
(2017) 01 MP CK 0016

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4450 of 1999 and Writ Petition No. 6487 of 2001

Principal

APPELLANT

Vs

Labour Court Under I.D. Act

RESPONDENT

Date of Decision : 12-01-2017

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 25F
Madhya Pradesh Industrial Disputes Rules, 1957 — Rule 10-B(3)

Citation : (2017) LabLR 619 : (2017) 2 LLJ 40

Hon'ble Judges : Mr. Sanjay Yadav, J.

Bench : Single Bench

Advocate : Shri Rajneesh Gupta, Learned Counsel, for the Petitioner In Writ Petition No. 6487 of 2001; Shri Mukhtar Ahmed, Learned Counsel, for the Petitioner In Writ Petition No. 4450 of 1999; Shri Rajneesh Gupta, Learned Counsel, for the Respondent In Writ Petition No. 4450 of 1999; Shri Mukhtar Ahmed, Learned Counsel, for the Respondent No. 2 In Writ Petition No. 6487 of 2001

Final Decision : Dismissed

Judgement

Mr. Sanjay Yadav, J.—These writ petitions under Article 227 of the Constitution of India, are directed against the Award dated 23.3.1999, whereby the Labour Court while answering the reference in favour of the workman, has directed for his reinstatement without back wages.

2. The Labour Court was in seisin with the industrial dispute as to whether the termination of service of the workman was proper and if not, what relief he is entitled for.

3. Whereas, the petitioner-management/employer is aggrieved by the Award of reinstatement. And, the workman has a grievance against non-grant of back wages.

4. Brief facts giving rise to industrial dispute are that the workman was engaged

as part time driver on a consolidated salary of Rs.1200/- per month vide order-dated 28.7.1994 w.e.f. 1.8.1994 (Ex.P/1). It was the case of the workman that despite satisfactory service rendered by him, he was terminated from service w.e.f. 13.5.1996 without holding any enquiry and without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947. And, that the workman employed after the petitioners were retained. As the conciliation resulted in failure, the appropriate Govt. vide order dated 20.11.1997, referred the matter to Labour Court for adjudication of aforesaid dispute.

5. Before Labour Court, the petitioner-management initially appeared but later on, remained ex parte. The Labour Court on the basis of cogent material documents and evidence on record, found the petitioner to be an industry and respondent as workman. It further found that the workman had continuously worked for more than 240 days in proceeding twelve calendar month from the date of termination. And, finding that the termination was without holding any departmental enquiry and without following the stipulations contained under Section 25F of 1947 Act, held the termination illegal and accordingly, vide impugned Award, set-aside the termination and directed for reinstatement without back wages, as no satisfactory cogent evidence was led by the workman that he was not gainfully employed during the period he was out of job.

6. Contention raised on behalf of petitioner is that the Labour Court having not adhered to the stipulation contained under Rule 10B of the M.P. Industrial Disputes Rules, 1957 (for short "1957 Rules") vitiates the entire proceedings. It is urged that, the petitioner was not served with the notice under sub-rule (3) of Rule 10B of 1957 Rules of posting the matter for hearing. Reliance is placed on the decision in Maharashi Mahesh Yogi Vaidik Vishwavidyalaya v. Smt. Meena Gupta : WP-3667-2001 decided on 29.10.2001 to bring home the submission that mandatory it is to issue a notice of hearing, the failure whereof vitiates the entire proceedings.

7. Rule 10-B of the M.P. Industrial Disputes Rules, 1957 provides for :-

"10-B. Proceeding before the Labour Court or Tribunal. - (1) Where the State Government refers any case for adjudication to a Labour Court or Tribunal, it shall send to the Labour /Court or Tribunal concerned and to the opposite party concerned in the industrial dispute, a copy of every such order or reference together with a copy of the statement received by it under sub-rule (3) or sub-rule (4) of Rule 10- A;

(2) Within two weeks of the receipt of the statement referred to in sub-rule (1), the opposite party shall file its rejoinder with the Labour Court, or Tribunal, as the case may be, and simultaneously forward a copy thereof to the other party:

Provided that such rejoinder shall relate only to such of the issues as are included in the order of reference:

Provided further that where the Labour Court or Tribunal, as the case may be,

considers it necessary, it may extend the time limit for the filing of rejoinder by any party.

(3) The Labour Court or Tribunal, as the case may be, shall ordinarily fix the date for the first hearing of the dispute within six weeks of the date on which it was referred for adjudication: Provided that the Labour Court or Tribunal, as the case may be, may for reasons to be recorded in writing, fix a later date for the first hearing of the dispute.

