

(1999) 08 RAJ CK 0038
In the Rajasthan High Court
Case No : C.W.P. No. 2798 of 1999

State of Rajasthan and Others

APPELLANT

Vs

Dulhe Singh and Another

RESPONDENT

Date of Decision : 13-08-1999

Acts Referred:

Citation : (2000) 84 FLR 708 : (2000) 3 LLJ 1485 : (2000) 1 RLW 24

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—The instant writ petition has been filed against an ex-parte Award dated November 19, 1994. The application for recalling the ex-parte award was filed by the present petitioners/establishment on August 19, 1995 and the same has been rejected by the Labour Court vide order dated January 12, 1999, holding the same as not maintainable for the reason that after the Award is published, the Labour Court became functus officio and cannot entertain any application to set-aside the award.

2. The view taken by the Labour Court that it has become functus officio after the award was published and has no competence to entertain the application to set it aside, is not in consonance with law. The issue is no more res integra, Unfortunately, it has not been brought to the notice of the Labour Court. In *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, and *Satnam Verma Vs. Union of India (UOI)*, Hon'ble Supreme Court has held that as there is no provision of review in the Industrial Disputes Act, 1947, the Labour Court/Tribunal lacks the competence to review its award. However, the Court distinguished the review from setting-aside an ex-parte award and held that every Court/Authority has an incidental and ancillary power to do complete justice between the parties and so long such powers are not in contradiction of the provisions of the Statute, they may be exercised by the Court/Authority and this inherent and ancillary power clothes the industrial Tribunal with the power to

set aside the ex-parte award. This view further gets fortified by the law laid down by the Hon"ble Supreme Court in *Income Tax Officer, Cannanore v. M.K. Mohammed Kunhi* AIR 1969 SC 430 wherein the Apex Court observed as under :

"It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective..... The powers which have been conferred by Section 254 on the Appellate Tribunal..... must carry with them by necessary implication all powers and status incidental and necessary to make the exercise of those powers fully effective."

3. This Court, in *Asstt. Engineer, Public Health and Engineering Deptt. Vs. Imamudeen Khatri and Another*, has held that Labour Court has competence to set aside an ex-parte award even after its publication provided the Court is satisfied that there was sufficient ground for the party not to attend the Court.

4. Thus, the question required to be considered is whether there was sufficient ground for the present petitioner not to appear before the Labour Court otherwise it will be a futile exercise to remand the case back to the Authority at such a belated stage to decide it afresh. The award was made on November 9, 1994. The application was filed on August 19, 1995 (Annexure 3). The reasons given in the application had been that one Shri Layak Ali, Regional Forest Officer, Kushalgarh, had been the incharge of the case. However, he had been transferred as he was having some difficulty with the local traders. The new officer, who came in place of Mr. Layak Ali, was not told by Layak Ali about pendency of this case. Meanwhile, the clerk who had been assigned the duty to attend the Labour Court in the instant case, had also been transferred and, thus, the department could not know about pendency of the case for a long time and the ex-parte award was made on November 19, 1994. The award was published on June 2, 1995 and only then the Authority came to know and filed the application on August 29, 1995. The application does not seem to be bona fide/correct as it is not mentioned in the application whether the respondent-workman, in whose favour the award had been made, ever contacted the Department to get the relief awarded to him or even if the department came to know about the award on its publication on June 2, 1995, why Department could not take any action for a period of two and half months as the application was filed on August 29, 1995. Moreover, the reasons given in the application represent the sorry state of affairs prevailing in the department and it reveals that nobody is taking the duty with any sense of responsibility and this cannot be a ground to set- aside an ex-parte award at the whim of the employer. Entertaining such an application, at such a belated stage, by this Court would be most unequitable to the respondent-workman in whose favour the award was made about five years ago.

5. While dealing with the impugned award, the Labour Court has relied upon the claim petition and evidence adduced by the respondent-workman and recorded the finding that the workman had worked from May 1, 1982 to June 1, 1987 and

he was removed from service without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947. Thus, he was granted relief of reinstatement with all back wages.

6. In a limited jurisdiction under Article. 227 of the Constitution, no interference is required with the impugned award. However, the Court is at complete loss to understand as to what restrained the so-called " administration of the State of Rajasthan from fixing liability for the negligence upon the officer concerned and why it had not initiated any action against him for causing undue burden upon public exchequer. Thus, in the facts and circumstances of the case, the State is directed to hold an inquiry in the matter and fix liability of the officer concerned.

7. With these observations and direction, the writ petition stands dismissed.