

(1966) 09 AHC CK 0010
In the Allahabad High Court
Case No : Special Appeal No. 76 of 1966

Tulsipur Sugar Co. Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-09-1966

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2, 4K, 5B, 6(5), 6(6)

Citation : AIR 1967 All 430 : (1968) 1 LLJ 420

Hon'ble Judges : R. Chandra, J; Jagdish Sahai, J

Bench : Division Bench

Advocate : Bishun Singh and B.C. Agarwal, for the Appellant; Mangi Lal, Ratan Lal and J.S. Trivedi, for the Respondent

Final Decision : Dismissed

Judgement

Sahai, J.—This special appeal is directed against the judgment of B. N. Nigam, J. dated February 2, 1966, dismissing writ petition No. 502 of 1964 filed by the appellant, the Tulsipur Sugar Company, Limited (hereinafter referred to as the company). The Central Government appointed a Central Wage Board for the Sugar Industry for working out a wage structure and for determining the categories of employees to be brought within the scope of the proposed wage fixation and also for working out the principles governing the grant of bonus. The Central Wage Board made its recommendations which were accepted by the Government. The U. P. Government published a notification in the State Gazette of April 27, 1961 reproducing the recommendations made by the Central Wage Board. One of the recommendations that the Central Wage Board made was that "the wages and dearness allowance specified" in Clause (6) of the recommendations were to "take effect from November 1, 1960". After the Central Wage Board had made its recommendations and after the same had been accepted and published in the Gazette, a dispute arose between the company and the labour. The dispute was taken up by the Union of the workers of the Company known as the Swatantra Chini Mill Karamchari Union, Tulsipur

(hereinafter referred to as the Union). The State Government u/s 4-K of the U. P. Industrial Disputes Act (hereinafter, referred to as the Act) referred the following dispute to the Labour Court at Lucknow on 14th of May, 1963:

"Should the employers be required to classify their workmen, named in the Annexure as shown in column 4 against each therein and place them in appropriate pay scale in terms of U. P. Government Order No. 2309 (ST)/ XXXVI-A-273 (ST) 1960, dated April 27 1961 as amended and extended to date? If so, with effect from what date and with what other details?"

2. The Labour Court gave its award on 6th of November 1963 holding that three of the persons mentioned in the annexure were not entitled to any relief but Sarvasri Kailash Nath Srivastava and Shanker Nath Srivastava were entitled to be fitted as Assistant Accountant in grade, II-B and as manufacturing clerk, clerical grade IV respectively. In the award the Company was directed to do so within a period of one month after the award came in force.

3. The State Government got the award published in the State Gazette dated 7th of December, 1963.

4. The Company allowed Sarvasri Kailash Nath Srivastava and Shanker Nath Srivastava the posts and grades which have been awarded to them by the Labour Court, but not from the 1st of November, 1960. The Company took tip the position that they were entitled to those posts only after the award had been enforced. The Union thereupon made an application before the Labour Court Lucknow to amend the award. The Labour Court purporting to act u/s 6(6) of the Act amended the award and clearly stated that the relief given to Sarvasri Kailash Nath Srivastava and Shanker Nath Srivastava was to take effect from the 1st of November, 1960. In the State Gazette dated 20th of June 1964 the order of the Labour Court, Lucknow amending the award was published in extensor. The concluding paragraph of that order reads:

"It is, therefore, directed that the employers shall allow the respective nomenclature and grade to these two workmen with effect from 1-11-60. The order be published in the official gazette in the manner prescribed u/s 6 (6) of the Act."

5. The Company approached this Court by filing the writ petition aforesaid on 3rd of September, 1964. The prayer in the writ petition is that this Court.

"may be pleased to issue a writ in the nature of certiorari after calling the records of the case and quashing Annexure 6, or to any other writ. order or direction quashing annexure 6 appropriate under the circumstances of the case and the costs of the petition be awarded."

6. The writ petition came up for hearing before Nigam J. The following two submissions were made before him on behalf of the Company:

1. That the Labour Court had no jurisdiction to amend the award because it had

not committed any clerical or accidental mistake.

2. That the Labour Court having already specified a date in its previous award and the award as originally made being prospective in its application could not have been made retrospectively applicable from the 1st of November 1960.

