

(2000) 07 RAJ CK 0089
In the Rajasthan High Court
Case No : C.S.A. No. 477 of 1999

Virendra Bhandari

APPELLANT

Vs

Rajasthan State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 04-07-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(5)
Rajasthan Industrial Disputes Rules, 1958 — Rule 10

Citation : (2001) 1 LLJ 396

Hon'ble Judges : N.N. Mathur, J; D.N. Joshi, J

Bench : Division Bench

Advocate : M. Mridul and R.S. Saluja, for the Appellant; Sangeet Lodha, for the Respondent

Final Decision : Dismissed

Judgement

N.N. Mathur, J.—The two appeals are directed against the judgment of the learned single Judge. D.B. Special Appeal No. 477/1999 is against the judgment in S.B. Civil Writ Petition No. 20/1992, wherein the writ petition filed by Rajasthan State Road Transport Corporation, hereinafter referred to as, the "Corporation"s has been accepted and the second Reference, made by the State Government dated December 20, 1988 u/s 10 of the Industrial Disputes Act has been quashed. As a consequence, the order of the Labour Court dated August 14, 1991 has also been quashed. D.B. Special Appeal No. 536/1999 has been filed against the judgment in S.B. Civil Writ Petition No. 3778/1998, wherein the Corporation challenged the award dated March 20, 1998 passed on second Reference made by the State Government vide Notification dated December 20, 1988. Learned single Judge has set aside the award dated March 20, 1998, in view of decision rendered in S.B. Civil Writ Petition No. 20/1992.

2. The few necessary facts are as follows:

The appellant-workman entered in the services of the Corporation as a cleaner on temporary capacity under the order of Assistant, Mechanical Engineer dated

October 15, 1974. During his tenure of service, he is alleged to have committed various acts of misconduct for which he was given notice from time to time. The reference of the notices as detailed in the, reply filed by the Corporation before the Labour Court, are given as follows:

- "1. Wilful absence during the period Augusts, 1976 to August 25, 1976;
2. Wilful absence for the period September 25, 197-6 to October 5, 1976;
3. On October 9, 1976, did not return on duty after lunch hours;
4. A notice dated April 6, 1977 was given for his continuous absence after January 30, 1976;
5. Wilful absence during the period January 31, 1978 to February 21, 1978;
6. Wilful absence for the period July 20, 1978 to July 30, 1978 and August 1, 1978 to August 23, 1978. Joined duty on August 24, 1976 and again remained absent;
7. On June 7, 1982, he left the workshop without permission and without handing over the relevant registers and also misplaced the key of the office on account of which the lock had to be broke open;
8. A notice was given on August 24, 1983, alleging that on July 21, 1983, a Roadways Bus bearing No. 4667 on Barmer-Dhorimana was driven by him unauthorisedly in spite of the fact that the driver Gopal Singh was on duty. It is alleged that the driver Gopal Singh, Conductor Prem Singh and the appellant-workman had consumed liquor. They were in drunken condition. The vehicle was driven by the workman-appellant rashly on account of which two persons sitting on the terrace of the bus fell down and died;
9. On July 27, 1982, he misbehaved with the higher authorities of the department. It is alleged that he pulled up the sleeves and abused the officer in filthy language;
10. In the attendance register of employees for the month of April and May, 1982, he is alleged to have fraudulently permitted the signatures of some of the employees, who were actually not on duty." In reply, a complete calendar of his absence has been given at page 63 of S.B. Civil Writ Petition No. 20/1992.

3. The appellant was first suspended on June 18, 1982 and thereafter was served with a chargesheet on June 29, 1982. A Departmental Enquiry was instituted against him. The Divisional Mechanical Engineer conducted the enquiry and found the charges proved against him. Accordingly, his services were terminated by order dated January 12, 1984. The appellant preferred an appeal against the said order, which was rejected by order of the General Manager (Operation) dated June 1, 1984. The appellant raised an industrial dispute on submission of failure report by the Conciliation Officer, the State Government by order dated July 5, 1985 made a reference to the Labour Court, Jodhpur, referring the

following question: ,

(Vernacular matter Omitted)

4. The Labour Court on receipt of Reference registered a Labour case No. 6/85 and issued notice to the parties returnable on August 1, 1985. On that day, neither the appellant appeared nor any person authorised on his behalf appeared. In spite of the fact that no one appeared on behalf of the appellant, the matter was adjourned to August 8, 1985 but on that day also, nobody appeared to submit the statement of claim. The learned Judge of the Labour Court took the service of notice of reference as valid service on the appellant for August 1, 1985. Thus, the learned Judge made "No dispute award" on the ground that non-appearance of the appellant allows that he was not interested in getting the dispute decided, referred by the State Government and, as such, there existed no industrial dispute between the parties. For convenience, the relevant part of the order is extracted as follows:

