

(1989) 02 AHC CK 0067
In the Allahabad High Court
Case No : C.M.W.P. No. 6408 of 1988

Sangam Finishing Works

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 03-02-1989

Acts Referred:

Uttar Pradesh Disputes Rules — Rule 16
Uttar Pradesh Disputes Rules — Rule 16
Uttar Pradesh Disputes Rules — Rule 16

Citation : (1989) 58 FLR 888 : (1995) 3 LLJ 614

Hon'ble Judges : S.K. Dhaon, J

Bench : Single Bench

Advocate : B.P. Singh, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dhaon, J.—Upon a reference made u/s 4-K of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the "Act") an Adjudication Case No. 256 of 1985 is before the Labour Court, Varanasi. On July 17, 1987 in the presence of the representative of the employer (Petitioner) the hearing of the case was adjourned to August 12, 1987. On that date, no one appeared on behalf of the employer. The Labour Court passed an order that it would proceed ex parte against the petitioner. On September 7, 1987 an application was made on behalf of the petitioner for recalling the order dated August 12, 1987. This application was rejected on December 22, 1987. Thereafter on January 28, 1988 an application was made on behalf of the petitioner to permit it to participate in the proceedings of the Adjudication Case. That application has been rejected by order dated April 4, 1988. The orders dated December 22, 1987 and April 4, 1988 are being impugned in the present petition.

2. A counter-affidavit has been filed on behalf of the workman and the petition is ripe for hearing. Though the petition has not been formally admitted, yet with the consent of the learned counsel for the parties I am proceeding to dispose of

this petition finally.

3. The Labour Court has decided to recall the order dated August 12, 1987 on the ground that the application made on September 7, 1987 for doing so had been made beyond the period prescribed under Rule 16 of the U.P. Industrial Disputes Rules, 1957 (hereinafter referred to as the "Rules"). It is to be noted that under the said rule an application has to be made within ten days of the passing of the order. No exception can be taken to the view taken by the Labour Court. Indeed, learned counsel for the petitioner has not advanced any serious argument so far as the order dated December 22, 1987 is concerned.

4. In its order dated April 4, 1988 the Labour Court has opined that so long as the order dated August 12, 1987 stands the employer cannot be permitted to participate in the proceedings at all. The provisions of the CPC and particularly Order 9 are not applicable. Rule 16 does not permit the participation of a party in the proceedings after an order to proceed ex parte as against it has been passed.

5. Section 5-C of the Act provides that subject to any rules that may be made in this behalf a Labour Court shall follow such procedure as it may think fit. In Sub-section (3) a Labour Court has been given the same powers as are vested in a Civil Court under the CPC when trying a suit in respect of certain matters but not a matter under controversy. Sub-rule (1) of Rule 16 provides that if, on the date fixed or on any other date to which the hearing may be adjourned any party to the proceedings before the Labour Court is absent, though duly served with summons or having the notice of the date of hearing, the Labour Court may proceed with the case in his absence and pass such order as it may deem fit and proper. In Sub-rule (2) it is stated that the Labour Court may set aside the order passed against the party in his absence, if within ten days of such order, the party applies in writing for setting aside such order and shows sufficient cause for his absence.

6. The Labour Court is a creature of the statute, the Act. It derives powers from the statute. It has no inherent powers. However, it has incidental and ancillary powers which it derives either from the express provisions of the Act or by necessary implication of the powers conferred upon it. It exercises quasi-judicial power. It adjudicates upon the social rights of the employer and the employee. Its ultimate object is to usher in industrial peace by resolving discords between the employer and his workmen thereby resulting in optimum production of the national wealth.

7. While deciding disputes the Labour Court is confined to the adversary system as opposed to the inquisitional system. Though it has power to follow its own procedure, its usual practice in all adjudication proceedings is to follow the procedure of an action at a civil suit in a civil Court:

8. Principle of natural justice must be observed by all judicial and quasi-judicial tribunals. The Labour Court while deciding disputes exercises judicial powers of the State. Even while formulating its own procedure, it cannot close its eyes to

justice and fairplay.

9. "Ex-parte" means in the absence of the other party. Principle of natural justice enjoins that as far as possible no proceedings should be conducted to the detriment of a person in his absence. This is not an absolute rule but subject to an exception. The exception being a clear rule to the contrary having the force of law. Rule 16 of the Rules does not mandate that it should pass an ex pane order if a party is absent on the date fixed. It only empowers the Labour Court to proceed with the case in the absence of a party and passes such order as it deems fit and proper. Therefore, there is no prohibition in Rule 16 either express or implied for permitting participation of a party in the proceedings of the Court on the adjourned date of hearing even though he was absent on the earlier date and the Court had passed an order that it would proceed ex parte against him. The observance of the principle of natural justice is not confined to giving of an opportunity to a party to appear but it also goes further and confers upon him a right not only to produce evidence in support of his case but also to cross-examine the witnesses produced by his adversary. If on the next date of hearing a party can exercise any of the said rights, he cannot be prevented from doing so and if he is prevented, such an act will be in violation of the principle of natural justice. Of course, as already indicated, such a right can be taken away by the statute. The right to appear on an adjourned date of hearing and to participate in the proceedings from that date onwards does not imply the right to set back the hands of the clock. No party can, therefore, insist upon the past transactions being reopened. He has to accept whatever has happened in his absence in the proceedings. This is so because Rule 16 says so. For getting over this difficulty, he has no option but to take proper steps within the time prescribed by Rule 16 and get the order passed by the Labour Court to the effect that it would proceed ex parte, set aside.

10. I have already referred to the provisions of Section 5-C of the Act which empowers the Labour Court to follow such procedure as it considers fit. This provision clothes the Labour Court with sufficient power to permit a party to appear on the next date of hearing or at the adjourned date of hearing and to participate in the proceedings if a request is made by him on that behalf. In fact, once it is recognised that such a party has a right to participate in the proceedings on the next date of hearing a corresponding duty is cast upon the Labour Court to allow him to do so and such a duty also flows from the provisions of Section 5-C of the Act. In *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, has held that an Industrial Tribunal has power of setting aside an ex parte award and such a power flows from the provisions of Sub-section (1) of Section 11 of the Industrial Disputes Act, 1947 which are analogous to the provisions of Section 5-C of the Act.

11. The Labour Court failed to exercise jurisdiction vested in it by law in rejecting the application made by the petitioner on January 28, 1988 when it took the view that it had no jurisdiction to permit the petitioner to participate in further

proceedings of the adjudication case as it had already rejected the application made by the petitioner for recalling the order dated August 12, 1987. Its order dated April 4, 1988 is also based on irrelevant and extraneous considerations. It, therefore, follows that the Labour Court was not justified in not permitting the petitioner to cross-examine Shri Ram Nand, the witness, who had been produced on behalf of the workmen. The Labour Court shall recall the witness Shri Ram Nand and afford an opportunity to the petitioner to cross-examine him. It shall permit the petitioner to participate in the further proceedings of the adjudication case. Thereafter, it shall proceed to adjudicate upon the dispute referred to it as expeditiously as possible.

12. The petition succeeds in part and is allowed. The impugned order dated April 4, 1988 is quashed. The Labour Court shall not act in accordance with law in the light of directions given above. There shall be no order as to costs.