No other submission was made before him.

7. The learned single Judge repelled both the submissions made on behalf of the Company and dismissed the writ petition.

8. Mr. Bishun Singh, who has appeared for the appellant before us. has reiterated the two submissions that were made before the learned single Judge We proceed to consider them seriatim.

9. Admittedly a Labour Court or an Industrial Tribunal is a Tribunal of limited jurisdiction. It is not one of the regular courts which functions in this country. The long title of the Act reads:

"to provide for powers to prevent strikes and lock-outs, to settle industrial disputes and for other incidental matters."

The preamble of the Act reads:

"Whereas it is necessary to provide for powers to prevent strikes and lock-outs and for the settlement of industrial disputes and other incidental matters;

It is hereby enacted as follows:"

As far back as in the AIR 1949 111 (Federal Court) it was held by the Federal Court that the Industrial Tribunals are not regular courts nor have they to decide disputes according to the normal law of the land.

10. An analysis of the various provisions of the Act reveals that a Labour Court or an Industrial Tribunal is not entitled to take cognizance of any matter unless it is referred to it specifically u/s 4-K of the Act. In other words it is not a court or Tribunal where institution can be made without reference by the authorities mentioned in the Act, Section 4-K of the Act reads:

"Reference of disputes to Labour Court or Tribunal--Where the State Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer, the dispute or any matter appearing to be connected with, or relevant to, the dispute to a labour Court if the matter of industrial dispute is one of those contained in the First Schedule or to a Tribunal if the matter of dispute is one contained in the First Schedule or the Second Schedule for adjudication:

Provided that where the dispute relates to any matter specified in the Second Schedule and is not likely to affect more than one hundred workmen, the State Government may, if it so thinks fit, make the reference to a Labour Court."

The only other provision under which a reference can be made to a Labour Court or an Industrial Tribunal is Section 5-B of the Act under which the employers and the workmen by a written agreement can refer a matter to a Labour Court or Tribunal for arbitration. There is no provision in the Act under which a Labour Court or Industrial Tribunal can take cognizance of a dispute suo motu without there being a proper reference made either u/s 4-K of the Act or u/s 5-B of the Act. The only other provisions that may be considered are Sections 6-F and 6-H of the Act, but in the case of former there must be a pending reference already made. The latter provision does not deal with a reference or with the resolving of an industrial dispute, but only with enforcing the recovery of payments already due to a workman.

11. From what we have said above it clearly follows that Labour Court or Industrial Tribunal seizes jurisdiction only when a reference is made to it and not otherwise. It has no powers to act suo motu. Section 6-D of the Act reads:

"Commencement and conclusion of proceeding-

Proceedings before a Labour Court or Tribunal shall be deemed to have commenced on the date of reference of a dispute to adjudication, and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable u/s 6-A."

This section clearly provides that the jurisdiction of the Labour Court or the Industrial Tribunal would commence on the date when the reference is made to it and shall cease on the date when the award becomes enforceable after being published in the State Gazette, that is to say one month after its publication. The Labour Court purported to act under Sub-section (6) of Section 6. which reads:

"A Labour Court, Tribunal or Arbitrator may, either of its own motion or on the application of any party to the dispute, correct any clerical or arithmetical mistakes in the award, or errors arising therein from any accidental slip or omission. Whenever any correction is made as aforesaid, a copy of the order shall be sent to the State Government and the provision of this Act, relating to the publication of an award shall mutatis mutandis apply thereto."

This provision admittedly confers on the Labour Court or the Tribunal or the Arbitrator, as the case may be, the jurisdiction to correct any clerical or arithmetical mistakes in the award or errors arising therein from any accidental slip or omission. The question for consideration, however, is whether such a power can be exercised even after the award has been published in the State Gazette and has become enforceable on the expiry of one month from the date of publication. Mr. Bishun Singh, the learned counsel for the appellant, contends that the Labour Court or Tribunal or Arbitrator becomes functus officio after the award has become enforceable and it cannot recreate or reconstitute itself for correcting an error.

