

(2008) 09 DEL CK 0171

In the Delhi High Court

Case No : Writ Petition (Civil) No. 3698 of 1993

Rajan Babu T.B. Hospital Patients Welfare Social

APPELLANT

Vs

Smt. Savitri Devi and Another

RESPONDENT

Date of Decision : 10-09-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Industrial Disputes (Central) Rules, 1957 — Rule 22, 24
Industrial Disputes Act, 1947 — Section 10, 11, 17A, 2, 20(3)

Citation : (2008) 09 DEL CK 0171

Hon'ble Judges : Siddharth Mridul, J

Bench : Single Bench

Advocate : K.K. Bhuchar, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Siddharth Mridul, J.—The present petition has been filed praying for a writ to quash the Award dated 16th October, 1987 as also the order dated 22nd September, 1992, passed by the Labour Court.

2. The facts as are relevant and germane for the adjudication of the present writ petition are that:

(i) The respondent, Savitri Devi, (hereinafter "workman") was employed by the petitioner/Management for more than ten years, prior to the termination of her services with effect from 1st January, 1985, without assigning any reason.

(ii) According to the workman she had remained on leave from 5th December, 1984, to 31st December, 1984, in relation to the hospitalization of her granddaughter. When the workman reported for duty on 1st January, 1985, she was not given duty and was asked to come back later. The workman was put off on one pretext or the other till 8th March, 1985, when she was told that her services had been terminated. A demand notice dated 14th March, 1985 was served upon the Management, but in vain. Conciliation proceedings also resulted in failure.

(iii) The workman, thereafter, raised an industrial dispute which was referred to the Presiding Officer, Labour Court for adjudication on the following terms of reference:

Whether Smt. Savitri Devi herself abandoned her job or her services were terminated by the Management illegally and/or unjustifiably, and if so, to what relief is she entitled and what directions are necessary in this respect?

The workman thus claimed reinstatement with full back-wages and continuity of service.

(iv) The petitioner/Management was served by Registered A.D. notice for 23rd March, 1987, but did not put in appearance and was proceeded against ex-parte.

(v) The Industrial Adjudicator after considering the ex parte evidence and the deposition of the workman found that she was an old employee of the Management and her services were terminated with effect from 1st January, 1985 without any notice, notice pay or service compensation.

(vi) After considering the photocopy of the letter dated 4th June, 1985 sent by the Management to the Office of the Labour Commissioner, where it had been alleged that the services of the workman were not terminated and that she had left on her own, the Industrial Adjudicator found that this allegation had remained un-substantiated and consequently, the action of the Management was clearly in violation of the provision of Section 25F of the Industrial Disputes Act.

(vii) Resultantly, the workman was granted the relief of reinstatement with full back-wages with effect from 1st January, 1985, i.e. the date of termination, and the reference was answered accordingly.

3. The petitioner/Management filed an application dated 2nd March, 1998, for setting aside the ex parte Award dated 16th October, 1987, on two distinct grounds, namely:

(a) that the Management Society was not an Industry as it was purely a charitable institution and, therefore, the dispute was not capable of reference to the Labour Court; and

(b) that the Management did not have any knowledge about the case nor was it served with any notice and came to know about the ex parte Award only when it received a notice from the Assistant Collector for implementation of the Award dated 16th October, 1987.

4. In opposition to this application, it was urged on behalf of the workman that the Management had intentionally failed to appear before the Court despite service of notice by the Court and the Award had already been published on 10th December, 1987 and became final and consequently, the Labour Court had no jurisdiction to set aside the Award which had so become final.

5. The Presiding Officer, Labour Court framed the following issue for

determination:

whether there is sufficient ground for setting aside the impugned ex parte Award.

6. On behalf of the Management Society, one Mrs. V.Bala, Honorary Treasurer, deposed that the Management did not receive any notice for appearance in this case before the Court and that they came to know about the case only when they received notice from the Recovery Department. On behalf of the workman, the A.R., Shri Rajeev Aggarwal, examined himself and proved the proceedings before the Conciliation Officer. In addition, the said Shri Aggarwal also deposed that in spite of notice by Delhi Administration, the Management had not participated in the implementation proceedings and, therefore, the Joint Labour Commissioner issued a Recovery Certificate for Rs. 16,000/- (rupees sixteen thousand) in favour of the workman. Mr. Aggarwal, further proved the copy of the Gazette Notification dated 10th December, 1987, in respect of the subject Award dated the 16th October, 1987.