(4) The hearing shall ordinarily be continued from day to day and the arguments shall follow immediately after the closing of evidence:

(5) The Labour Court or Tribunal, as the case may be, shall not ordinarily grant any adjournment for a period exceeding a week at a time, not more than three adjournments in all at the instance of any one of the parties to the dispute. Provided that the Labour Court or Tribunal, as the case may be, may for reasons to be recorded in writing, grant an adjournment exceeding a week or more than three adjournments at the instance of any one of the parties to the dispute.

(6) The Labour Court or Tribunal, as the case may be, shall, as the examination of each witness proceeds, make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Presiding Officer.

Provided that the Labour Court or Tribunal, as the case may be, may follow the procedure laid down in Rule 5 Order 18 of the First Schedule to the Code of Civil Procedure, 1908, if it considers necessary so to do, in view of the nature of the particulars industrial dispute pending before it."

8. The emphasis has been placed on sub-rule (3) of Rule 10B of 1957 Rules which envisages that "the Labour Court, or Tribunal, as the case may be, shall ordinarily fix the date for the first hearing of the dispute within six weeks of the date on which it was referred for adjudication". As exception is caused vide proviso which stipulates that "the Labour Court, or Tribunal, as the case may be, may, for the reasons to be recorded in writing, fix a later date for the first hearing of the dispute".

9. A Division Bench of our High Court in Bhagwandas v. Radheyshyam Gupta : Misc. Petition No.473/1975 decided on 8.3.1976; wherein their Lordships were pleased to observe :-

"6. Sub-rule (3) of rule 10-B (hereinafter called the rules) requires the fixing of a date of hearing ordinarily within 6 weeks of the date on which the dispute was referred to it for adjudication. The proviso therein enables the Labour Court to fix a later date for reasons to be recorded in writing. Thus, this provision clearly requires the fixing of date for the first hearing of the dispute. Rule 13, which provides for the place and time for hearing, also requires information thereof to be given to the parties. From these provisions it is clear that a notice informing the parties of the first date of hearing of the dispute has to be given. From the

undisputed facts of the present case, it is clear that this was not done by the Labour Court. It was only on 21-3-75 that the Labour Court, for the first time, fixed the date of first hearing of the dispute and that date was 24-3-75, i.e. only 3 days thereafter. Admittedly no information was given by the Labour Court to the employer of the date of hearing in spite of the fact that the employer's counsel was not present on 21-3-75, his presence being not necessary that day, the case being fixed on 21-3-75 only for filing of the employees' rejoinder. Thus, the Labour Court could not proceed with the hearing of the case on 24-3-75 unless the employer was willing to participate in the same without any objection. In fact appearance on behalf of the employer was not necessary on 24-3-75, of which date no information had been given to him by the Labour Court. The position of the employer could not become worse merely because a junior counsel appeared on his behalf on getting information of the date from some other source, to seek adjournment. The noncompliance of the provision already indicated renders the proceedings of the Labour Court on 24-3-75 and thereafter to be invalid. For this reason alone, this petition must succeed.

7. As a result of the discussion aforesaid, this petition is allowed. The orders Annexure-D-1 and Annexure-G passed by the Labour Court as also the entire proceedings of the Labour Court commencing on and from 24-3-75 are quashed. The Labour Court is directed to proceed with the reference from that stage in accordance with law. The amount of security shall be refunded to the petitioner."

10. Based on the decision in Bhagwandas (supra), two more decisions have been rendered in M.P. Rajya Sahakari Bhoomi Vikas Bank v. Labour Court and two others : Misc. Petition No.1374/1983 decided on 16.4.1984 and Meena Gupta (supra).

11. The facts which gave rise to the decision in Radheyshaym Gupta (supra) are :

"2. By an order of reference dated 25-2-74 Annexure-A, the industrial dispute specified therein arising out of the termination of services of respondents 1 and 2 by the petitioner was referred to the Labour Court No. 1 for adjudication. After receipt of the reference, the Labour Court issued a notice to the employer requiring to file statement of claim on the specified date. After that statement was filed, the Labour Court required the employees to file their rejoinder, if any. As many as 6 adjournments commencing from 21-12-74 and ending on 20-2-75 were granted to the employees' counsel to enable the filing of a rejoinder by the employees and the last date fixed for that purpose alone was 21-3-75 on 21-3-75, which was the date fixed only for filing the employees' rejoinder, the employer's counsel was not present and the employees' counsel stated that the employees did not want to file any rejoinder. The case was then fixed for recording evidence of both the parties i.e. for hearing, only a few days thereafter on 24-3-75. No notice was given to the employer of this date, which was the first date hearing, fixed by the Labour Court. Admittedly, the only notice issued to the employer was the one initially issued requiring him to file his statement of claim in the Court.