(Vernacular matter Omitted)

5. The aforesaid "no dispute award" was published u/s 17 of the Industrial Disputes Act on August 6, 1985. The appellant submitted an application on June 16, 1986 before the Labour Court for recalling of the order dated August 8, 1985. The said application was rejected by order dated August 29, 1987. The appellant thereafter again approached the Conciliation Officer for settlement of the dispute. The State Government by notification dated December 20, 1998 referred the same dispute for adjudication to the Labour Court vide Notification dated December 20, 1988. The Judge, Labour Court, Jodhpur, after receipt of the reference issued notice to the concerned parties. The appellant submitted the claim. The respondent-Corporation submitted a reply to the said statement of claim containing therein that a domestic enquiry conducted against appellant was in accordance with law and does not suffer from any illegality or invalidity and the charges against the appellant were duly proved and the said charges were of very serious nature and that being so, the order of removal from service of the Corporation passed against him, cannot be said to be in any manner excessive or exorbitant. The Corporation also raised a preliminary objection to the effect that as the Labour Court has already given "no dispute award" the instant reference was not maintainable. The said preliminary objection was rejected by the order of the Labour Court dated August 14, 1991 on the ground that the principle of resjudicata would not apply to the facts and circumstances of the case for the reason that earlier, "no dispute award" was not given on merits of the case and that being so, the same dispute which was earlier raised and decided under the said "No dispute award" can be raised and decided afresh by the Labour Court. The Corporation challenged the said order dated August 14, 1991 and the Government. Notification making second (sic) dated March 20, 1998 has also been challenged by the Corporation by way of Writ Petition, which was registered as S.B. Civil Writ Petition No. 3778/1998 "R.S.R.T.C. v. Virendra Bhandari".

6. In S.B. Civil Writ Petition No. 20/ 1992, the learned single Judge held that the award, which was passed by the Labour Court on August 8, 1985, was not challenged by the Workman and permitted to become final. In view of the said award, the second reference is barred by the principle of res judicata as held in the case of Shri Bijay Cotton Mills Ltd. Vs. The Rastriya Mill Mazdoor Sangh and Others, . In view of the finding, the learned single Judge allowed the writ petition and quashed the Notification dated December 20, 1988 and also the order of the Labour Court dated August 14, 1991. As far as the second writ petition is concerned i.e. S.B. Civil Writ Petition No. 3778/1998 in view of the judgment rendered in S.B. Civil Writ Petition No. 20/1992, the award dated March 20, 1998 has also been set aside.

7. It is contended by Mr. M. Mridul, senior advocate, that the learned single Judge has committed error in considering the order dated August 8, 1985 as the award. It is submitted that it is not an award within the meaning of Section 2(d) of the Industrial, Disputes Act, inasmuch as there was no determination of the industrial dispute on merit. Dismissal of reference in default for non-appearance of a workman in an enquiry is not an award u/s 2(d) of the Act and, therefore, the State Govt. was not precluded from making a reference u/s 10(1)(c) of the Act. It is also submitted that even if the proceedings were ex parte on account of the default of the workman, the Tribunal was not absolved of its duty to make its determination on dispute and answer the reference. It is also submitted that the Industrial Disputes Act is conceived to establish industrial peace and harmony between the employer and employee. The mechanical and technical orders of termination of proceedings might further embitter the relations between the Management and the Labour. Learned counsel has heavily placed reliance on a decision of the Apex Court in Cox and Kings (Agents) Ltd. Vs. Their Workmen and Others, It is submitted that the controversy involved is squarely covered by the said decision of the Apex Court. It is further submitted that the learned single Judge has committed gross error in distinguishing the binding decision for unsustainable reasons. Learned Counsel has also referred to (1) Management of Bangalore Woollen, Cotton and Silk Mills Co. Ltd. Vs. The Workmen and Another, (4) Krishna Kutty Nair Vs. Industrial Tribunal, Trivandrum,