7. The Industrial Adjudicator on a consideration of the submissions and a perusal of the case file, came to the conclusion that the witness on behalf of the Management had admitted during the cross-examination that the address on the Registered A.D. Card dispatched to the Management is correct and that, therefore, there was a presumption that the same had been given to the addressee, and thus found there was proper service of the notice on the management by the Court.

8. The Industrial Adjudicator also came to a finding that the stand of the Management in its application to the effect that the impugned Award had not been published was patently wrong and contrary to the record. The ex parte Award dated 16th October, 1987 had in fact been published vide Gazette Notification dated 10th December, 1987 and the application filed by the Management on 2nd March, 1988 was factually moved beyond thirty days of the publication of the Award, and consequently, the Labour Court having become functus officio thereby had no jurisdiction to set aside the ex parte Award. Even otherwise, it was held by the Industrial Adjudicator that there was no sufficient ground to set aside the ex parte Award.

9. It is in the above circumstances that the Management filed the present writ petition assailing the ex parte Award dated 16th October, 1987, as also the order dated 22nd September, 1992, dismissing the application filed by the Management for setting aside of the ex parte Award.

10. Rule was issued in the writ petition on 15th March, 1994. However, the workman did not appear at the time of arguments and, therefore, I have heard Mr. K.K.Bhuchar, learned Counsel for the Management.

11. Mr. K.K.Bhuchar, Advocate, has also filed a brief note of arguments along with copies of the judgments on which the petitioner relies. Although in the writ petition and subsequently in the brief note aforesaid it is stated that the

Management Society is purely a voluntary organization, raised with the help of grants in aid, and as such is not an institution covered by the provisions of the Industrial Disputes Act, 1947, this issue was not pressed on behalf of the petitioner at the time of hearing of the writ petition. In this behalf, it is seen from the record of the proceedings that on 2nd August, 2005 it was observed by this Court that the matter be not listed for a period of about six months to await the outcome of the proceedings before the Supreme Court on the issue of the ambit of "Industry" referred for adjudication to the Larger Bench, obviously referring to the case of State of U.P. Vs. Jai Bir Singh, I am, however, not advertent to this question at length since it was not specifically addressed by the petitioner at the time of arguments. It can only be inferred that this issue was not urged on behalf of the petitioner in view of the judgment of the Supreme Court in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, where the Supreme Court had held that even running a hospital which is a welfare activity is an industry and only sovereign functions, strictly understood would qualify for exemption from the ambit of the definition of "industry", and which decision still holds the field. Further, following the ratio in Bangalore Water Supply (supra), this Court in Indraprastha Medical Corporation and Ors. v. Govt. of NCT of Delhi reported as (2001) 3 LLN 562 has held that a hospital is an industry within the meaning of Section 2(j) of the Industrial Disputes Act.

12. Mr. K.K.Bhuchar placed reliance on the following decisions:

(i) Grindlays Bank Ltd. v. Central Industrial Tribunal and Ors. reported as 1981 UJ 43 (SC).

(ii) Satnam Verma Vs. Union of India (UOI),

(iii) Anil Sood Vs. Presiding Officer, Labour Court II,

to urge that the order of the Tribunal rejecting the application for setting aside the ex parte Award is not tenable. He further submits that these judgments categorically laid down that even after lapse of thirty days from the publication of Award, the Labour Court had jurisdiction to set aside the ex parte Award.

13. However, the question whether the Industrial Adjudicator is empowered to set aside the ex parte Award after one month of the publication of the Award, is no longer res integra.

14. In Sangham Tape Company Vs. Hans Raj, the Supreme Court observed as follows:

5. Mr. Neeraj Kumar Jain, learned Counsel appearing on behalf of the Appellant, would submit that having regard to the fact that the provisions of Order IX Rule 13 of the CPC are applicable to an industrial adjudication, the Labour Court must be held to have ample jurisdiction to set aside an ex parte award, if sufficient cause therefore is shown. The learned Counsel would further submit that such exercise of jurisdiction by the Labour Court cannot be limited to a period of 30 days from the date of publication of the award. Reliance, in this connection, has

been placed on Anil Sood Vs. Presiding Officer, Labour Court II,

6. An industrial adjudication is governed by the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") and the rules framed thereunder. The rules framed under the Act may provide for applicability of the provisions of the Code of Civil Procedure. Once the provisions of the CPC are made applicable to the industrial adjudication, indisputably the provisions of Order IX Rule 13 thereof would be attracted. But unlike an ordinary Civil Court, the Industrial Tribunals and the Labour Courts have limited jurisdiction in that behalf. An award made by an industrial court becomes enforceable u/s 17A of the Act on the expiry of 30 days from the date of its publication. Once the award becomes enforceable, the Industrial Tribunal and/or Labour Court becomes functus officio.

