
(2017) 04 RAJ CK 0234
In the Rajasthan High Court
Case No : 45 of 2016

Sher Singh

APPELLANT

Vs

Managing Director

RESPONDENT

Date of Decision : 04-04-2017

Acts Referred:

[Industrial Disputes Act, 1947](#), [Section 33 C \(2\)](#) -
Industrial Disputes Rules, 1958, Rule 22-A

Citation : (2017) 04 RAJ CK 0234

Hon'ble Judges : Sanjeev Prakash Sharma

Bench : SINGLE BENCH

Advocate : VD Agnihotri, Subham Jain

Judgement

1. The petitioner by way of this writ petition prays for setting aside the orders dated 24.07.2009 whereby his application moved under Section C (2) of the Industrial Disputes Act, 1947 (hereinafter to be referred as "the Act of 1947") was dismissed in default by the Judge, Labour Court, No.1-Jaipur as well as the order dated 20.08.2015 whereby his application for restoration was also dismissed and has further prayed that the directions be issued to decide his application under Section 33 C (2) of the Act of 1947 on merits.

2. Brief facts of the case which need to be noted for the decision of the case is that the petitioner was appointed on the post of LDC on 27.01.1997 and his services were terminated on 28.01.1984 by way of punishment. On 24.04.1997, an award came to be passed whereby the punishment order was quashed and lesser punishment of withholding of five grade increments with cumulative effect was passed by the Labour Court. Fixation was to be made after imposing aforesaid punishment and period of the absence was to be regularized by granting leave if the same was available/credit in the petitioner's account otherwise extra ordinary leave without pay was to be granted. The award was published on 28.10.1997 and the petitioner submitted his joining report on

11.03.1998. In the meanwhile, S.B.Civil Writ Petition No.2984/1997 preferred by the Corporation which came to be disposed of vide order dated 22.11.2001 by this Court with direction that the petitioner would be entitled for only 50% backwages. The Special Appeal (W) No.30/2002 preferred before the Division Bench by the Corporation came to be decided on 12.02.2012 upholding the award dated 24.04.1997 with the said modification passed in the writ.

3. A writ petition came to be preferred bearing S.B.Civil Writ Petition No.3239/2004 wherein orders were passed on 31.01.2005 allowing the petitioner to prefer application under Section 33 C (2) of the Act of 1947 for computation of the benefits from the date of award dated 24.04.1997 and for the earlier period.

4. In the circumstances, the application was preferred by the petitioner under Section 33 C (2) of the Act of 1947 which came to be dismissed in default vide order dated 24.07.2009. An application for restoration was moved on 07.05.2010 alongwith an affidavit of the petitioner and his Counsel and an application for condonation of delay was also moved by the Counsel for the petitioner on the ground that the date was wrongly noted as 03.11.2009 instead of 27.07.2009 and the Counsel could not appear on the said date and thereafter, as the associate could not note any next date, the delay occurred in submitting restoration application. Affidavit of the Counsel was also submitted before the Labour Court. However, by order dated 20.08.2015, the restoration application was dismissed.

5. Hence, this writ petition has been preferred by the petitioner.

6. Counsel for the petitioner submitted that there is no provision under the Act of 1947 or rules for dismissing application under Section 33 C (2) of the Act of 1947 in default. It has been submitted that the provision of the Rule 22-A of the Industrial Disputes Rules, 1958 (hereinafter to be referred as " the Rules of 1958) reproduced as under : - "22-A. Setting aside ex parte decision- (1) On an application made within fifteen days of the exparte decision, the Board, Court, Labour Court, Tribunal or Arbitrator may, on sufficient cause being shown after notice to the opposite party set aside either wholly or in part, an ex parte decision.

(2) The Board, Court, Labour Court, Tribunal or Arbitrator may on an application, extend the time of fifteen days as prescribed in sub-rule (1) on sufficient cause being shown.

(3) Applications under sub-rules (1) and (2) shall be supported by an affidavit."

