

(1994) 03 RAJ CK 0063
In the Rajasthan High Court
Case No : W.P. No. 1247 of 1994

Rajasthan State Road Transport Corporation

APPELLANT

Vs

General Mazdoor Union

RESPONDENT

Date of Decision : 30-03-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12

Citation : (1995) 70 FLR 656 : (1995) 1 LLJ 1032 : (1994) 1 RLW 498 : (1994) 2 WLC 160 : (1994) 1 WLN 438

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : Manish Bhandri, for the Appellant;

Judgement

G.S. Singhvi, J.—Heard Shri Bhandari and perused the record of the case.

2. This writ petition has been presented before this court on February 23, 1994, and challenge in this writ petition has been made to an order dated December 19, 1991, passed by the Labour Court, Kota, in Miscellaneous Application No. 14 of 1990.

3. A look at the impugned order passed by the Labour Court shows that by this impugned order it has dismissed the application filed by the employer (petitioner) for setting aside the ex-parte award dated February 6, 1990. Which the Labour Court has passed in Reference Case No. 84 of 1987. The Labour Court found that the explanation offered by the employer for the delay in filing an application was wholly unsatisfactory and, therefore, there was no justification for condonation of delay in filing of application. The Labour Court also held that the facts have not been correctly mentioned in the application filed on behalf of the employer for setting aside the ex pane award and, therefore, there was no justification for interference by the Labour Court. The reason advanced by the Judge, Labour Court, is that the ex pane award was published on April 24, 1990, and an application had been filed by the employer on June 22, 1990 and that after publication of the award, there was no justification to entertain an

application for setting aside the ex pane award.

4. From the documents, which are available on record, the facts which emerged before this court are that the hearing of the reference case had been fixed by the Labour Court in the month of November, 1989. An application was moved on behalf of the employer for adjournment of the proceedings on the ground that officer-in-charge of the case was to attend the court at Tonk on November 1, 1989. The request made by the employer for adjournment was accepted by the Labour Court, Kota, and the case was adjourned. However, none appeared on behalf of the employer in the subsequent proceedings. This left the Labour Court, Kota, with no option but to proceed ex pane and pass the ex pane award. After four months and 16 days of the passing of the ex parte award and after two months of publication of the award in the Official Gazette, an application for setting aside the ex pane award came to be made on June 22, 1990. This application was accompanied by another application u/s 5 of the Limitation Act and two affidavits of the officer-in-charge of the case Rajendra Kumar Tanan.

5. Shri Bhandari, learned counsel for the petitioner, has argued that the learned Judge, Labour Court, has committed a Serious illegality in rejecting the application filed by the employer for setting aside the ex parte award. Shri Bhandari argued that the application filed by the employer u/s 5 of the Limitation Act has been overlooked by the Labour Court and this by itself is sufficient to set aside the order passed by the Labour Court.

6. I have given my thoughtful consideration to the submissions made by Shri Bhandari in the context of the application u/s 5 of the Limitation Act, filed by the employer on June 22, 1990, together with an application for setting aside the ex pane award.

7. A look at the application dated June 22, 1990, shows that the officer-in-charge had made no effort to find out from the Labour Court, Kota, as to what had happened to the application which is said to have been filed by him for adjournment of the case in November, 1989. He simply did not bother to seek information from the Labour Court as to what order had been passed by the Labour Court on that application for adjournment. The officer-in-charge of the case thought that once he has made an application, the Labour Court is bound to send him an invitation to attend further proceedings of the court. Even after passing of the ex pane order it took him more than four months to make an application for setting aside the ex pane award. The officer-in-charge is conspicuously silent about the steps taken by him or the efforts made by him to find out as to what had happened in the proceedings in the Labour Court. Total silence on the part of the officer-in-charge in this regard militates against the plea of the employer that the Labour Court has committed an illegality in ignoring the application filed by it for setting aside the ex parte award.

