

(2013) 09 AHC CK 0162
In the Allahabad High Court
Case No : Writ C. No. 48112 of 2013

Ram Kishore

APPELLANT

Vs

Presiding Officer, Labour Court (I) and Another

RESPONDENT

Date of Decision : 09-09-2013

Acts Referred:

Citation : (2013) 4 LLJ 399

Hon'ble Judges : Arvind Kumar Tripathi, J

Bench : Single Bench

Advocate : S.N. Dubey, for the Appellant; Mani Shanker Sahu and R.G. Prasad, for the Respondent

Final Decision : Allowed

Judgement

Arvind Kumar Tripathi, J.—Heard learned counsel for the petitioner, learned counsel for the respondent no. 2 and perused the record. By means of the present writ petition, the impugned order dated 9.7.2013 passed by the respondent no. 1 Presiding Officer, Labour Court (I), U.P., Kanpur has been challenged by which the restoration/recall application for recall of the award was allowed.

2. Learned counsel for the petitioner submitted that the petitioner was appointed in the month of January, 1997 on the post of Stitcher by the respondent no. 2 and he continued to work continuously up to 31.7.2008. On 1.8.2008, there was holiday and when he came to join his duties on 2.8.2008, he was not permitted to work by the respondents. Since it was an industrial dispute, hence, the reference was made by the State Government u/s 4(K) of the Industrial Disputes Act. The case was registered as adjudication case no. 26/2010, notices were issued to the respondents. Though representative of the respondent no. 2 appeared, however, neither written statement was filed nor any document was filed against the claim of the petitioner. The award was passed in favour of the petitioner on 30.4.2012, which was published on 27.8.2012 allowing the claim of the petitioner directing for reinstatement with backwages. The award was

published on 27.8.2012, however, when the petitioner was not reinstated, an application u/s 6H(1) of the Industrial Disputes Act was filed for payment of the backwages as awarded by the labour court. The notice was issued and served upon the respondent no. 2 by the Deputy Labour Commissioner, however, the respondent did not appear. Hence, the application was allowed by order dated 4.3.2013. When recovery certificate was issued in pursuance of the order then writ petition no. 26749 of 2013 was filed by the respondent no. 2. The petitioner was directed to deposit the entire amount as per recovery certificate before Assistant Labour Commissioner, Kanpur Region, Kanpur and further it was directed that the petitioner would be reinstated within four weeks, however, till date the entire amount has not been paid in compliance of the order passed by the labour court as well as by this court and even the petitioner has not been reinstated though the order is passed by this court also on stay application on 13.5.2013. In the meantime, the application for recall of the ex-parte award was also filed before the labour court and this fact was not disclosed in the writ petition. The labour court believed the averment of the respondent no. 2 that when recovery certificate was issued and the respondent no. 2 came to know the same on 19.3.2013, then within 30 days restoration application was filed on 15.4.2013 and as such the award dated 30.4.2012 published on 27.8.2012 was recalled merely on the payment of cost of Rs. 500/-.

3. Learned counsel for the petitioner further submitted that in view of the provisions of Section 6(A) and 6(D), the labour court will have the power only within 30 days after publication of the award to restore/recall the order and in view of the judgment of the Supreme Court in the case of Sangham Tape Company Vs. Hans Raj, will become functus officio after 30 days of the publication of the award and as such the labour court has no power to recall the ex-parte award after 30 days. He also submitted that in spite of the notice, neither the respondent no. 2 contested before the labour court nor when the notice was served on the application under 6H(1) of the Industrial Disputes Act, he raised any objection or filed any restoration application. Subsequently, when recovery certificate was issued then after about a month, the application was moved for restoration/recall of the ex-parte award. The writ petition was also filed and since there is no compliance of the award, the impugned order passed by the labour court is liable to be set aside by which the award was recalled.

4. Learned counsel for the respondent no. 2 submitted that two representatives who were appointed to decide the case on behalf of the employer respondent no. 2 left the job and as such pairvi could not be done on behalf of the respondent. When respondent no. 2 came to know regarding recovery certificate, then the application was filed for restoration and recall of the ex-parte award. Since the application was within 30 days from the knowledge and as such the same was maintainable and rightly the ex-parte award was recalled by the order dated 9.7.2013 and as such in the interest of justice, no interference is required. He also contended that a part of the amount in compliance of the award and order passed by this Court on 13.5.2013 has already been paid and the proceeding has

been initiated to reinstate the petitioner.

5. Considered the submission of learned counsel for the parties. Admittedly respondent no. 2 was aware regarding the proceeding of adjudication case no. 26/2010. No specific date has been mentioned when employee of the respondent no. 2 Sri Sumit Maheshwari and Sri C.B. Tripathi left the service. If they left the service and respondent no. 2 was aware regarding the pendency of the adjudication case on reference u/s 4(K), then the enquiry should have been made since the notice had already been served, hence, no further notice was required. Apart from that from perusal of the order passed on Section 6(H)1, it is clear that the notice was served upon the respondent no. 2 when application u/s 6(H)1 of the Industrial Disputes Act was moved on behalf of the petitioner, however, no reply was filed nor there was compliance of the award. Hence, the application moved u/s 6(H)1 was allowed for payment of the backwages and recovery of the same. By order dated 4.3.2013, when recovery certificate was issued, the writ petition no. 26749 of 2013 was filed before this court. Admittedly the entire amount in compliance of the order passed by the labour court as well as by this court on 13.5.2013 has not been complied with. The writ petition is still pending. Apart from that in view of the provisions of Section 6(A), the award would be enforceable within 30 days from the date of publication of the award by the State Government. In view of the judgment of the Apex Court in the case reported in Sangham Tape Com v. Hans Raj (supra), after expiry of the 30 days from the publication of the award in official gazette, the labour court would become functus officio. Hence, in view of the facts and circumstances, the impugned order dated 9.7.2013 passed by the respondent no. 1 Presiding Officer, Labour Court (I), U.P., Kanpur is illegal, arbitrary, against the fact and the same is hereby set aside. The writ petition of the respondent no. 2 is already pending in which his case might be examined on merit. Accordingly, the writ petition is allowed.