3. On 24-3-75, in spite of the absence of any notice of hearing to the employer, the junior counsel appearing for the employer, appeared in the Court and filed an application seeking an adjournment due to the absence of the senior counsel, who was stated to have gone that day to another city on professional work and due to the absence of the employer's witness. An offer was made on behalf of the employer to compensate the employees for the costs of that date. However, the Labour Court rejected that prayer by the order Annexure-D-1, closed the evidence and fixed the case for argument on 1- 4-75. Thereafter, another application was made on behalf of the employer reiterating the prayer for an opportunity to the employer to cross examine the employees' witnesses and to lead evidence. This application was also rejected by the Labour Court by its order Annexure-G passed on 11-4-75 and the case was fixed for hearing the arguments on merits thereafter. The petitioner prays for quashing of both these orders Annexure-D-1 and G."

12. Similarly, in *M.P. Rajya Sahakari Bhoomi Vikas Bank (supra)*, the facts were that on receiving the reference for adjudication, notice was issued to the petitioner therein on 5.7.1982 to file rejoinder on or before 9.7.1982. As the petitioner did not appear and sought adjournment through telegram as the period from appearance was very short date (three days), the Labour Court on 9.7.1982 proceeded ex parte and postponed the matter on 26.7.1982 for recording evidence. The said date was declared to be a holiday. The case was taken up on 27.7.1982; ex parte evidence was recorded and Award was passed on 30.7.1982.

13. In this factual background, it was observed that the first notice that is given by Labour Court or Tribunal to the opposite party under sub-rules (1) and (2) of Rule 10-B of 1957 Act is simply to file rejoinder with the Labour Court or Tribunal within specified time and the notice has nothing to do with the date for the first hearing of the dispute required to be fixed by the Labour Court and non-adhering to the same is a fatal procedural lapse.

14. Somewhat similar facts arose in *Smt. Meena Gupta (supra)* wherein on first date of hearing i.e. 17.11.2000. One Vinod Kumar appeared on behalf of petitioner therein and the case was fixed at Chhattarpur camp on 12.12.2000 for taking statement of claim/rejoinder on record. As the petitioner therein did not appear he was proceeded ex parte and the matter was fixed on 23.1.2001. No notice for said date was issued. Treating it to be in violation of sub-rule (3) of Rule 10B, the proceedings after 23.1.2001 were held having vitiated.

15. The facts, in the present case, are different. In the present case as borne out from the record of Labour Court, that the petitioner had the notice of the proceeding which does not necessarily mean a communication in writing, it may be actual, constructive or imputed. In this context, reference can be had of the decision in *Food Corporation of India v. E. Kuttappan* : (1993) 3 SCC 445 : JT 1993 (4) SC 90 and *Ram Niwas v. Bano* (2000) 6 SCC 685 ? paragraph 5.

16. In the case at hand, it is borne out from the record that on 4.3.1998, the

petitioner was represented through its principal whereon he was granted time to file rejoinder/statement. The matter was posted for 16.4.1998. The petitioner, however, choose to remain ex parte and did not appear on any date thereafter, though had the constructive notice. In view whereof, in these given facts, the petitioner is not benefited from the decision in M.P. Rajya Sahakari Bhoomi Vikas Bank (supra) and Smt. Meena Gupta (supra). The contention therefore, fails.

17. No other ground having been raised, the petition (WP-6487-2001) fails and is dismissed. WP-4450-1999

18. This petition is by the workman whereby he questions non-grant of back wages. The record reveals that there is no material evidence on record to establish that the petitioner was jobless after the termination of his service. In these given facts, non-grant of back wages cannot be faulted with.

19. Furthermore, it is noticed that the petitioner/workman has been reinstated on 25.9.2002 and he has continuously discharged his duties satisfactorily as would give cause to any industrial unrests. In view whereof also, no indulgence is caused.

20. Both the writ petitions i.e. WP-4450-1999 and WP- 6487-2001 are dismissed. Parties to bear their respective costs.