

(2003) 05 RAJ CK 0037
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1232 of 2003

Vishan Singh

APPELLANT

Vs

The Labour Court and Others

RESPONDENT

Date of Decision : 01-05-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (2004) 3 RLW 1572 : (2004) 2 WLC 361

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Vijay Vishnoi, for the Appellant; R.S. Saluja, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Garg, J.—This writ petition under Article 226/227 of the Constitution of India has been filed by the petitioner against the respondents with a prayer that by an appropriate writ, order or direction the judgment dtd. 6.2.2002 (Annex. 1) passed by the learned Labour Court, Jodhpur (respondent No. 1) by which the respondent No. 1 (Labour Court, Jodhpur) passed no dispute award and the order dtd. 22.1.2003 (Annex. 4), by which the learned Labour Court (respondent No. 1) rejecting the application filed by the petitioner for recalling the order dtd. 6.2.2002 (Annex. 1), be quashed and set aside.

2. The facts as put forward by the petitioner are as under:

- i. That the State Government vide notification dtd. 20.5.98 made a reference to the respondent No. 1 (Labour Court, Jodhpur) to the effect whether raising of dispute after nine years was proper and justified and if so, whether termination of services of petitioner Vishan Singh with effect from 1.4.86 was proper or not.
- ii. That on receipt of the reference, a case was registered and notices were issued to the parties.
- iii. That on behalf of the petitioner his representative Shri Vijay Mehta appeared

on 19.5.2001 and submitted statement of claim.

iv. That a reply was filed by the respondents to the statement of claim on 26.9.2001 and the matter was posted on 22.11.2001 for filing affidavit on behalf of the petitioner, but on 22.11.2001, affidavit was not filed by the petitioner and the case was adjourned to 19.1.2002. On 19.1.2002 also, affidavit was not filed and the case was fixed on 6.2.2002, but on 6.2.2002 also affidavit was not filed and the Learned Labour Court passed no dispute award.

v. It may be stated here that no doubt on 6.2.2002, the petitioner was not present, but his representative was present but since on 6.2.2002, the petitioner was not present and affidavit was also not filed on his behalf, therefore, the learned Labour Court, Jodhpur (respondent No. 1) through judgment dtd. 6.2.2002 (Annex. 1) passed no dispute award.

vi. That thereafter, the petitioner filed an application (Annex. 2) for recalling the judgment dtd. 6.2.2002 (Annex. 1) along with an application (Annex. 3) u/s 5 of the Limitation Act.

vii. That the learned Labour Court (respondent No. 1) vide order dtd. 22.1.2003 (Annex. 4) rejected the application filed by the petitioner inter alia holding:

that no dispute award dtd. 6.2.2002 (Annex. 1) was passed because of negligence on the part of the petitioner as he did not file affidavit and since termination order was passed on 1.6.86, therefore, there was no justification for deciding the matter now after so many years.

v. Aggrieved from the judgment dtd. 6.2.2002 (Annex. 1) and order dtd. 22.1.2003 (Annex. 4) passed by the learned Labour Court, Jodhpur (respondent No. 1), the petitioner has preferred this writ petition.

3. Heard and perused the record.

4. I am of the view that a little more sensitive approach is required to be adopted by the Courts in process of dispensation of justice. It is not at all desirable to drive out a party out of Court by way of punishment for whatever reason.

5. I may remind an age old well established principle that every court has inherent power to act ex debito justitiae to do real and substantial justice for which it exists. It has always been anxiety of the Court to decide an issue on merit instead of driving out a party from the court for one or the other technical reason.

6. Even if the party was remiss in complying with the directions of the court, the matter could have been restored on payment of cost. Refusal to restore a matter is bound to result in a meritorious matter being thrown out and the cause of justice will be defeated. The Apex Court in Collector Land Acquisition v. Mst. Katiji and Ors. (1), has observed, thus:

"It must be grasped that judiciary is respected not on account of its power to

legalize injustice on technical ground but it is capable of removing injustice and is expected to do so."

7. Recently the Apex Court in Rohit Singhal v. Principal (2), dealing with the question of discipline has observed that efforts must be made to salvage the situation in order to secure ends of justice.

8. Thus, I am of the view that respondent No. 1 should have decided the reference on merits and should not have rejected the same on technical grounds.

9. On 6.2.2002 when no dispute award (Annex. 1) was passed, representative of the petitioner was present in Court. Therefore it cannot be said that no efforts were being made by the petitioner, though no affidavit was filed by the petitioner. In these circumstances, the learned trial Court should have allowed the application (Annex. 2) for recalling the judgment dtd. 6.2.2002 (Annex. 1) and should have decided the reference on merits.

10. For the reasons mentioned above, the present writ petition deserves to be allowed and the judgment dtd. 6.2.2002 (Annex. 1) and order dtd. 22.1.2003 (Annex. 4) deserve to be set aside.

"Accordingly, the present writ petition is allowed and the judgment dtd. 6.2.2002 (Annex. 1) and order dtd. 22.1.2003 (Annex. 4) passed by the respondent No. 1 (Labour Court, Jodhpur) are set aside and the respondent No. 1 (Labour Court, Jodhpur) is directed to decide the reference on merits after giving an opportunity of hearing to both the parties. Both the parties are directed to appear before respondent No. 1 (Labour Court, Jodhpur) on 2.6.2003." Cost made easy.