8. On the other hand, Mr. Sangeet Lodha appearing for the Corporation, submitted that the order dated August 8, 1985 is an award inasmuch as the Labour Court has decided that no industrial dispute exists. The said decision has attained finality and, as such, it is not open for the appropriate Government to say that the industrial dispute exists to make a second reference. It is also submitted that it is not open in the instant proceedings to examine the legality of the order dated August 8, 1985. As regards the doctrine of res judicata, it is submitted that it is founded on consideration of high public policy i.e. to give finality to the litigation. It is further submitted that if the party does not appear before the Labour Court and file the statement of claim, there is nothing with the Labour Court for the adjudication. Thus, even if the order dated August 8, 1985 is not construed strictly an award then also, the first reference remains

unanswered. In that situation also, no second reference can be made. It is also submitted that no proceedings can be kept open for all time to come. On the question of desirability of second reference, Mr. Mridul has vehemently argued on the hypothesis that there may be a reference, the answer to which may affect large number of employees and for the default of one workman, the reference is dismissed in default and second reference is not permitted to be made, it would lead to a disastrous situation as that will adversely affect the large number of workmen or to say that the negligence of one workman will adverse by affect number of workmen. Dealing with the said argument, Mr. Sangeet Lodha has also advanced the argument on the basis of hypothesis that if the second reference is permitted then there is no guarantee that the workman will appear and file the statement of claim and the second reference may also be dismissed in default. If such is the attitude, then why second reference only, the State will be obliged to make hundred references and it will be entirely at the mercy of the workman concerned. In such circumstances, the only reasonable view possible is to take the first reference to its logical conclusion i.e. in case of dismissal in default, get it restored and co-operate with the Court proceeding in determination of the question referred.

9. We have considered the rival contentions. It is now well-settled that the doctrine of *res judicata* is wholesome one, which is applicable not merely to the matters governed by the provisions of the CPC but to all litigations. It proceeds on the principle that there should be no unnecessary litigation and whatever claims and defences are open to the parties, should all be put forward at the same time provided no confusion is likely to arise by so putting forward all such claims. Reference may be made to *Bombay Gas Co., (1975) 4 SCC 690*

In *Gulam Abbas and Others Vs. State of Uttar Pradesh and Others*, a petition was filed under Article 226 of the Constitution of India before the Apex Court by the persons of Shiya community of Mohalla Doshipura, Varanasi against the various actions of the respondents representing the Sunni community of the same Mohalla, which constituted a serious threat or infringement of the fundamental rights guaranteed under Articles 25 and 26 of the Constitution in the matter of enjoying their religious faith and performance of religious rites, practices and observances on certain plots and properties situated in the said Mohalla. By a counter affidavit filed in the reply, the respondents of the Sunni community resisted the relief on various grounds including the plea that the petition was barred by the principle of *res judicata* in view of the decision in Civil Suit No. 232. Repelling the objection, it was contended by the respondents that the decision in the said suit would not operate as *res judicata* against them or the Sunni community of the Mohalla Doshipura inasmuch as Munsif s Court in Varanasi did not have either pecuniary or subjectwise jurisdiction to grant the relief claimed in the writ petition. The Apex Court after referring to various decisions, made a distinction from the technical aspects *res judicata* as contained in Section 11, CPC and the general doctrine of *res judicata*, the Court held that the technical aspects of Section 11, CPC as for instance pecuniary or subjectwise

competence of earlier suit, would be immaterial in the subsequent proceedings, when general doctrine of res judicata is invoked. The Court emphasized that it is in the interest of the public at large that finality is attached to the binding decision pronounced by the Courts of competent jurisdiction and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. In the said case, the Court held that customary right of Siya community of Mohalla Doshipura, Varanasi to perform religious rites on certain plots at the time of Moharram was established by earlier decree of the Court and that would operate as res judicata in subsequent proceeding irrespective of technical objection or subjectwise jurisdiction of the Court in earlier suit. The Court thus observed (at page 2212 of AIR):

"It is well settled that Section 11 of the C.P.C. is not exhaustive of the general doctrine of res judicata and though the rule of res judicata as enacted in Section 11 has some technical aspects the general doctrine is founded on considerations of high public policy to achieve two objectives namely, that there must be a finality to litigation and that individuals should not be harassed twice over with the same kind of litigation. Technical aspects of Section 11 of C.P.C. as for instance, pecuniary or subjectwise competence of the earlier forum to adjudicate the subject-matter or grant reliefs sought in the subsequent litigation would be immaterial when the general doctrine of res judicata is to be invoked."

10. Bearing in mind the general doctrine of res judicata, we revert to the initial issue as to whether the proceedings dated August 8, 1985 is an award and in case, it is not an award, what is the remedy i.e. second reference u/s 10(l)(c) of the Act or restoration of the proceedings in first reference?

11. In order to better appreciate the issue, it is necessary to read some of the relevant provisions of the Industrial Disputes Act.

The term "award" has been defined in Section 2(b) of the Act as follows:

"Section 2(b) - "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made u/s 10-A."

The term "Industrial Dispute" has been defined in Section 2(k), which reads as follows:

"2(k) - "industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

Section 10 provides that where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing, refer the dispute to the Labour Court or to the Industrial Tribunal as specified in the second or third Schedule.