8. Although the petitioner had made an application u/s 5 of the Limitation Act, Shri Bhandari, learned counsel for the petitioner, has very frankly conceded that

section 5 of the limitation Act is not attracted in the proceedings before the Labour Court/Industrial Tribunal, which have been taken under the Industrial Disputes Act. He, however, submits that an application for setting aside an ex pane award/order could be made by an employer or employee under Rule 22A of the Rajasthan Industrial Disputes Rules, 1958, and under rule 22-A(3), the Labour Court had jurisdiction to entertain the application filed even after expiry of 15 days time specified in Rule 22-A(1). To this extent Shri Bhandari is correct. However, before an application filed for setting aside the ex parte award could be entertained by the Labour court, it had to be satisfied that there was sufficient cause for non-appearance of the employer on the date of hearing. In the present case, what to say of sufficient cause, no cause whatsoever was shown by the employer for non-appearance on the date of hearing and no cause whatsoever has been shown for the delay of more than four months in filing of application for setting aside the ex pane award. There cannot be a case of greater negligence than the present one and, it appears prima facie that the officer-in-charge had deliberately not taken steps to appear before the Labour Court on the date fixed for hearing. Same deliberate negligence on the part of the officer-in-charge has prompted him not to make an application for the setting aside the ex pane award within the specified time of 15 days. In this fact situation, the Labour Court did not consider it appropriate to accept the application of the employer (petitioner). It is impossible to say that the impugned order of the Labour Court suffers from any error of law or an error apparent on the face of the record. I cannot ignore the principle of exercise of discretion by the Labour Court/Industrial Tribunal in such like matters, whether it is for condonation of delay or for refusing to condone the delay, deserves to be rarely interfered with by this Court in exercise of jurisdiction under article 226 or 227 of the Constitution of India.

9. There is yet another reason as to why this court must not interfere with the impugned order. The writ petition has been filed after a period of more than two years of the passing of the impugned order. It is most interesting to notice that certified copy of the impugned order was made available to the petitioner as early as on January 4, 1992. Another interesting feature is that the very same person is officer-in-charge in this writ petition who was the officer-in-charge on behalf of the Corporation before the Labour Court, Kota. Thus it is reasonable to infer that the officer-in-charge of the case was directly interested in denying the writ petition by filing it after a period of over two years. It is not very difficult to discern a nexus between the officer-in-charge and the person concerned which prompted him to delay filing of the writ petition for a period of more than two years. The writ petition is conspicuously silent as to why there has been delay of over two years in the filing of the writ petition, after receipt of the certified copy of the impugned order. There is total absence on the part of the petitioner to explain this delay of more than two years and this justifies summary dismissal of the writ petition. 10. For the reasons aforesaid, the writ is dismissed. However, it is neither just nor proper for this Court to ignore the conduct of the officer-in-charge of the case about causing financial loss to the Corporation. As I have

already observed, prima facie it is clear that the officer-in-charge was interested in deliberately not prosecuting the case on behalf of the Corporation. There could have been no other reason of his absence from the proceedings before the Labour Court except negligence and deliberate act. The officer-in-charge was appointed by the Corporation to take steps to find out as to what proceedings have been drawn by the Labour Court and as to what has been the fate of the reference case in which the Corporation was a party. However, he did not take any step in this direction. It is, therefore, imperative that this court should suo motu take notice of these facts and direct the respondent Corporation to initiate departmental action against the officer-in-charge, Shri Rajendra Kumar, Inspector, Rajasthan State Road Transport Corporation. I direct the Managing Director, Rajasthan State Road Transport Corporation to forthwith initiate departmental proceedings against the defaulting officer. It is expected that the departmental action which is being ordered by the court against the officer will be taken to its logical end by the officers of the Corporation so that in future the officers-in-charge who appears on behalf of the Corporation, do not commit similar act causing loss to the Corporation. It would be in the fitness of things if recovery of the amount which is to be paid to the workman in implementation of the award, is made from the defaulting officer.