
(2010) 12 AHC CK 0055
In the Allahabad High Court
Case No : Writ - C No. 67857 of 2009

State of U.P. and Others

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 07-12-2010

Acts Referred:

Citation : (2011) 2 LLJ 575

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Judgement

Arun Tandon, J.—State of U.P. has filed this writ petition against the orders of the Presiding Officer, Labour Court, Varanasi dated October 30, 2007, dated December 10, 2007 and dated April 28, 2009 as well as for quashing of the citation dated August 12, 2009.

I have heard Sri Arvind Kumar, Additional Chief Standing counsel on behalf of the State and Sri Ram Janam Singh, Advocate on behalf of the Respondent.

2. Facts in short giving rise to the present writ petition are as follows:

Respondent Nos. 3 to 16 were appointed in the Irrigation Department as work charged employee. They set up a claim for being offered regular appointment and for the purpose an industrial dispute was raised, which was registered as Adjudication Case No. 107/1986. By means of the award dated December 4, 1987 the Labour Court directed that the services of the workmen concerned be regularized. Not being satisfied, the award was challenged by the State by means of Writ Petition No. 12979/1998, which was dismissed. The workmen, therefore, made an application u/s 33-C-2 for computation of the money in terms of the award. The claim so filed was registered as Misc. Case No. 1/2001. The claim so filed was contested by the State and it was stated that the money, as disclosed in terms of the award, is legally not due.

3. It appears that the office of the Presiding Officer, Labour Court, Varanasi,

where the case was pending, was vacant for months together. Therefore, no dates were fixed in the matter to the knowledge of the parties concerned. However, a Presiding Officer was appointed in the Labour Court. On September 13, 2007 the authorized representative of the State, who had earlier proceeded with the matter on their behalf, namely R.K. Srivastava appeared and appended his signature on the order-sheet on behalf of the employers. The case was adjourned to October 17, 2007. On October 17, 2007 the representative did not appear and after considering the evidence and the arguments of the workmen concerned, the case was adjourned to October 25, 2007 for consideration of the case of the employers with liberty to file their written submissions. On October 25, 2007 Sri R.K. Srivastava appeared before the Labour Court and filed his personal affidavit categorically stating that he has no more instruction to represent the employers and that despite best effort he could not contact the Executive Engineer, as his office was vacant. It was further stated that the Labour Court may, therefore, send a fresh notice to the employers in the matter so that the same could be argued on behalf of the employers. It appears that the Labour Court did not pass any order on the application so made by R.K. Srivastava and proceeded to pass an ex parte order dated October 30, 2007 only after recording that the case is of the year 2001. The order of the Labour Court has been enclosed as Annexure-10 to the writ petition.

4. Coming to know of the aforesaid ex parte order, an application was made on behalf of the employers and the facts stated above, qua Sri R.K. Srivastava being no more authorized representative, was disclosed and it was contended that in absence of any notice having received from the Labour Court, the State could not be represented on September 25, 2007. This application has been rejected under order dated April 26, 2009 only after recording that in the application made by Sri R.K. Srivastava it was not disclosed that instructions have been withdrawn from him and that any other person has been appointed in his place. In any view of the matter withdrawal of instruction from Sri R.K. Srivastava was an internal matter between the employers and the authorized representative. The Labour Court under the impugned order has not noticed as to what orders were passed on the request made by Sri R.K. Srivastava on October 25, 2007. It appears from the records that the request made by Sri R.K. Srivastava remained pending without disposal and in the meantime recovery certificate was issued on August 12, 2009. Hence the present writ petition.

5. On behalf of the Petitioner it is submitted that once the authorized representative has filed an affidavit that he has no more instruction in the matter and further since in the facts of the case the matter was being heard by the Labour Court after more than four years, after the pleadings were exchanged there was little or no justification for the Labour Court to not to issue fresh notices to the employers. In any view of the matter the Labour Court should have passed an order on the request made by Sri R.K. Srivastava on October 25, 2007 and it could not have decided the matter without disposing of the request so made.

