
(1981) 02 RAJ CK 0027
In the Rajasthan High Court
Case No : Civil Writ Petition No. 28 of 1981

The State of Rajasthan and Another	Vs	APPELLANT
Bhanwar Lal and Another		RESPONDENT

Date of Decision : 25-02-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1981) RLW 165 : (1981) WLN 61

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

G.M. LODHA, J.—This writ petition has been filed by the State of Rajasthan and the Assistant Engineer, Public Health Engineering Department, Rajasthan Jaipur against the order dated 29th August, 1979 rejecting the application of the petitioners for setting aside the ex-parte award. It is not in dispute that the date of appearance was 8.3.1979. On this date the State or respondent No. 2 Assistant Engineer or its authorised representative did not appear. The case was then adjourned on 3.5.1979 for 19.6.1979 and on that date also the authorised representative of the petitioner did not appear, although on 3.5.1979 an unauthorised person was present according to the application of the petitioner for setting aside ex-parte order, the order for proceeding ex-parte was, therefore, passed on 3.5.1979. No efforts were made by the petitioners to move application for setting aside ex-parte order after this upto 19.6.1979 when the case was fixed up for further proceedings.

2. On 19.6.1979 none appeared and therefore, the proceedings were taken and on 20.6.1979 award was given.

3. The only reason given in the application for setting aside experte order is about non-appearance on 19.6.1979. The absence on 19.6.1979 is not Levant and even if there is sufficient cause for non-appearance on that date it could not

result in setting aside the order passed on 3.5.1979.

4. The Labour Court was therefore, correct in holding that no sufficient cause has been shown for non-appearance of these petitioners on 3.5.1979.

5. Mr. Mathur, submitted that reason given for nonappearance for 19.6.1979 was sufficient, therefore, award should have been set aside and proceedings should be started afresh. I am not impressed by the submission of Teamed counsel for the petitioner, in the proceedings before Labour Court when the State and its functionaries did not attend the Court on three or four subsequent hearings as would be evident from the dates given above, application for setting aside award by showing some reason which may be assumed to be good reason for the non-appearance on 19.6.1979 cannot be entertained. The crucial order is dated 3.5.1979 when Court ordered the proceedings to be taken ex-parte, nothing has been said for showing good and sufficient cause for non-appearance on 3.5.1979, on 19.6.1979 presence or absence is wholly irrelevant and immaterial.

6. I am, therefore, in agreement with the view taken by the Labour Court that there was no good reason for setting aside the award which was given ex-parte on account of consistant and repeated absence of State and the Assistant Engineer.

7. The Labour Court has already observed that by remaining absent continuously on number of hearing the State Functionaries have shown scant regard for the Labour Court. To this I have to add that by filing writ application under Article 226 of the Constitution, the petitioner have only burdened the State Exchequer un-necessarily. Instead of filing such writ application, the State should have probed into the matter of negligence of the officers concerned who did not attend the labour Court hearing on three subsequent dates and would have considered whether they can be saddled with the liability, which has been fastened on the State. That is all the more necessary when in a social welfare legislation and in the Labour Court where a workman comes for relief is the subject matter of litigation. The relief which should have given by the State itself was ultimately given by the Labour Court and therefore, there was no occasion to challenge it before this Court.

8. By interfering in such matters, this Court cannot put premium on the negligence of the State functionaries, first is not giving relief in social welfare legislation and dragging the employee in Labour Court and then avoiding attendance in the Labour Court lastly making an attempt to drag the workman to this Court, even after the Labour Court has passed an un-contested award.

9. The writ application is, therefore, dismissed in limine.