12. Having given the matter our anxious consideration, we see no escape from

the conclusion that a Labour Court or Industrial Tribunal becomes functus officio with regard to a particular dispute after its award becomes enforceable u/s 6-A of the Act, that is, after one month from the date of the publication of the award in the Government Gazette. Section 6(6) of the Act, no doubt confers on a Labour Court or Tribunal or Arbitrator the power to correct arithmetical mistakes or accidental errors or omissions, but it does not provide the period during which such a correction can be made. It does not even say, like Section 152, C. P. C., that correction can be made at any time. Mr. Bishun Singh points out that Section 6 (6) of the Act uses the words "whenever any correction is made as aforesaid", but in our opinion the word "whenever" does not mean at any time. It only means that when the correction is made, a copy of it shall be sent to the State Government for publication. The word "when ever", therefore, has no relation to any period of limitation. That being the position, we have to find out if there is any period of limitation provided or a Labour Court or Industrial Tribunal or Arbitrator as the case may be is free to correct any error or mistake at any time and the period of limitation is indefinite.

13. An analysis and study of various provisions of the Act reveals to us that the power cannot be exercised indefinitely. Our reasons are as follows:

(a) Section 6-D of the Act categorically declares that the Labour Court or the Industrial Tribunal would be deemed to have concluded its proceedings on the date on which the award becomes enforceable, that is, after one month of the implication of the award. This, in other words, means that with regard to that particular dispute the Labour Court or the industrial Tribunal ceases to have jurisdiction or becomes functus officio after one month of the publication of the award. When an application is made for correcting an award or amending it, it is not the continuation of the old proceedings, but a completely new proceeding. In *Ganpat Rai Hiralal and Another Vs. Aggarwal Chamber of Commerce Ltd.*, while dealing with an amendment application u/s 152, C. P. C., their Lordships observed:

"There is no warrant for the view that the amendment petition is a continuation of the suit or proceedings therein. It is in the nature of an independent proceeding, though connected with the order of which amendment is sought. Such a proceeding is governed by the law prevailing on its date ,... ..".

We see no reason why we should hold that the proceeding started on an application made u/s 6 (6) of the Act is the continuation of the old proceedings. Those proceedings must also be treated to be completely new proceedings. The Labour Court or Industrial Tribunal not being competent to take cognizance of a matter or industrial dispute itself, but only on a reference it cannot, in our opinion, start fresh and new proceedings for amending the award once the award has become final.

(b) Section 6(6) of the Act does not provide that the correction can be made at any time. It is true that whenever a correction is made, the order shall be sent to

the State Government who shall publish it in the State Gazette. This is clear from the words.

"Whenever any correction is made as aforesaid a copy of the order shall be sent to the State Government and the provision of this Act, relating to the publication of an award shall mutatis mutandis apply thereto."

If the award has been corrected before it is published under Sub-section (3) of Section 6 of the Act, there would be no occasion for the correction being republished because the award would be published in the amended form. Therefore the circumstance that the legislature thought it fit to provide that the provisions relating to the publication of an award shall mutatis mutandis apply even to an order making a correction clearly shows that the correction can be made even subsequent to the publication of the award. But the question is what is the outer limit in which the correction can be made. In our judgment correction can be made within the period commencing from the date of the award to the date when it becomes enforceable. Sub-section (3) of Section 6 of the Act reads:

"Subject to the provision of Sub-section (4) every arbitration award and the award of a Labour Court or Tribunal shall, within a period of thirty days from the date of its receipt by the State Government, be published in such manner as the State Government thinks fit."

Section 6-A of the Act reads:

"An award.....shall become enforceable on the expiry of thirty days from the date of its publication u/s 6:"

Sub-section (6) of Section 6 of the Act reads:

"Subject to the provisions of Section 6-A, an award published under Sub-section (3) shall be final and shall not be called in question in any court in any manner whatsoever."