6. This Court is of the affirm opinion that an order on merit after contest is always welcome vis-a-vis an order passed ex parte. Sri Ram Niwas Singh, counsel for the Respondent workmen vehemently contended that (a) the writ petition is highly belated, (b) the doctrine of futility would apply and therefore even if there has been violation of the principle of natural justice this Court may not interfere. For the purpose he has placed reliance upon the judgment of this Court in the case of Paras Nath Singh v. Deputy Director of Consolidation, Varanasi (Writ Petition No. 63870/2009) decided on February 2, 2010, as well as upon the judgment of the Hon"ble Supreme Court in the case of P.D. Agrawal Vs. State Bank of India and Others,

7. He further submits that in the facts of the case no prejudice has been caused to the employers, which may justify any interference by this Court. Lastly it is contended that the Petitioner had the opportunity to contest the proceedings and they deliberately did not avail. Fault if any was of the authorized representative or the officer, who was responsible for watching the interest of the State and therefore the workmen cannot be permitted to suffer.

8. Having heard counsel for the parties and having gone through the records, I am of the considered opinion that the contention raised on behalf of the State is legally justified. It is not in dispute that for the years together, because of the absence of the Presiding Officer, proceedings of Case No. 1/2001 could not take place nor dates were fixed in the presence of the authorized representatives of the parties concerned. It is not in dispute that the claim filed by the workmen u/s 33-C-2 was contested by the department and a written statement was filed opposing the application so made, which was on record. It is also not in dispute that the Presiding Officer was appointed in the year 2007 to be precise on September 13, 2007, on which date authorized representative Sri R.K. Srivastava appeared and appended his signature on the order-sheet. The next date fixed was October 17, 2007 on which date the statements of the workmen and the contention raised on their behalf were noticed and the case was adjourned to October 25, 2007 for the arguments of the employers as well as for filing of the written submission. On October 25, 2007 itself representative of the State filed an affidavit stating therein that he has no more instruction in the matter and that the office of the Executive Engineer, who was the immediate employer, was vacant and therefore it was insisted that fresh notice be issued to the employers.

9. It is surprising that the Labour Court did not pass any order on the request so made, which was supported by an affidavit, and proceeded to decide the case ex parte only on the ground that the matter is pending since 2001.

It may be recorded that there is no finding by the Labour Court that the proceedings were delayed by the employers at any stage of the proceedings. In the facts of the case the Labour Court should have passed an order on the request of the authorized representative, wherein he stated that he has no more instructions in the matter.

10. It is settled law that a judgment on merit, after hearing the parties, is always welcomed to a judgment passed ex parte. All Courts of law are established for furtherance of interest of substantial justice and not to obstruct the same on technicalities. Reference Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, wherein it has been held that where substantial justice and technicalities are pitted against each other, the cause of substantial justice should not be defeated on technicalities. No procedure in a Court of law/Tribunal should be allowed to defeat the cause of substantial justice on some technicalities. Reference - Ghanshyam Dass and Others Vs. Dominion of India and Others,

11. This Court holds that in the facts of the case the application made by the State for review of the ex parte order was legally justified and the grounds mentioned for rejecting the application are not tenable in the eyes of law. Accordingly, all consequential orders also fall automatically.

12. In view of the aforesaid, the writ petition is allowed. The order of the Labour Court dated October 30, 2007 is hereby set aside. Case No. 1/2001 is restored to its original number, from the stage as on September 17, 2007 the Labour Court shall proceed to decide the matter afresh by means of a reasoned speaking order, preferably within three months from the date a certified copy of this order is filed before the Labour Court and for the purpose the parties are directed to appear before the Labour Court on January 6, 2011 along with certified copy of this order. It is further clarified that the Labour Court shall not grant any unnecessary adjournment to either of the parties.

13. The bank draft, which was submitted in terms of the interim order of this Court, may be returned to the Standing counsel today by the Bench Secretary.