
(2000) 05 DEL CK 0059

In the Delhi High Court

Case No : Civil Writ Petition No. 3420 of 1996

Virender Kumar and Others

APPELLANT

Vs

Presiding Officer and Others

RESPONDENT

Date of Decision : 01-05-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 86 FLR 474

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Ms. Urmil Narang, for the Appellant; Mr. B.N. Dhar, for the Respondent

Judgement

A.K. Sikri, J.—Rule

Since short question is involved in the matter, the matter is taken up with consent of the parties and finally disposed of at this stage.

2. Petitioners who are four in number had raised industrial dispute which was referred for adjudication by Secretary (Labour) Government of NCT of Delhi on 5.11.93. Although both the parties, namely petitioners and respondent no.3 appeared before the Industrial Tribunal where the matter was being adjudicated. On 4th September, 1995 as nobody appeared on behalf of the petitioners, Industrial Tribunal proceeded ex-parte and passed ex-parte award. Thereafter, petitioners filed application for setting aside ex-parte award which was dismissed by impugned order dated 6th February, 1996 holding that there was no sufficient cause for non-appearance by any of the four petitioners or their representative on the date when the award was passed.

3. Case of the petitioners in the application for setting aside ex-parte award was that when the matter was listed on 10th July, 1995 and on that date was adjourned for 4th September, 1995, petitioner No. 1 who was present Along with clerk of counsel for the petitioners wrongly heard and noted the date as 4th

October, 1995 for filing rejoinder. Accordingly, when petitioner came on 4th October, 1995 and did not find the matter listed in the cause list, on enquiring about the matter and after inspecting the record, he came to know that the matter was adjourned to 4th September, 1995 and not on 4th October, 1995. It was submitted that since wrong date was noted in the case, petitioners could not appear on 4th September, 1995. While dismissing the application, Industrial Tribunal made the following observations:-

"In the application it is averred that the workman having signed this application noted the date to be that of 4.7.95 thought it was on 4.9.95. The order sheet of 10.7.95 goes to show that none of the workman had appeared all either on that date or before the said date of 10.7.95. There is virtually not material on record to show of there being the sufficient cause for non-appearance of any of the 4 workmen or their representative on the date when the award was passed. Merely stating the fact of the date to have been noted as 4.7.95 as against 4.9.95 fixed in the reference I find it can not be said to be a sufficient cause specially when none of the workman though noted in number have been shown made available on record any sufficient cause for setting aside the award passed on 4.9.95. I see of there being no sufficient cause made available on record for the purpose of setting aside the same. The application is devoid of any substance hence be rejected."

4. A perusal of the aforesaid portion of the order shows that version of the petitioner was not accepted on the ground that order-sheet of 10th July, 1995 and that of the previous date i.e. 1st March, 1995 does not show the appearance of the workman and Therefore it could not be said that workman noted wrong date in the case i.e. 4th October, 1995. This observation of the Industrial Tribunal are contrary to the record, which would be clear from orders dated 1st March, 1995 and 10th July, 1995 which are reproduced below:-

"1.3.95:

Present : Shri N.D. Pancholi for W/M with Shri M.M. Sood for Management. Fix 10.7.95 for Rejoinder & Issue. P.O. has gone to attend the D.P.C. Meeting."

"10.7.95:"

Present : None for management. Clerk for Shri N.D. Pancholi for W/M.

Fix 4.9.95 for Rejoinder.

5. A perusal of the aforesaid order shows that on 10th September, 1995 nobody was present on behalf of the Management but clerk of the authorised representative of the workman was present. Likewise on 1st March, 1995 authorised representative of the workman was present. Therefore Industrial Tribunal was wrong in stating that nobody appeared on behalf of the workman on 10th July, 1995 and 1st March, 1995. The averments of the petitioners that petitioner no.1 was present on both the dates cannot be disbelieved in view of the fact that attendance of the authorised representative of the workman on 1st

March, 1995 and that of the clerk on 10th July, 1995 has been recorded. Once the attendance of authorised representative and/or his clerk is recorded it was not necessary to record the attendance of petitioner No.1 also. No presumption could be made that when the attendance of petitioner no.1 is not recorded he was not present. It is a matter of common knowledge that normally workman or management when they appear Along with their authorised representative, their attendance is not recorded if authorised representative is present and his attendance is recorded. Moreover, application of petitioner No.1 was supported by his affidavit to the effect that he was present in the Court on 10th July, 1995 and he wrongly noted the date as 4th October, 1995 instead of 4th September, 1995 and for this reason nobody could appear before the Industrial Tribunal on 4th September, 1995. It is also a matter of record that but for 1st March, 1995, petitioners have been appearing in this case and pursuing the case. Therefore, the Industrial Tribunal was not right in stating that no sufficient cause is shown for non-appearance on 4th September, 1995. Rule is made absolute. Impugned order dated 6th February, 1996 is accordingly set aside. Application filed by the petitioners-workmen for setting aside exparte award dated 4th September, 1995 is allowed. Ex-parte award dated 4th September, 1995 is set aside. Parties may appear before the Industrial Tribunal-III on 5th July, 2000 and Industrial Tribunal will proceed with the reference from the last date the matter was heard i.e. 4th September, 1995. Let record of the Tribunal be send back. Accordingly, the writ petition stand disposed of.