Section 12 provides duties of Conciliation Officer. Sub-section (5) of Section 12 provides that if on a consideration of the report, referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, (Labour Court, Tribunal or National Tribunal), it may make such reference. Where the appropriate Government does not make such a reference, it shall inform its reasons therefor. Section 15 casts a duty on the Labour Court, Tribunal or the National Tribunal to hold its proceedings expeditiously and submit its award to the appropriate Government. Section 19 provides period of operation of settlements and awards.

12. Now, we may avert to the decision of the Apex Court in Cox & Kings (Agents) Ltd. 's case (supra) on which the heavy reliance has been placed by Mr. Mridul, learned counsel for the appellant. In Cox & Kings (Agents) Ltd.'s case (supra), the Management dismissed from service three of their workmen after a domestic enquiry conducted against them on certain charges. A reference was made u/s 10 read with Section 12(5) of the Act by the Lt. Governor of Delhi. A preliminary objection was raised that since no demand notice has been served on the Management, no industrial dispute had legally come into existence and, as such, the reference was invalid and the Labour Court had no jurisdiction to adjudicate. The Labour Court accepted the preliminary objection by order dated September 27, 1972 and made the award saying that the question of deciding the issue as in the reference or other issues, does not arise as the industrial dispute under reference did not come into existence in accordance with law. In these circumstances, the workmen on October 25, 1972 raised a dispute by sending the demand notice on the Management. By order dated May 2, 1973, the Lt. Governor again made a reference to the Labour Court for adjudication of the same matter relating to termination of services of the said workmen. The Management raised inter alia a preliminary objection that second reference within one year of the first award dated September 27, 1972 was not competent in view of what is contained in Section 19 of the Act. The Labour Court rejected the preliminary objection by order dated May 2, 1973. A final award was made by the Labour Court on May 2, 1973. The Management impugned the said award by filing a petition under Article 226 of the Constitution of India before the High Court. The writ petition was decided against the Management. The Apex Court held that the Labour Court's determination dated September 27, 1972 did not possess the attributes essential to bring it within the definition of an award. The Court also held that the mere fact that the award was published by the Government u/s 17(1) of the Act did not confer that status on it. As regards the second reference, the Court held that it was not barred by anything contained in Sub-section (3) or other provisions of Section 19 of the Act. Dealing with the questions as to whether the order dated September 27, 1972 is an award or not, the Court after reading the various provisions of the Industrial Disputes Act, observed as under 1997-I-LLJ-471 at p.476:

"From a conjoint reading of Clause (b) of Section 2 and Sub-sections (1) and (4) of Section 10, it is clear that in order to be an award within the second part of

the definition, a determination must be (1) an adjudication of a question or point relating to an industrial dispute, which has been specified in the Order of Reference or is incidental thereto, and (ii) such adjudication must be one on merits."

Thus, following" the decision in Cox & Kings (Agents) Ltd. 's case (supra), we are of the view that the order dated August 8, 1985 is not an award as there is no adjudication of question or the point referred to the Labour Court as specified in the order of reference. We are unable to agree with Mr. Sangeet Lodha that decision of the Labour Court, to the effect that finding recorded by the Labour Court that no industrial dispute exists, is in itself a determination of question relating to the industrial dispute and that would fall within the definition of term "award" under the Industrial Disputes Act. Such a contention has been rejected in the said case in para 30 of the judgment.

13. However, the next crucial question which arises for consideration is that in the facts of the case, whether it was open for the State Government to make a second reference on the same matter relating to termination of service of the respondent-workman. The Cox & Kings (Agents) Ltd. 's case (supra) is of no assistance to the appellant so far as this aspect of the case is concerned. In the said case, the first reference itself was invalid as no demand notice has been served on the Management and, as such, no industrial dispute had legally come into existence. Therefore, in fact there was only one valid reference i.e. under the order dated May 2, 1973. Thus, in our view, Cox & Kings (Agents) Ltd. 's case (supra) is not an authority on the point of second reference.

14. The scheme of the Industrial Disputes Act shows that after failure of conciliation, a reference is made u/s 10(1)(c) read with Section 12(5) of the Industrial Disputes Act to the Labour Court or the Industrial Tribunal, Section 15 of the Act casts a duty on the Tribunal or the Court to submit its award to the appropriate Government.