From these provisions it follows that the award must be published within one month of its receipt by the State Government from the Labour Court or Industrial Tribunal and that it becomes enforceable after the expiry of thirty days from the date of its publication. Once it is published, it becomes final. It, therefore, appears to us that even though the correction or amendment can be made subsequent to the signing of the award by the Labour Court or Industrial Tribunal or its remission to the State Government or its publication in the State Gazette, no amendment or alteration can be made after the expiry of thirty days from the date of its publication in the State Gazette. It is only during the period commencing with the signing of the award and its being enforceable u/s 6-A of the Act that a correction or amendment can be made as provided by Section 8 (6) of the Act. We draw support for our conclusion from the circumstance that once an award becomes enforceable u/s 6-A of the Act, it becomes final u/s 6 (5) of the Act and cannot be called in question in any court. It would also be noticed

that whereas Sub-section (5) of Section 6 of the Act provides that the finality shall be subject to the provisions of Section 6-A of the Act, it does not provide that it shall be subject to the provisions of Section 6 (6) of the Act.

(c) By means of an award an industrial dispute is resolved. The award gives the manner in which that dispute is to be resolved. The word "award" has been defined by Section 2(c) of the Act which reads:

"Award" means an interim or final determination of any industrial dispute or of any question relating thereto by any Labour Court or Tribunal and includes an arbitration award made u/s 5-B: "

It is, therefore, clear that the function of an award is to issue directions resolving a dispute. An award once enforced and implemented becomes incapable of enforcement in the sense that nothing is left to be enforced. If the idea was that an award could be amended indefinitely at any time, however, remote it may be from the date of its enforcement, the result would be that the Labour Court or the Industrial Tribunal would have a power to non-force an award which had already been implemented. If that interpretation were to be given the result would be that disputes already resolved would be recreated afresh and matters finally concluded will be reopened afresh. That obviously could not be the intention of the legislature. To illustrate what we are saying, let us take a case where the award is that Rs. 5,000/- be paid to a workman. Can there be an amendment in the award so as to set aside the liability for payment even after it has been made? The answer clearly is that the award having been implemented in the sense in which a decree is satisfied, it loses its capacity of being enforced with the result that there can be no amendment to it, in the same way as no amendment can be made in a decree which has already been satisfied.

(d) A Labour Court or an Industrial Tribunal cannot recreate or reconstitute itself to make an amendment. It draws its jurisdiction only by a reference made to it and it ceases to have jurisdiction once, the award is enforced. Consequently vis-a-vis that dispute, it does not exist at all. It is true that, in the case of Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, , the fact that the Tribunal had ceased to exist was not treated as a bar to the issue of a writ of certiorari to quash its order, but in the present case the question before us is not whether a writ of certiorari can be issued to quash the order of the Labour Court, but whether the Labour Court, after becoming functus officio, could recreate itself or could seize itself of a new matter in proceeding in which it had become functus officio. In our opinion, the case of Hari Vishnu Kamath is clearly distinguishable.

14. Inasmuch as we are taking the view that after the expiry of one month from the date of the publication of the award the Labour Court became functus officio, we hold that it could not correct or amend the award nor any order passed by it correcting or amending the award is enforceable by itself. It becomes, enforceable only after the award has been published. The award becomes enforceable not by virtue of the order of the Labour Court or the Tribunal, but

because of its publication in the State Gazette. Once the publication is made and the award becomes final, it cannot be disturbed because the finality of the award cannot be taken away by the unilateral act of the Labour Court or Industrial Tribunal. We are, therefore, of the opinion that the Labour Court had no jurisdiction to make the amendment at the time when it purported to do so.

15. We are in agreement with the learned single Judge that it is a case of accidental omission or error. One of the questions referred to the Labour Court was as to from which date the employers were required to classify the workmen concerned. The Labour Court had to give some answer to this question. They did not specify the date clearly. Once the right of the workmen was upheld, the date could be no other than 1st of November 1960. The Labour Court, no doubt, in its award dated 6-11-1963 said that "the employers are directed to do this within one month after this award has come in force." Mr. Bishun Singh reads this as to mean that the Company was required to classify their workmen after the expiry of one month from the date when the award became enforceable. In our judgment that is clearly misreading the award.

