

(2002) 03 RAJ CK 0006
In the Rajasthan High Court
Case No : .S.C.A. No. 114 of 2002

State of Rajasthan and Another	Vs	APPELLANT
Rajendra Samaria and Another		RESPONDENT

Date of Decision : 21-03-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2), 33C(2)

Citation : (2002) 94 FLR 411 : (2002) 3 LLJ 426 : (2002) WLC 457

Hon'ble Judges : Rajesh Balia, J;K.K. Acharya, J

Bench : Division Bench

Advocate : Arun Bhansali, for the Appellant; G.K. Vyas, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—Heard learned counsel for the parties.

2. The respondent workman filed an application u/s 33-C(2) of the Industrial Disputes Act, 1947 alleging that he has been appointed as a Class IV Servant by the Deputy Chief Medical and Health Officer on August 1, 1988 at Rs. 700 per month with usual allowances admissible under the Rules in the pay scale of Rs. 700 to 865 for a period of six months. He further alleged that he is continuing in the service and that he has not been paid an salary since the date of his appointment and asked for quantification of the amount payable to him from August 1, 1988 to December 31, 1989. The application was made on January 2, 1990. In the application, the Chief Medical and Health Officer, and Deputy Chief Medical and Health Officer were made parties.

3. It appears that at initial Stage, the representative of the respondents appeared in the Court after the notices were served on them before April 16, 1990. After April 26, 1990, it appears neither the counsel nor the party itself appeared on the next two dates and on January 26, 1991 (sic) the proceedings were ordered to be proceeded ex parte. On February 14, 1991, an affidavit was filed in support of the claim. On March 7, 1991, the counsel for the respondent

appeared and requested time to file application for setting aside the order to proceed ex parte, however, no application for setting aside the ex parte order was filed until October 11, 1993. During this period, the claimant was required to furnish the detail of the amount claimed by him, which was filed on September 17, 1992. Ultimately, the order was made on April 13, 1993 accepting the claim of the claimant.

4. Thereafter, the application for setting aside the aforesaid award was made by one Dr. Santosh Singh Gehlot on October 11, 1993 alleging that the award has been made without serving notice on him. The said Dr. Santosh Singh Gehlot was the Deputy Chief Medical & Health Officer, Jodhpur. This application was ultimately rejected by order dated February 12, 1997. Cost of Rs. 300 was also awarded.

5. Aggrieved with that order, writ petition was filed by the present appellants which has been dismissed by the learned single Judge vide order under appeal dated July 19, 2000. This appeal was barred by 18 days. The application u/s 5 of the Limitation Act was allowed by the Court on February 27, 2002.

6. So far as the conduct of prosecuting the case by appellants is concerned, on the facts it establishes gross negligence with which it has been conducted. Not only that, wholly unwarranted and incorrect assertions have been made in the application for setting aside the ex parte order. We have already noticed that the employer had not been impleaded by name by the claimant. The Chief Medical and Health Officer, Jodhpur and Deputy Chief Medical and Health Officer, Jodhpur were made parties by their designation, whosoever at the time was holding the office. In that circumstance, the reason for non-appearance of Dr. Santosh Singh Gehlot on account of his suspension and transfer is wholly irrelevant. The plea of not effecting service on respondent Dr. Santosh Singh is also apparently misconceived inasmuch as firstly Santosh Singh was not a party in person who was required to explain his absence from the conduct of the case. Secondly, the notices infact had been served on both the non-applicants and the representative appeared on behalf of the present appellants. The representatives of the appellants were appearing before the Labour Court until September 20, 1990. Thereafter, one clerk on behalf of appellants appeared on March 7, 1991, after the order to proceed ex parte was passed, and time was sought for filing an application for setting aside that order. However, inspite of said appearance, the application for setting aside the order to proceed ex parte was never made until the order was passed by the Labour Court after almost two years on April 13, 1993. It is pertinent to notice that knowing about the order to proceed ex parte and seeking time to make an application to set it aside, for two years nothing was done. It is apparent from the record that appearance was put through representative and on September 20, 1990 a clerk, and not Dr. Santosh Singh, appeared to seek time. It cannot be presumed that the clerk did not inform the officer holding charge of the office from time to time so as to prevent anyone from making an appropriate application. The application was thereafter moved in

October, 1993 which goes to suggest, as has been rightly observed by the Presiding Officer of the Labour Court that they have lost interest in conducting the case and did not appear for reasons best known to them.

7. In these circumstances, it cannot be said that the learned single Judge was wrong in dismissing the writ petition against the order rejecting the application for setting aside ex parte order passed by the Labour Court as well as the order directing the appellants to pay the amount which was apparently payable to the respondent workman as per the appointment order dated August 1, 1988 which has been filed along with the application.

8. It is further pertinent to notice that notwithstanding filing an application for setting aside ex parte order, in the writ petition and in this appeal at no stage the appellants have even whispered that the respondent workman was not entitled to the amount as directed by the Labour Court for any reason.

9. It is apparent that this litigation has been pursued with some oblique motive and really not intended to contest the claim of the workman.

10. We, therefore, dismiss this appeal and looking to the conduct of the appellants in conducting the case, find it prominently a fit case in which the two non-applicants - viz. CM & HO and Dy. CM & HO, holding the post during the relevant time at Jodhpur may be directed to pay the cost of this litigation personally to the respondent workman which is quantified at Rs. 2,500 each.