In view of the above, it is submitted that Section 5 application if moved, even an ex parte decision can be set aside in terms of Rule 22-A. In the present case, the application had been moved and reasons were assigned by the Counsel for the petitioner alongwith an affidavit. However, the learned Labour Court has failed to appreciate the submissions in their true perspective. The learned Counsel has taken this Court through the findings of the Labour Court while dismissing

application dated 28.08.2015 and submits that there is a gross perversity in the order. It is submitted that learned Judge, Labour Court has wrongfully interpreted Rule 22-A of the Rules of 1958 and has failed to take notice of judgments cited before it with regard to restoration. It is submitted that the Tribunal while dismissing the restoration application has gone into technicalities and surmises while passing the order. It has been observed wrongfully that the applicant was not in contact with his Counsel and, therefore, the delay cannot be said to be a bonafide.

7.) Per contra, learned Counsel for the respondent submits that the restoration application moved by the petitioner on 07.05.2010 had been dismissed in default on 9.7.2010 and was thereafter, again restored on 1.4.2011 and thus, there has been carelessness on the part of the petitioner. Therefore, the application ought not to have been restored and has been rightly rejected.

8.) I have considered submissions of both the Counsel and find that the proceedings under Section 33 C (2) which were pending before the Labour Court could have been decided even in the absence of the Counsel for the Petitioner and there was no occasion for the Labour Court to dismiss the case in default. Once, it had come on record that the award passed by the Labour Court had attained finality all the way up to the Division Bench of this Court, and the High Court itself had observed for moving application under Section 33 C(2) which was part of the contents of the application, the manner in which the Labour Court has proceeded to dismiss the application in default is wholly unwarranted. The same was pending with them since 2007 and the entire process of restoration has consumed much more time than it would have been to decide the original application itself.

9.) In the case of Hiren Singha Roy Vs. Hawarah Improvement Trust & Ors.: 2000 Volume 9 SCC 309, the Apex Court was seized of the matter where the application for restoration filed alongwith condonation application has been rejected by the High Court. The Apex Court however, taking into consideration the contents of the application, restored the same. Apex Court observed in para 4 as under : - "4. Having regard to the fact set out above, we think that the High Court should have condoned the delay in filing the application for restoration and should not have dismissed the application summarily. We allow the appeal set aside the impugned judgment of the High Court, condone the delay in filing the restoration application and restore the FMAT No. 1413/1987 on the file of the High Court. The High court is requested to dispose of the writ appeal on merits. No order as to costs."

10.) In the case of N.Balakrishnan Vs. M.Krishnamurthy : (1998) 7 SCC 123, it has been observed by the Apex Court in para 12 and 13 as under : - "12. A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as

to advance substantial justice vide *Shakuntala Devi Jain Vs. Kuntal Kumari* [AIR 1969 SC 575] and *State of West Bengal Vs. The Administrator, Howrah Municipality* [AIR 1972 SC 749].

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

11.) From what has been observed by the Apex Court it appears that principally in restoration matters the delay should be condoned generally, except in matters where there is a deliberate attempt to delay the matter for ulterior purposes in cases where with the purpose is to avoid a particular Court or Presiding Officer who may have expressed his view which may not suit the concerned plaintiff or petitioner but in other cases a lenient view is required to be taken. In the presently case, merely because lawyer was not be available on account of wrongly noting a date in his diary and has filed an application for restoration alongwith his own affidavit, it is sufficient ground for restoring the case to its original number.

12.) This Court also finds that application under Section 33 C (2) are being adjourned merely for the purposes of seeking personal presence of the lawyers although the same are to be decided on the basis of affidavits which are already on record and in view that there is already a settled right which has been created in favour of the applicant-petitioner on the basis of a verdict of a Court, in such cases dismissing the application in default ought to be avoided and application be decided on merits.

13.) In the circumstances, the writ petition is allowed. The order dated 24.07.2009 and 20.08.2015 are set aside. The application under Section 33 C (2) is restored to its original number and it is now directed that the Labour Court, No.1, Jaipur shall decide the case within a period of two months from the date of submission of the certified copy of this order on merits.