

(2010) 09 RAJ CK 0036

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 07817 of 2009

Sarpanch, Gram Panchayat

APPELLANT

Vs

Moola Ram and Others

RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 17A

Rajasthan Industrial Disputes Rules, 1958 — Rule 22A

Citation : (2010) 09 RAJ CK 0036

Hon'ble Judges : Dinesh Maheshwari, J;C.M. Totla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—This intra-court appeal is directed against the order dated 09.02.2007 passed in S.B. Civil Writ Petition No. 459/2007 whereby the learned Single Judge of this Court has dismissed the writ petition preferred by the petitioner-appellant against the order dated 12.09.2006 whereby the Labour Court, Jodhpur refused to set aside the ex parte award dated 12.11.2002.

2. This appeal, filed only on 07.09.2009, is reported to be barred by limitation by 881 days and the appellant has moved an application seeking condonation of delay.

3. Briefly put, the relevant facts and background aspects of the matter are that upon the respondent No. 1 Moola Ram raising an industrial dispute on the allegations that he was appointed in the month of January 1982 under the Gram Panchayat, Balana as driver of engine and electric motor but his services were terminated on 01.03.1996, the Government made a reference to the Labour Court, Jodhpur on the question of validity of such termination of services. The present appellant chose not to appear before the Labour Court despite service; and on 12.11.2002, the Labour Court proceeded to make the award ex parte in favour of the respondent No. 1. The Labour Court held the questioned termination illegal and further held the respondent-workman entitled for

reinstatement with continuity of services and with 40% back-wages from the date of reference. The award so made by the Labour Court, Jodhpur came to be published by the Government of Rajasthan on 13.02.2003.

4. Thereafter, on 19.08.2004, the appellant moved an application under Rule 22-A of the Rajasthan Industrial Dispute Rules, 1958 for setting aside the ex parte award on the ground that the notices were not properly served. The appellant also moved an application for condonation of delay with the submissions that the fact of making the award came to the knowledge only when the respondent-workman moved the application seeking benefits thereunder; and that the delay was caused in the process of the taking instructions from higher authorities. By its order dated 12.09.2006, the Labour Court rejected the application so moved by the appellant for setting aside the award while observing that the application had been moved after 30 days from the date of publication of the award; and the applicant failed to show proper reasons for condonation of delay. The Labour Court also observed that in view of Section 17-A of the Industrial Disputes Act, 1947, on the expiry of 30 days from the date of publication, the award becomes enforceable and thereafter the Labour Court becomes functus officio; and in this regard, referred to the decision of the Hon"ble Supreme Court rendered in the case of Sangham Tape Company Vs. Hans Raj,

5. The appellant preferred the writ petition [CWP No. 459/2007] wherefrom has arisen this appeal, seeking to challenge the aforesaid order dated 12.09.2006 and the related award dated 12.11.2002. The learned Single Judge of this Court proceeded to dismiss the writ petition by the impugned order dated 09.02.2007 with the observations that the employer had the opportunity to contest the matter as the notices had been served; and that there was no reason to interfere in view of the decision of the Hon"ble Supreme Court in the case of Sangham Tape Co. (supra).

6. Seeking to challenge the order so passed by the learned Single Judge, the employer has preferred this intra-court appeal.

7. It is contended in the appeal that the Labour Court and the learned Single Judge have erred in dismissing the application for setting aside the ex parte award on the ground that the award has become enforceable and the Labour Court was functus officio after 30 days of publication of award. The appellant relies on a decision of the Hon"ble Supreme Court rendered in the case of Radhakrishna Mani Tripathi v. L.H. Patel and Anr. (2009) 1 SCC 358. As noticed, this belatedly filed appeal is barred by 881 days. An application seeking condonation of delay in filing the appeal has been moved by the appellant, the contents whereof are reproduced verbatim hereunder:

The humble appellant most respectfully submits as under:

1. That, the present appeal is being submitted on the strong facts and grounds in which fully hope to be succeed.

2. That, the averment made in present appeal may kindly be treated part and parcel of the present application for condonation of delay.

3. That, the present appeal is being submitted delay because of the Gram Panchayat-appellant had sought permission from Panchayat Raj. Department and due to administrative process it has caused for delay.

