
(2002) 10 AHC CK 0038
In the Allahabad High Court
Case No : C.M.W.P. No. 4006 of 1996

Pee-Medica

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 04-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : (2002) 5 AWC 3622

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Ranjit Saxena, for the Appellant; Rajesh Tiwari, Vimlesh Srivastava and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—The employer-Petitioner aggrieved by the ex parte award dated 12.4.1991, Annexure-2 to the writ petition, passed by the labour court in Adjudication Case No. 101 of 1988, whereby the reference made by the State Government u/s 4K of the U.P. Industrial Disputes Act, 1947, hereinafter referred to as the "Act", which is reproduced below, has been answered by the labour court in favour of the workman concerned to the effect that the termination of the services of the concerned workman by the employer w.e.f. 1.8.1987 is illegal and unjustified and the workman concerned therefore, is entitled for reinstatement with full back wages.

other language

2. The aforesaid award dated 12.4.1991 was published by the State Government on 29.9.1993. It is after the aforesaid award was published, as stated above, the employer filed an application dated 8.11.1993 for setting aside the ex parte award, which has been allowed by the labour court vide his order dated 4.6.1994, Annexure-4 to the writ petition. The labour court allowed the application after setting aside the ex parte award on the ground that on receipt

of the aforesaid application moved by the employer, notice was sent to the workman concerned, thereupon an application dated 19.3.1994 was filed by representative of the workman with the prayer that due to illness the workman is unable to present before the Court, therefore, the date may be fixed after a month. The labour court fixed 27.4.1994 as the next date, but on that date or thereafter on the dates fixed by the Court, representative of employer was present, but neither the workman, nor his representative was present. The employer has stated that on 4.11.1993 when he came to know about the ex parte award, which has been passed against him, and since he was ill therefore, he could not contest the case, but by letters dated 30.1.1991 and 15.2.1991 they requested to extend the date and after coming to know about the ex parte award, they filed an application within ten days. The labour court has said that neither the workman has denied this fact, nor he has filed any evidence in rebuttal, although the workman was informed about this application by his representative. Therefore, there is no occasion to disbelieve the contents narrated in the affidavit filed in support of this application moved by the employer and held that employer should be given opportunity to contest the case. He further held that employer will pay Rs. 300 to the workman concerned as compensation and fixed 21.9.1994 for further hearing and directed to inform the employer as well as the concerned workman.

3. Thereafter contesting respondent-workman filed an application before the labour court for recalling the order dated 4.6.1994 whereby ex parte award was set aside. The employer filed his objection stating therein that once the labour court recalls/sets aside the award, the matter has to be heard on merits ; therefore, the review petition filed by the workman is not maintainable. Workman concerned has replied to this objection of the Petitioner-employer. The labour court after hearing both the parties, namely the employer and the concerned workman, and considering the material evidence on record has rejected the application dated 8.11.1993, on the basis that the order dated 4.6.1994 requires modification then the labour court has allowed the review application filed by the workman and rejected the application of the employer dated 8.11.1993, whereby the labour court has set aside the ex parte award dated 12.4.1991 by his order dated 11.12.1995, Annexure-8 to the writ petition. It is this order, which has been challenged by the Petitioner by means of this petition.

4. I have heard Sri Ranjit Saxena, learned Counsel representing the Petitioner-employer and Sri Rajesh Tiwari, learned Counsel for the contesting Respondent-workman as well as the learned standing counsel.

5. The labour court has taken a view that whether in the absence of workman concerned, cancellation/ recall of the award is not justified. It has further said that after hearing both the parties, it has been established that during the course of hearing representative of workman was seriously ill and since all informations have been sent on the address of representative, so neither the representative,

nor the workman concerned has received the said informations, as the lock was put in at the door of the representative of the workman concerned. In so far as the application dated 8.11.1993 for setting aside the ex parte award is concerned, the labour court has held that the said application has been filed after a highly belated stage and particularly after forty-nine days of the publication of the award when the labour court has become functus officio. It has disbelieved the contention of the employer that due information was not given by his representative Sri H. S. Goyal about the hearing of the case for which the employer himself is responsible.

6. Learned Counsel for the Petitioner tries to assail the order of the labour court rejecting the application to recall the ex parte award on the ground that the labour court ought to have considered the evidence and the circumstance in which the workman concerned had not appeared before the labour court, which having not been considered, serious injustice has been caused to the employer. In these circumstances, the order of the labour court rejecting the application dated 8.11.1993 by his order dated 11.12.1995 deserves to be quashed.

7. From the narration of the facts stated above, the contention of learned Counsel for the Petitioner deserves to be rejected. The labour court afforded full opportunity to the employer and in the facts and circumstances of the case it cannot be said that opportunity was not afforded to the employer to put up their case before the labour court before the ex parte award was given by the labour court. In the circumstance, the natural conclusion is that in spite of opportunity being given to the employer, the employer could not establish his case, whereas the workman concerned has, in all aspects, been able to establish his case. In these circumstances, the findings recorded by the labour court under the award impugned in the present writ petition do not warrant any interference by means of this petition under Article 226 of the Constitution of India. The order of the labour court dated 11.12.1995 allowing the application of the workman is upheld. The writ petition being devoid of any merits deserves to be dismissed and is hereby dismissed. The interim order/orders, if any, stands vacated. However, the parties shall bear their own costs.