

(2011) 04 DEL CK 0040

In the Delhi High Court

Case No : Letters Patent Appeal No. 923 of 2010

The Management of General Industries Company and Another	APPELLANT
Vs	
Satish Kumar	RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Citation : (2011) 130 FLR 430 : (2011) LLR 792

Hon'ble Judges : Dipak Misra, C.J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Kum Kum Jain, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—In this intra-Court appeal filed by the General Industries Company, the Appellant, the challenge is to the order dated 5th October, 2010 by which the learned single Judge has dismissed the Writ Petition (Civil) No. 10507/2006. In the said writ petition, the Appellant had challenged the ex parte impugned award dated 8th December, 2004 passed by the Industrial Adjudicator in I.D. No. 346/1999. By the said award, the Industrial Adjudicator had held that the Appellant had not been able to prove and establish misconduct by the Respondent-workman. The Respondent had worked for nine years but instead of reinstatement and back wages, lump sum compensation of Rs. 70,000/- has been directed to be paid by the Appellant to the Respondent. The Appellant had also challenged the order dated 10th March, 2006 dismissing his application for setting aside the ex parte award.

2. The industrial dispute was referred vide order dated 14th July, 1999. The Respondent had filed statement of claims stating that he had started working with the Appellant with effect from 3rd April, 1989 but his services were terminated on 14th October, 1998. His last drawn wages were Rs. 2,361/- per month. The averments in the statement of the claims were proved by the Respondent by evidence by way of affidavit. The Respondent denied that he was

absenting from duties or was threatening the management. He had stated that he was unemployed but his wife was working in an export house. He had his own house. The Appellant had filed written statement but did not lead evidence and failed to prove that the services of the Respondent-workman were terminated in accordance with law.

3. The aforesaid award was made on 8th December, 2004 and was published in the gazette on 27th July, 2005. On 19th September, 2005, the Appellant filed an application for setting aside the ex parte award. By order dated 10th March, 2006, the application for setting aside of the ex parte award was dismissed by the Industrial Adjudicator holding, inter alia, that the same had been filed beyond 30 days of publication of the award and, therefore, the Labour Court had become functus officio.

4. Learned single Judge in the impugned order dated 5th October, 2010 has noticed the said facts and has dismissed the writ petition. He has upheld the finding of the Industrial Adjudicator given in the order dated 10th March, 2006 that he had become functus officio after 30 days of the publication of the award and, therefore, he did not have jurisdiction and authority to recall the ex parte award.

5. Learned Counsel for the Appellant has relied upon Anil Sood Vs. Presiding Officer, Labour Court II, and Radhakrishna Mani Tripathi Vs. L.H. Patel and Another, and it is submitted that the Industrial Adjudicator did not become functus officio after 30 days of the publication of the award and, therefore, had jurisdiction to entertain the application for setting aside of the ex parte award.

6. In Radhakrishna Mani Tripathi (supra), the ex parte award was made on 12th June, 1998 and was published on 5th August, 1998 and on 29th January, 1999 the application was filed for recall of the award. The Supreme Court held that the Industrial Tribunal was competent to entertain the application for setting aside of the ex parte award and upheld the judgment of the High Court. However, what is relevant and material is that the case was governed by the Industrial Disputes (Bombay) Rules, 1957 (Bombay Rules, for short). Rule 26(2) of the Bombay Rules postulate that an application for setting aside of an ex parte award, order or decision can be made within 30 days of the receipt of the copy thereof. In Radhakrishna Mani Tripathi (supra), it was noticed that the application for setting aside of the award was filed within 2 days of the receipt of the copy of the award and was within the time stipulated in Rule 26(2) of the Bombay Rules. Bombay Rules are not applicable in Delhi.

7. In Radhakrishna Mani Tripathi (supra), reference was made to the judgment of the Supreme Court in Grindlays Bank Limited v. Central Government Industrial Tribunal 1981 SCC 309 as well as the judgment in the case of Anil Sood (supra). It was held that the reliance placed on these two decisions and Section 17A of the Act which deals with enforcement of the awards does not negate and is not repugnant to Rule 26(2) of the Bombay Rules. There was no conflict or

contradiction between the two and Rule 26(2) of the Bombay Rules operates within its own field.

8. Judgment in the case of Anil Sood (supra) was considered by the Supreme Court in Sangham Tape Company Vs. Hans Raj, . In the said case, the ex parte award was passed on 5th February, 1996 but the application for setting aside the ex parte award was made after a lapse of 30 days from the date of publication. The application was allowed and the ex parte award was set aside. This order was successfully challenged before the High Court, which allowed the writ petition. The matter was taken to the Supreme Court but without success. Decision of the Supreme Court in Grind lays Bank Limited (supra) was referred to and was explained as under:

8. The said decision is, therefore, an authority for the proposition that while an Industrial Court will have jurisdiction to set aside an ex parte award but having regard to the provision contained in Section 17A of the Act, an application therefore must be filed before the expiry of 30 days from the publication thereof. Till then Tribunal retains jurisdiction over the dispute referred to it for adjudication and only upto that date, it has the power to entertain an application in connection with such dispute.

9. It is clear from the aforesaid paragraph that the decision in the case of Grind lays Bank Limited (supra) holds that the Industrial Adjudicator has jurisdiction to set aside the ex parte award but having regard to the provisions of Section 17A of the Act, an application for setting aside an ex parte award must be filed before expiry of 30 days from the publication of the award and not afterwards. If an application for setting aside an ex parte award is filed after 30 days of the publication of the award, then the Industrial Adjudicator will not have jurisdiction to entertain the said application as he becomes functus officio. This is clear from paragraph 8 quoted above and from the following observations in Sangham Tape Company (supra):

10. In view of this Court's decision in Grind lays Bank (supra), such jurisdiction could be exercised by the Labour Court within a limited time-frame, namely, within thirty days from the date of publication of the award. Once an award becomes enforceable in terms of Section 17A of the Act, the Labour Court or the Tribunal, as the case may be, does not retain any jurisdiction in relation to setting aside of an award passed by it. In other words, upon the expiry of 30 days from the date of publication of the award in the Gazette, the same having become enforceable, the Labour Court would become functus officio.

10. Judgment in the case of Anil Sood (supra) was also considered by the Supreme Court in M/s. Sangham Tape Company (supra) and it was observed as under:

12. This Court in Anil Sood (supra) did not lay down any law to the contrary. The contention raised on the part of Mr. Jain to the effect that in fact in that case an application for setting aside an award was made long after 30 days cannot be

accepted for more than one reason. Firstly, a fact, situation obtaining in one case cannot be said to be a precedent for another. [See *Mehboob Dawood Shaikh Vs. State of Maharashtra*, . Secondly, from a perusal of the said decision, it does not appear that any date of publication of the award was mentioned therein so as to establish that even on fact, the application was made 30 days after the expiry of publication of the award. Furthermore, the said decision appears to have been rendered on concession.

11. In the light of the aforesaid discussion, reliance placed by the Appellant on *Radhakrishna Mani Tripathi (supra)* and *Anil Sood (supra)* is misconceived. It may be noted here that a Division Bench of this Court has taken similar view in LPA No. 860/2010 titled *Greaves Cotton Limited v. Government of NCT of Delhi and Ors.*, decided on 6th December, 2010.

12. In view of the aforesaid, we do not find any merit in the present appeal and the same is dismissed.