7. This Court in Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, held that the Tribunal does not become functus officio provided an application for setting aside the award is filed within thirty days of publication of award having regard to the provisions contained in Section 11 of the Act and Rules 22 and 24 of the Industrial Disputes (Central) Rules, 1957 stating:

14. The contention that the Tribunal had become functus officio and, therefore, had no jurisdiction to set aside the ex parte award and that the Central Government alone could set it aside, does not commend to us. Sub-section (3) of Section 20 of the Act provides that the proceedings before the Tribunal would be deemed to continue till the date on which the award becomes enforceable u/s 17A. u/s 17A of the Act, an award becomes enforceable on the expiry of 30 days from the date of its publication u/s 17. The proceedings with regard to a reference u/s 10 of the Act are, therefore, not deemed to be concluded until the expiry of 30 days from the publication of the award. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication and up to that date it has the power to entertain an application in connection with such dispute. That stage is not reached till the award becomes enforceable u/s 17A. In the instant case, the Tribunal made the ex parte award on December 9, 1976. That award was published by the Central Government in the Gazette of India dated December 25, 1976. The application for setting aside the ex parte award was filed by respondent 3, acting on behalf of respondents 5 to 17 on January 19, 1977 i.e., before the expiry of 30 days of its publication and was, therefore, rightly entertained by the Tribunal....

8. The said decision is, therefore, an authority for the proposition that while an Industrial Court will have jurisdiction to set aside an ex part award but having regard to the provision contained in Section 17A of the Act, an application therefore must be filed before the expiry of 30 days from the publication thereof. Till then Tribunal retains jurisdiction over the dispute referred to it for adjudication and only upto that date, it has the power to entertain an application in connection with such dispute.

10. In view of this Court's decision in *Grindlays Bank (supra)*, such jurisdiction could be exercised by the Labour Court within a limited time frame, namely, within thirty days from the date of publication of the award. Once an award becomes enforceable in terms of Section 17A of the Act, the Labour Court or the Tribunal, s the case may be, does not retain any jurisdiction in relation to setting aside of an award passed by it. In other words, upon the expiry of 30 days from the date of publication of the award in the gazette, the same having become enforceable, the Labour Court would become functus officio.

11. *Grindlays Bank (supra)* has been followed in *Satnam Verma Vs. Union of India (UOI)*, and *J.K. Synthetics Ltd. v. Collector of Central Excise*.

12. This Court in *Anil Sood (supra)* did not lay down any law to the contrary.

15. Thus, the Supreme Court vide its decision in the case of *Sangham Tape Co. (supra)*, after due consideration of the judgments referred to and on behalf of the petitioner in the present petition, held that upon the expiry of thirty days from the date of publication of the Award of the Gazette, the same having become enforceable, the Labour Court would become functus officio.

16. In view of the Supreme Court's decision in *Re: Sangham Tapes (supra)*, the jurisdiction vested in the Labour Court to set aside an ex parte Award could be exercised only within a limited timeframe, namely, within thirty days from the date of publication of the Award.

17. In the instant case, the Labour Court made an ex parte Award on 16th October, 1987. That Award was published vide Gazette Notification dated 10th December, 1987. The application for setting aside the ex parte Award was filed on 22nd March, 1988, i.e. after thirty days of the publication of the Award. Once an Award becomes enforceable in terms of Section 17A of the Industrial Disputes Act, the Labour Court does not retain any jurisdiction in relation to setting aside of an Award passed by it. In other words, upon the expiry of thirty days from the date of publication of the Award in the Gazette, the same having become enforceable, the Labour Court became functus officio. Even otherwise, as held by the Labour Court in the impugned order dated 22nd September, 1992, the application for setting aside the ex parte Award did not disclose any sufficient ground. Further it was held that there was proper service of the notice by court on the Management, before proceeding ex-parte. Nothing else was urged on behalf of the petitioner.

18. For the foregoing reasons there is no merit in the present writ petition which is accordingly dismissed without any order as to costs.