16. Having perused the award we are of the opinion that the Labour Court did not clearly answer the question as to from what date the Company was to classify their workmen even though it held that they were required to classify them. The words reproduced above and relied upon by Mr. Bishun Singh only mean that the Company was directed to comply with the directions made in the award at the latest within one month from the date when the award became enforceable, u/s 6-A of the Act and not that the workmen were not entitled to be classified with effect from 1-11-1960. The award could be implemented on becoming enforceable but from a back date (1-11-1960). But even though we are holding that the Labour Court had before it a case of clerical or accidental mistake, and for that reason could amend the original award, we are satisfied for the reasons already stated that in the present case it could not do so.

17. The second submission of Mr. Bishun Singh is in a way connected with the first submission. He has submitted that the award was to have prospective application and for that reason the workmen were to be classified after the award had been enforced and not from the 1st of November, 1960. We see no merits in this submission. We have carefully perused the award and have already pointed out earlier that there is nothing in it to indicate that the classification was to be made with effect from the date the award became enforceable and not with effect from 1-11-1960. It is true that language used by the Labour Court is not very happy and it has not been very categorically stated that the workmen would be classified with effect from 1-11-1960. But it is equally true that the Labour Court has not used words to indicate that it wanted the classification of workmen to be with effect from the date the award became enforceable. No doubt the award is silent on the question as to with effect from what date the workmen should be classified.

18. Even though we have upheld the submission of Mr. Bishun Singh that the

corrections were made beyond the period during which the Labour Court was competent to do so, we are satisfied that it is not a fit case in which a writ should be issued. The main submission of Mr. Bishun Singh was that a correction of an accidental or clerical, mistake or omission could be made not u/s 6(6) of the Act, but u/s 11-B of the Act. He has never disputed the power of the Labour Court to make the amendment on the ground of accidental or clerical mistake or omission. In other words the submission of Mr. Bishun Singh is hyper-technical. Whether the order making correction or amendments in the award could be made u/s 11-B or u/s 6(6) of the Act is wholly immaterial, once it is conceded that a clerical or arithmetical mistake or accidental slip or omission could be corrected. Admittedly the award dated 6-11-1963 was not challenged in this Court and became filial between the parties after it was published. If the award is to be enforced, there must be a date with effect from which the classification is to be made. On this point the award is silent. The interest of justice required that the date with effect from which the classification was to be made should be clearly given in the award and this it precisely what the Labour Court did, not do. Mr. Bishun Singh contends that Section 6-A(4) of the Act provides that

"..... the award shall come into operation with effect from such date as may be specified therein, but where no date is specified, it shall come into operation on the date when the award becomes enforceable under Sub-section (1) or Sub-section (2) as the case may be."

Enforceability of an award is quite a different matter from the direction contained in it as to with effect from what date the classification will take place. Sub-section (4) of Section 6-A of the Act, therefore, does not meet the question that has been raised before us the same being that the award dated 6-11-1963 was silent as to with effect from what date will the classification take place and to that extent the second question involved in the reference inadvertently remained unanswered by the Labour Court. Admittedly the award dated 6-11-1963 became final, the petitioner-appellant having never challenged it. And vet it could not be fully enforced in the absence of the direction as to with effect from what date the classification was to take place. Interest of justice required that such a date should be given and as already pointed out earlier this is precisely what the Labour Court had not done. Under these circumstances it appears to us that the order passed by the Labour Court dated 9th May 1964 is imminently just and must be upheld by this Court. It is well settled that the writ jurisdiction is equitable and no party, who has no equity and justice on its side, is entitled to get a writ issued. We have already said earlier that the order dated 9-5-1964 serves the cause of justice and for that reason should be upheld. We may also add that the matter is far too petty. There are only two workmen involved and the amount involved is also not much. We are told it is below Rs. 4,000. It is of utmost importance that the employers should treat their labour properly. Social justice is the key note of our Constitution and the basic principle on which a welfare State works. Under these circumstances we are of the opinion that the Company would have been better advised not to invoke the jurisdiction of this

Court under Article 226 of the Constitution of India or at any rate not to have filed this special appeal. Once they have accepted the award dated 6-11-1963, they should have implemented it rather than try to circumvent it by challenging an ancillary and necessary order. We are, therefore, of the opinion that even though technicalities are on the side of the appellant, justice and equity are against him, and B. N. Nigam, J. was right in dismissing the writ petition.

19. We dismiss this special appeal, but direct the parties to bear their own costs.