
(2014) 01 RAJ CK 0197
In the Rajasthan High Court
Case No : SBC WP No. 11699/2013

Superintendent of Post Offices

APPELLANT

Vs

Industrial Disputes Tribunal

RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Citation : (2014) 2 LLJ 671 : (2014) LLR 574

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : Vinit Kumar Mathur, Advocate for the Appellant; Girish Sankhla, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Vijay Bishnoi, J.—The present writ petition has been preferred by the petitioner against the order dated 21.12.2011 passed by Labour Court, Jodhpur (for short "the labour court" hereinafter), whereby the labour court has answered the reference, while holding that the termination of the services of the respondent-workman on 26.3.2000 was not valid, and "directed to reinstate the respondent-workman with 50% of back-wages with continuity in service. The petitioner has also challenged the order dated 10.4.2013, whereby the application preferred by the petitioner for setting aside the ex-parte award dated 21.12.2011 has also been dismissed. Brief facts of the case are that the Ministry of Labour made a reference through its notification dated 29.01.2009 to the Labour Court, Pali on the following question:

Whether the action of the Management of Superintendent of Post Offices, Sirohi Mandal, Sirohi (Rajasthan) in terminating the services of Shri Dinesh Singh Rao w.e.f. 26.3.2000 is legal and justified? If not, what relief the workman entitled to?

2. On service of notice by the labour court, an advocate had filed "Vakalatnama" on behalf of the petitioner, however, no reply to the statement of claim was filed. Despite several opportunities, when the reply to the statement of claim was not

filed by the petitioner, the opportunity of filing the reply was closed on 2.11.2010 and thereafter the opportunity of filing an affidavit was also closed on 10.10.2011. On 24.11.2011, when none had appeared on behalf of the petitioner, ex-parte proceedings were initiated against the petitioner and on 21.12.2011, the impugned award has been passed by the labour court. The petitioner had preferred an application for setting aside the award on 9.2.2012, however, the said application has also been dismissed by the labour court vide order dated 10.4.2013.

3. The learned counsel for the petitioner has argued that on 10.10.2011, when the matter was listed before the labour court, the counsel for the petitioner took note of the next date of hearing as 24.12.2011 instead of 24.11.2011 and, therefore, none had appeared before the labour court on 24.11.2011. It is contended by the learned counsel for the petitioner that mistake committed by the counsel before the labour court was bona fide and the petitioner should have been provided one opportunity to defend before the labour court. The learned counsel for the petitioner has further argued that the labour court has not taken into consideration the contentions raised by the petitioner for setting aside the ex-parte award in true spirit and passed the order dated 10.04.2013 solely on the ground that the petitioner has failed to produce photostat of the diary of the advocate to prove that he had wrongly noted the date as 24.12.2011 instead of 24.11.2011. The learned counsel for the petitioner has prayed that the impugned order dated 10.04.2013, as well as the judgment and award dated 21.12.2011 may kindly be quashed and set aside and the petitioner may be provided one more opportunity to defend its case before the labour court.

4. Per contra, the learned counsel for the respondents has argued that the petitioner has failed to file reply or the affidavit before the labour court despite several opportunities and, therefore, the labour court has not committed any illegality in proceeding ex-parte against the petitioner. It has also been argued by the learned counsel for the respondent that the petitioner had failed to demonstrate sufficient cause before the labour court; for its non-appearance and, therefore, the labour court has not committed any illegality in rejecting the application preferred by the petitioner for setting aside the ex-parte award.

5. Heard learned counsel for the rival parties and perused the record.

It is true that despite giving opportunity, the petitioner failed to file reply to the statement of claim preferred on behalf of the workman and the opportunity to file reply to the statement of claim was closed by the labour court vide order dated 2.11.2010. On several occasions, the petitioner was provided opportunities to submit affidavit but it failed to do so and the opportunity of filing affidavit was also closed by the labour court on 24.11.2011. When none was present before the labour court, the labour court had proceeded ex-parte against the petitioner and passed the impugned judgment and award on 21.12.2011. The application preferred by the petitioner for setting aside the ex-parte award was dismissed by the labour court vide order dated 10.08.2013 on the ground that the petitioner

had failed to produce the photostat of the diary of the advocate to prove that he had wrongly mentioned the date of hearing as 24.12.2011 instead of 24.11.2011.

6. It is to be noticed that before the labour court, the petitioner was represented by same advocate, who had filed the application for setting aside the ex-parte award. In such circumstances, when the same advocate had appeared before the labour court stating that he had noted the date of hearing as 24.12.2011 instead of 24.11.2011, the labour court should have taken into consideration this aspect of the matter and should not have dismissed the application of the petitioner on the ground that the advocate has not produced the photostat of his diary to prove that he had wrongly noted the date of hearing. The endeavour of the courts should be to impart justice to the parties after providing them full opportunity of hearing.

7. In the totality of facts and circumstances of the case, this Court is of the opinion that one opportunity should be provided to the petitioners to appear before the labour court for finally arguing the case at a reasonable cost to be paid to the respondent-workman. Consequently, the writ petition is partly allowed. The impugned orders dated 10.04.2013 and 21.11.2013 are set aside. However, it is made clear that the order passed by the labour court of closing the opportunity of the petitioner to file reply to the statements of claim and to file affidavits is not disturbed. The labour court shall grant an opportunity to the petitioner to finally argue the case subject to the condition that the petitioner shall pay a cost of Rs. 2000 to the respondent-workman. It is also made clear that the labour court shall hear the final arguments of the petitioners only on satisfaction of the payment of cost to the respondent-Workman.