have been set aside.

Learned Single Judge has taken note of the fact that the exparte award has been passed against the respondent only on the basis of statement of the workman on oath without considering any document on record, particularly because there was no rebuttal of the affidavit filed by the workman and an inference was drawn by the Labour Court that the appellant-workman had worked from January, 1991 to 5th September, 1991 and there was non-compliance of the provisions of Sections 25F, 25G and 25H of the Industrial Disputes Act, 1947.

Shri Kailash Chander Sharma, learned counsel for the appellant relying on the

judgement of the Supreme Court in *Grindlays Bank Ltd. vs. Central Government Industrial Tribunal & Ors.*-1980 (Supp) SCC 420, has argued that the application for setting aside the ex-parte award could have been filed before the Labour Court only within 30 days from the date of publication of the award and thereafter no such application could be filed as the Labour Court becomes functus officio and does not have the authority to deal with the application. In the present case, the application has been illegally allowed by the Labour Court on an application filed 14 months after the publication of the award.

Contention of learned counsel for the appellant is that appellant had in fact given the joining on 24.4.2006 and the Executive Engineer on that basis sent a letter to the appellant on 5.3.2007 with reference to the aforesaid joining. There was thus taken a false plea by the respondent that information about award was first received on 6.9.2006.

On perusal of the award, it is evident that the respondent management took a plea before the Labour Court that they for the first time came to know about the award dated 20.4.2005 when the appellant-workman gave his joining in the office of Executive Engineer, Public Works Department Division-II, Sawaimadhopur on 6.9.2006. The ex-parte award was passed on account of negligence of officer-in-charge of the case and, therefore, the application was filed for recall and review of the award.

Even if a different date has been declared by the respondents in the application for recall of the ex-parte order, the fact remains that the Labour Court in the present case has assumed the service to have been completed after notice on the as management by drawing an inference. The Labour Court sent the notice in the office of the management by registered AD post and as per Rule 99 of the Rules of the High Court of Judicature for Rajasthan, 1952, it has drawn the inference of service. The learned Single Judge cannot be said to have committed an error in remanding the matter to the Labour Court for seeking afresh adjudication on merits after opportunity to the management to cross examine the witnesses of the workman and produce them on evidence.

The judgement of the Supreme Court in *Grindlays Bank Ltd.*, supra and several other jugements on this aspect of the matter came to be re-considered by the Supreme Court in a recent delivered judgement in the case of *Haryana Suraj Malting Ltd. vs. Phool Chand*-2018 SCC Online SC 631, wherein it was unambiguously held that it is the power and duty of the Tribunal exercising its ancillary and incidental powers to set aside an award which is a nullity. In that process, the Tribunal is governed by the principles of Order IX Rule 13 of the CPC. However, apparently, on facts, the Court came to the conclusion that the power to set aside an ex parte award remained only till the award had become enforceable under Section 17A, viz., before the expiry of 30 days from the date of its publication under Section 17. It was observed that the application for setting aside the award in *Grindlays*, supra, was filed within 30 days of publication and interestingly, the legal position in that judgement was

summarised in the concluding part to the effect that there is no finality attached to an ex parte award because it is always subject to its being set aside on sufficient cause being shown. The Tribunal had the power to deal with an application properly made before it for setting aside the ex parte award and pass suitable orders.

The Supreme Court after considering several judgements on this subject including *Sangham Tape Co. vs. Hansraj*-(2005) 9 SCC 331 and *Anil Sood vs. Presiding Officer, Labour Court II*-(2001) 10 SCC 534, stated the position of law as under:

"32. Therefore, all the decisions hereinabove noted by us referred to *Grindlays* (supra). On a close reading of paragraph-14 of *Grindlays* (supra), in the background of the analysis of law under paragraphs 10 to 13, it is difficult for us to comprehend that the power to set aside an ex parte award is not available to a Labour Court/Industrial Tribunal. On the principles of natural justice, and on a purposive interpretation of the scheme of the Act and Rules, we find it difficult also to discern that the ratio of the decision in *Grindlays* (supra), is what is stated in paragraph-14 to the extent that an application for setting aside an ex parte award has to be filed within 30 days of publication of the award. On the contrary, the ratio in *Grindlays* (supra) is that the Tribunal can exercise its ancillary and incidental powers, on the broader principles contained under Order IX Rule 13 of the CPC. No doubt, the Limitation Act, 1963 is not applicable to the Labour Court/Tribunal.

35. In case a party is in a position to show sufficient cause for its absence before the Labour Court/ Tribunal when it was set ex parte, the Labour Court/Tribunal, in exercise of its ancillary or incidental powers, is competent to entertain such an application. That power cannot be circumscribed by limitation. What is the sufficient cause and whether its jurisdiction is invoked within a reasonable time should be left to the judicious discretion of the Labour Court/Tribunal.

38. Merely because an award has become enforceable, does not necessarily mean that it has become binding. For an award to become binding, it should be passed in compliance with the principles of natural justice. An award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being nullity. An award which is a nullity cannot be and shall not be a binding award. In case a party is able to show sufficient cause within a reasonable time for its nonappearance in the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal is bound to consider such an application and the application cannot be rejected on the ground that it was filed after the award had become enforceable. The Labour Court/Tribunal is not functus officio after the award has become enforceable as far as setting aside an ex parte award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. It needs to be restated that the Industrial Disputes Act, 1947 is a welfare legislation intended to maintain industrial peace. In that view of the

matter, certain powers to do justice have to be conceded to the Labour Court/Tribunal, whether we call it ancillary, incidental or inherent."

In view of the above discussion, we do not find any merit in this appeal, which is accordingly dismissed.