
(2012) 01 MP CK 0091

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4775 of 1999

Shiv Naresh Sharma

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 17A

Citation : (2012) 134 FLR 109 : (2012) LLR 480

Hon'ble Judges : Tarun Kumar Kaushal, J; Rajendra Menon, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Challenging the order-dated 25.9.1999 - Annexure P/4, passed by the Presiding Officer, Labour Court, Jabalpur recalling an order passed by it on 6.11.1998 and listing the dispute for hearing, petitioner has filed this writ petition.

2. Facts that have come on record indicates that petitioner claiming to be an employee working in the establishment of M/s Nav Bharat Press, Bhopal (Jabalpur), raised an industrial dispute with regard to his termination. Failure of conciliation resulted in reference of the dispute to the Labour Court, Jabalpur. Notices were issued by the Labour Court and it seems that due to non-appearance of the employer/respondent, ex-parte proceedings were drawn and an award-dated 6.11.1998 - Annexure P/1 was passed granting some benefits to the petitioner namely - his reinstatement with consequential benefits. As the award was passed ex-parte, an application for setting aside the same was filed by the respondent employer on 25.1.1999 - Annexure P/2, and this application has been allowed by the impugned order and, therefore, the petitioner is before this Court challenging the impugned order-dated 25.9.1999, by which the award passed on 6.11.1998 has been recalled.

3. Shri Rajneesh Gupta, learned counsel for the petitioner, made a singular

contention before us. It was his argument that the award in question was passed on 6.11.1998 and a certified copy of that award was granted to the petitioner on 21.12.1998. According to Shri Rajneesh Gupta the Labour Court exercising jurisdiction under the Industrial Dispute Act, has power to recall an order passed or set aside an ex-parte award only if the application for that purpose is filed within a period of 30 days from the publication of the award.

4. Placing reliance on the law laid down by the Supreme Court in the case of *Grindlays Bank Limited Vs. Central Government Industrial Tribunal and others*, 1980 (Supp) SCC 420, following by the Supreme Court again in the case of *M/s Sangham Tape Company Vs. Hans Raj*, 2005 (1) SLJ 224, Shri Rajneesh Gupta argues that after a period of 30 days from the date of publication of the award, the Labour Court or the Tribunal, as the case may be, becomes functus officio and, therefore, the application filed beyond the period of 30 days cannot be entertained. It is submitted that in this case the application was filed on 25.1.1999 i.e... beyond the period of 30 days not only from 6.11.1998, but also from 21.12.1998, i.e... the date on which the certified copy of the award was issued to the parties concerned after its publication. Accordingly Shri Rajneesh Gupta submits that the power exercised by the Labour Court for setting aside the ex-parte order being beyond its jurisdiction, the impugned order is liable to be set aside.

5. Even though Shri S.K. Rao, learned Senior Advocate appearing for the respondents, tried to justify the order by contending that an ex-parte award has been set aside and the Labour Court has found that proper notice was not served on the employer, the fact remains that the Labour Court had jurisdiction to entertain the application only if it is filed within a period of 30 days, after the period of 30 days of publication of the award, the Labour Court could not exercise the jurisdiction for the reasons indicated in the order. The only remedy available to the employer was to challenge the award and get the matter remanded in an appropriate forum instead of seeking recalling of the order, in the manner done, before the Labour Court.

6. We have heard learned counsel for the parties and perused the record.

7. In the case of *Grindlays Bank* (supra) followed in the case of *M/s Sangham Tape* (supra), it has been held in paragraphs 6 and 8 that if the dispute is governed by the principles of Industrial Disputes Act, 1947 (hereinafter referred to as "Act of 1947") and after considering the principle laid down in the case of *Grindlays Bank* (supra), it has been held that the decision in the said case is an authority for the proposition that the Industrial Court will have jurisdiction to set aside an ex-parte award, but taking note of the provisions of Section 17-A of the Act of 1947, an application thereof must be filed before expiry of a period of 30 days from the publication of the award. Till then, it is held that the Tribunal retains jurisdiction over the dispute referred to it for adjudication and only upto that date the power to entertain the application in connection with such a dispute.

8. If the aforesaid enunciation of law as laid down is applied in the present case, it would be seen that the award was passed on 6.11.1998 and a certified copy of the award was provided to the petitioner on 21.12.1998. It is, therefore, clear that the certified copy was provided after publication of the award and, therefore, even if the Tribunal had jurisdiction for a period of 30 days from 21.12.1998, the application filed on 25.1.1999 was beyond the period of 30 days and, therefore, the Tribunal had no jurisdiction to entertain the application having been rendered functus officio, after a period of 30 days.

9. Accordingly, the order passed impugned in this writ petition is beyond the powers vested with the Labour Court and the Labour Court having exercised power without jurisdiction, the same is liable to be interfered with.

10. In view of the above, this petition is allowed. The impugned order-dated 25.9.1999 - Annexure P/4, for the reasons indicated here in above being unsustainable, is quashed.

11. The petition stands allowed and disposed of.