
(2010) 08 MP CK 0006

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1797 of 2004

Satendra Singh Gujar

APPELLANT

Vs

Bank of India, Gwalior and Others

RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 10(B)(9)
Industrial Disputes Act, 1947 — Section 10(1), 10(2)(A), 14, 15, 2

Citation : (2010) 127 FLR 835 : (2011) LLR 61

Hon'ble Judges : Shyam Sunder Dwevedi, J;S.K. Gangele, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Shri Pawan Dwivedi. Advocate, for petitioner. None appeared for respondents, though represented.

Heard.

The petitioner has filed this petition challenging the award dated 1st May, 1995, Annexure P-1 passed by Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur and also the order dated 16.9.1998. Annexure P-2, by which the Tribunal has rejected the application of the petitioner to set aside the ex-parte award dated 1.5.1995.

2. The petitioner was engaged as a Watchman at M/s Gwalior Rolling Mill, Maharajpura in March 1983. His services were terminated in the month of August 1988. Thereafter, as per the petitioner, he was engaged on 6th June 1989 by respondent No. 1, Bank. He worked in the bank up to 8.11.1989-Thereafter his services were terminated. The petitioner filed a Letter Petition before the High Court against the order of termination. The High Court dismissed the petition with liberty to the petitioner to raise an industrial dispute. Thereafter, the petitioner submitted a complaint to the appropriate Government. After failure of conciliation proceedings, the appropriate Government referred the dispute for

adjudication before the Labour Court.

3. The Labour Court vide impugned award dated 1st May 1995 has held that the petitioner did not appear before the Court nor filed statement of claim, hence, it appears that the petitioner was not interested in pursuing his claim therefore, the Labour Court passed "no dispute award. For setting aside the aforesaid award the petitioner filed an application before the Labour Court, which has also been dismissed vide order dated 16.9.1998. The Labour Court has held that the petitioner deliberately did not appear before the Labour Court.

4. From the award dated 1st May. 1995. it is clear that the Labour Court passed the award as "no dispute award" on the ground that the petitioner did not appear before the Labour Court nor filed statement of claim.

5. Sections 14 and 15 of the Industrial Disputes Act, 1947, which are as under prescribes that the Labour Court to decide the dispute referred for adjudication;--

14 Duties of Courts---A Court shall inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry.

15. Duties of Labour Courts, Tribunals and National Tribunals.--Where an industrial dispute has been referred to a Labour Court. Tribunal or National Tribunal for adjudication, it shall hold its Satendra Singh Tomer v. Bank of India and others proceedings expeditiously and snail. within the period specified in the order returning such industrial dispute or the further period extended under the second proviso to sub-section (2A) of section 10. submit its award to the appropriate Government.

6. The Central Government in exercise of powers conferred by Section 38 of the Industrial Disputes Act. 1947 has framed the Rules, namely. The Industrial Disputes (Central) Rules, 1957". Rule 10B (9) of the aforesaid Rules, which is as under, prescribes that the Labour Court may proceed with the reference ex-parte in absence of any party and decide the reference:--

10B. Proceeding before the Labour Court, Tribunal or National Tribunal.--(1).....

(9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal or National Tribunal, as the case may be. may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party;

Provided that the Labour Court. Tribunal or National Tribunal, as the case may be. shall submit its award to the Central Government within one month from the date of arguments oral hearing or within the period mentioned in the order of reference whichever is earlier.

7. From the aforesaid Rule it is clear that it is cosignatory on the part of the Labour Court to answer the reference after considering merits of the case. However, Satendra Singh Tomer vs. Bank of India and others. the Labour Court has

no power to pass an award as no dispute award" on the ground that one party did not appear before the Labour Court.

8. A Division Bench of this Court in the case of Sital Sukhiram Vs. Central Government Industrial Tribunal Cum Labour Court, Jabalpur and Others, has held that the Labour Court has no power to dismiss the reference in defaults. The relevant findings of the Division Bench are as under:--

9. The main question for consideration is whether the Tribunal could, as it did in this case, accept an amicable settlement between the parties which "did not specify the manner in which the dispute have been settled" and make an award in terms of that settlement because "there now remains nothing for adjudication" by the tribunal so far as these five specific demands are concerned. We are clearly of opinion that the Tribunal could not act in that way without disregarding the provisions of the Act. The word "award" as defined in clause (b) of section 2 of the Act means "an interim or final determination of any industrial dispute or of any question relating thereto by any Labour Court, industrial Tribunal or National industrial Tribunal and includes an arbitration award made u/s 10A We think that the word "determination" used in the definition implies adjudication upon relevant material by the Labour Court or the Tribunal. So. it has been held that, once a reference has been made u/s 10(1) of the Act. it cannot be rescinded or cancelled: State of Bihar v. Ganguli, (1958) II LJ 834 (SC) It cannot also be dismissed for default because that would amount to putting an end to the proceedings otherwise than by adjudicating upon the dispute.

9. Hence, in our opinion, the Labour Court has committed an error of law in passing "no dispute award" against the petitioner. The Labour Court further committed an error of law in rejecting the application for restoration of the dispute filed by the petitioner.

10. Consequently, the petition of the petitioner is allowed. The impugned award dated 1st May, 1995 Annexure P-1 passed by Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur and also the order dated 16.9.1998. Annexure P-2 are hereby quashed. The matter is remanded back to the Labour Court, respondent No. 3 for deciding the reference afresh in accordance with law. Looking to the facts of the case, there shall be no order as to costs.