
(2002) 01 RAJ CK 0003
In the Rajasthan High Court
Case No : Civil Writ Petition No. 148 of 2002

Surajgarh Kraya Vikraya Sahakari Samiti APPELLANT
Vs
Labour Court No. 2 and Another RESPONDENT

Date of Decision : 07-01-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Industrial Disputes Act, 1947 — Section 25F, 25G

Citation : (2002) 3 RLW 1909 : (2002) 1 WLC 793

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : Rohitashwa Kajla, for the Appellant;

Final Decision : Dismissed

Judgement

Madan, J.—The petitioner which is a Cooperative Marketing Society registered under Rajasthan Cooperative Societies Act, 1956 (for short, "the Societies Act") has challenged the Award dated 22.12.97 (Ann.4) passed by the Judge Labour Court, Jaipur, in LCR No. 18/96, whereby the Labour Court's order rejecting the application preferred by the petitioner Management for recalling the ex-parte order has been rejected under Order 9 Rule 13 C.P.C.

2. The facts, which are relevant for deciding the instant petition, briefly stated, are that the respondent No. 2 workman had presented a statement of claim contending therein that his appointment was made with effect from 1.2.1983 by the Select Committee and he had faithfully and diligently discharged his duties on the post of Salesman but his services were terminated with effect from 3.8.1994. His further contention is that for the period of 1.3.93 to 3.8.94 he was not paid his salary dues nor he was served with any notice prior to the impugned action. He was also not paid any retrenchment compensation. "Hence the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short, "the Act") have been violated. His further case was that he had worked for a period of more than 240 days against the calendar year and the management had given

fresh appointment to some other candidates by ignoring petitioner's candidature, hence there was also violation of 25-G of the Act,

3. It is pertinent to mention in the back drop of events that the learned Tribunal has recorded significant finding against the petitioner-Samiti in para 3, wherein it has been recorded that despite the services upon Samiti on 5th July, 1996, the petitioner had voluntarily absented before the learned Tribunal when the case was called, consequent to which ex-parte proceedings were drawn against him on 3.9.97. Since there was violation of the provisions of Section 25-F of the Act, the learned Tribunal had observed in the impugned Award that there was no reason or justification to disbelieve the additional affidavit filed in support of claim petition by the workman, therefore, he was entitled to salary in lieu of notice in accordance with the rules.

4. The reference made by the State Government to the Tribunal was accordingly answered in favour of the workman with direction that the workman shall be entitled to all his dues as admissible to him with effect from the date of his termination.

5. The Award passed by the learned Tribunal was sought by the petitioner Samiti before the learned Tribunal for review by moving an application under Order 9 Rule 13 CPC on the ground that the Award has been passed ex parte without hearing the petitioner as the management had not been heard by the Tribunal. This condition was repelled by the learned Tribunal for the reason that from the perusal of the record, it was borne out that notwithstanding the service of notice on the Management, none chose to appear on its behalf when the case was fixed for hearing before the Tribunal. Hence, the Tribunal was left with no alternative but to proceed ex parte in the matter against the management on 3.9.97 and also passed the Award against the management on 22.12.97, which was duly published by way of Notification dated 11.9.1998.

6. From the perusal of the impugned order as well as the award, it is apparent that the service of notice in the claim petition on reference by the State had duly been affected but none had chosen to appear on behalf of petitioner-Management. The Tribunal has also recorded the finding in para-7 of the impugned order to the effect that the petitioner had moved to the Tribunal against the impugned Award belatedly after 34 days of publication of the Notification, for which no justifiable or satisfactory reason was explained. Besides, there was intervening gap of 3 years and 4 months in moving to the Tribunal for recalling ex-parte Award.

7. The petitioner has placed reliance upon the following judgments:

Karnataka State Road Transport Corporation and Another Vs. Sindhanoor Veerabhadrappe and Another, Grindlays Bank v. Central Govt. Industrial Tribunal (1979 (38) FLR 401) APSRTC v. K. Bhoomiah and Anr. (1987 II LLN 240) Ramjas College Delhi vs. Labour Court No.IV, Delhi and Ors. 1989 I LLN 794.

8. I have examined the ratio of the aforesaid decisions, which are not attracted to the instant case, being distinguishable.

9. As a result of the above discussion, this writ petition fails and is dismissed in limine.