15. The State Government has framed rules in the name of Rajasthan Industrial Disputes Rules, 1958 in exercise of powers conferred by Section 38 of the Industrial Disputes Act, 1947. Rule 10(b) provides that while referring an industrial dispute for adjudication to the Labour Court or the Tribunal, the State Government shall direct the party raising a dispute to present and file a statement of claim complete with relevant documents, list of witnesses with the Labour Court or the Tribunal within fifteen days of the receipt of the order of reference and also forward a copy of such statement with each one of the opposite parties involved in the dispute, Sub-clause (2) provides for filing of written statement together with documents etc. Sub-clause (9) provides that in case any party defaults or fails to appear at any stage, the Labour Court or the Tribunal, as the case may be, may proceed with the reference ex parte and decide a reference application in absence of the defaulting party. A proviso appended to sub-rule (9) empowers the Labour Court or the Tribunal to revoke the order of ex parte proceedings if it is satisfied that the absence of the parties

was on justiciable grounds. Rule 22 also empowers the Tribunal or the Labour Court to proceed ex parte in case of either of the parties being absent without sufficient grounds. Rule 22-A provides a provision for setting aside an ex parte decision. Thus, it is evident that a reference is to be decided on the basis of statement of claim, written statement, rejoinder and the other evidence. In absence of the parties, the Tribunal or the Court may proceed ex parte. The Tribunal or the Court has also been empowered to restore the ex parte proceedings. There is no provision of dismissing a reference proceeding in default. The situation has arisen in the instant case as there is absolutely no material on the basis of which the reference can be decided even ex parte for the reason that the party raising dispute did not choose to file the statement of claim as required by Section 10(b)(1) of the Industrial Disputes Act. In a case where some material is placed on record, the Labour Court or the Tribunal may proceed with a reference ex parte and decide the reference application in absence of the defaulting party but in a case where there is absolutely no material on record, there is nothing to be decided. Even in such a case, the Presiding Judge is asked to decide ex parte just looking at the reference, it would be nothing but just a mockery of the provisions of the Industrial Disputes Act. We cannot lose sight of the fact that a mischievous party may harass by repeatedly approaching the State Government and asking for making a reference. The reference can also not be kept pending for an indefinite period and left only to the mercy of the person at whose instance, the reference is made. In fact a person who has not discharged his own obligation by filing statement of claim cannot ask the Labour Court to decide it on merit.

16. Dealing with an identical situation, the Apex Court in *New India Assurance Co. Ltd. Vs. R. Srinivasan*, has held that where case is called up for hearing and the party is not present, the Court or the judicial or quasi-judicial body is under no, obligation to keep the matter pending before it or to pursue the matter on behalf of the complainant, who had instituted the proceedings. The Court held that in absence of the party, the Court will be well within the jurisdiction to dismiss the complaint for non-prosecution. The Court also held that in absence of any provision, the Court or the Tribunal have an inherent power and jurisdiction to dismiss a proceeding for want of prosecution and also to restore on good cause being shown for non-appearance. The Court also held that it was not open for the complainant to file a fresh complaint on the same cause of action and the only remedy was to get the complaint restored. The Apex Court, after referring the observations of MAHMOOD, J., in his dissenting judgment in the Full Bench case of *Narsingh Das v. Mangal Dubey* ILR 1983 All 183, has observed as follows:

"We only intend to invoke the spirit of the principle behind the above dictum in support of our view that every Court or judicial body or authority, which has a duty to decide a lis between two parties, inherently possesses the power to dismiss a case in default."

17. Thus, the reference made by the appropriate Government can be dismissed

for want of prosecution, where the party, at whose instance, the reference has been made, does not appear. In such a case, keeping in view the high public policy that there must be a finality to the litigation and the individual should not be harassed twice over with the same kind of litigation, the only remedy is to get the reference restored for good reasons. In a case where the Labour Court or the Tribunal has refused to restore, the party can approach the higher forum, if there existed good grounds and can ask for mandamus to restore the proceedings and answer the award as required by Section 15 of the Act. But, so long as the first reference has not been answered, the appropriate Government is not competent to make the second reference. Thus, in our view, the learned single Judge has rightly set aside the order of the Labour Court dated August 14, 1991.

18. Dealing with the second Special Appeal i.e. bearing No. 536/1999, it does not survive in view of what we have said above. However, it is to be noticed that even the second reference has been adjudicated by the Labour Court. All the allegations of the misconduct have been proved against the appellant. It is amazing that the Judge, Labour Court, contrary to the decisions of this Court and the Apex Court, has interfered with the order of punishment by substituting the order of termination by order of stoppage of three increments with cumulative effect. We fail to understand how the Labour Court found it to be a case of disproportionate punishment. The view taken by the Labour Court on the face is shocking.

19. Consequently, we find no merit in both the appeals and the same are dismissed. There shall be no order as to costs.