4. That, the respondent workman has filed a writ petition-bearing No. as 6155/07 Moola Ram v. B.D.O. Panchayat Samiti's and Ors. and the Hon'ble Court vide their order dtd.13.07.2009 disposed the writ petition with a direction to the appellant-employer to make full compliance of the award and it is also directed that appellant-employer can obtain all necessary order from wherever, they are required. In the present case, the present appellant has sent letters, number of times to the higher authority, but due to not provided the permission, and the delay has been occurred. Hence, the present appeal deserves to be condoned its delay.

5. That, the present appeal involves a substantial question of law that whether the ex-party award can be set-aside after its publication. If, the delay is not Condon in filing the present appeal, than, it will be cause for irreparable loss to the appellant.

It is therefore, prayed that application for condonation for delay may kindly be allowed and the present appeal may kindly be heard on merit.

8. While relying on the decision in Radhakrishna Mani Tripathi's case (supra), learned Counsel for the appellant strenuously argued that the appellant has a strong case on merits and the delay deserves to be condoned for having been caused due to administrative process.

9. After having heard the learned Counsel for the appellant and having perused the material placed on record, we are unable to find any cause what to say of a sufficient one to condone the inordinate delay in filing this appeal.

10. Even when ordinarily a matter is preferred to be decided on merits and a slight bona fide cause is taken sufficient, it cannot be assumed yet that the law of limitation has been rendered totally redundant. Apart that the delay of more than 2 years in filing this appeal remains unexplained, the cause, in whatever form stated in the application, shows that the appellant has not been prosecuting its case bona fide. Reference has been made in the application to an order dated 13.07.2009 as passed in CWP No. 6155/2007. Having regard to the circumstances, we have requisitioned the record of CWP No. 6155/2007 and find that the said writ petition was filed by the present respondent No. 1 Moola Ram with the submissions that though reinstated with effect from 22.01.2004, he had not been granted the other benefits under the award. The facts regarding making of the award, rejection of the application for setting aside the award, and dismissal of the writ petition of the employer were all stated in the writ petition so filed by the workman and such facts were not disputed by the present

appellant in the reply filed in the said writ petition on 13.02.2008. The award having attained finality was a fact not even disputed before the learned Single Judge in the said writ petition (CWP No. 6155/2007) that was decided on 13.07.2009.

11. It is thus clear from the record of CWP No. 6155/2007 that the appellant was all through aware of the order dated 09.02.2007, sought to be impugned in this appeal. It is beyond comprehension that the appellant yet chose not to take requisite steps for filing the appeal against the order dated 09.02.2007 at the relevant time and even while contesting the writ petition filed by the workman. The cursory suggestions about "administrative process" as made in the application for condonation are not only incomplete but turn out to be more of pretension rather than of any reasonable cause. It is also not clear as to who was to grant permission for filing of the appeal to the appellant and as to how the so-called "administrative process" could take over 2 years time? The delay in filing the present appeal being unreasonable and inordinate without a sufficient cause therefor, no case is made out for condonation.

12. In the aforesaid view of the matter, we do not propose to deal with the contentions sought to be urged in the appeal but in that regard too, it cannot be lost sight of that the learned Labour Court has recorded the specific finding about want of sufficient cause for condonation of delay in filing the application for setting aside ex parte award.

13. Put in a nutshell, the scenario is that the appellant did not appear before the Labour Court despite

14. service and hence, ex parte award was made on 12.11.2002; the award was published on 13.02.2003 whereas the application for setting it aside was filed only on 19.08.2004; and in the meantime, the workman was reinstated on 22.01.2004. Then, the application for setting aside ex parte award was rejected on 12.09.2006 and the writ petition filed against the same was also dismissed on 09.02.2007. On the other hand, the workman preferred the writ petition seeking all the reliefs under the award and referred to the fact of dismissal of writ petition filed by the appellant. The appellant did not dispute this fact and suffered the order dated 13.07.2009 in the said writ petition filed by the workman. An attempt thereafter to assail the order dated 09.02.2007 by filing this appeal on 07.09.2009 could only be considered lacking in bona fide; and cannot be countenanced.

15. In an overall view of the matter, we find no reason to entertain this grossly belated appeal. The application for condonation of delay stands rejected and the appeal stands dismissed.