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Court : Chennai

Decided On : Oct-20-2016

Judge : S. Manikumar & N. Authinathan

Appeal No. : W.A. No. 2900 of 2012

Appellant : K. Selvaraj

Respondent : The Ponds (India) Limited Leather Products Division Rep. its Manager and Another

Judgement :

(Prayer: Writ appeal filed under clause 15 of the Letters Patent filed against the order of this Court made in W.P. No.8959 of 1998 dated 30.10.2006.)

S. Manikumar, J.

1. Writ appeal is directed against the order made in W.P.No.8959/1998 dated 30.10.2006, by which, the writ court, has declined to issue a writ of certiorarified mandamus, to quash the order of the Presiding Officer, Labour Court, Pondicherry, made in I.A.No.21 of 1995 in I.D.No.55 of 1993 dated 19.1.1998 and consequently, declined to issue directions to the Labour Court, Pondicherry, which disposed of the industrial dispute.

2. Facts leading to the appeal are that on 19.4.1984, the appellant joined Ponds (India) Ltd, Leather Products Division, Mettupalayam, Pondicherry - 8. On 1.7.1988 and his services were regularised. By order dated 14.5.1993, he was terminated from service, on the basis of some charges and irregularities. The appellant raised a dispute, which culminated in I.D.No.55/1993 on the file of the Presiding Officer, Labour Court, Pondicherry. The said ID came to be dismissed on 6.1.1995, on the ground that claim statement was made belatedly.

3. Thereafter, the appellant filed I.A.No.21/1995, to set aside the exparte order dated 6.1.1995. The said I.A.No.21/1995 came to be dismissed on 19.1.1998.

4. Assailing the correctness of the latter order dated 19.01.1998, the appellant has filed W.P.No.8959/1998 and contended that after filing ID No.55/1993, the appellant has taken steps for preparation of the claim statement and gave instructions to his counsel. The previous Industrial Relation Manager, having hostile relationship with the appellant, was transferred and no officer was appointed till January 1995. There was also election, for the office bearers. Management was also suggesting settlement. In the above said circumstances, the claim statement could not be filed. The appellant has contended that non-filing of claim statement was neither willful nor wanton.

5. Before the writ court, in the counter affidavit, the first respondent, Ponds (India) Limited, has contended that though the dispute raised was numbered as ID No.55/1993 on 15.12.1993, the appellant took several adjournments to file claim statement. As he had failed to file the claim statement, for more than one year and six months, the Labour court, Pondicherry, vide order dated 6.1.1995 dismissed ID No.55/1993. Reasons given by the appellant for not filing the claim statement, have been denied, as false. Placing reliance on Rule 10B(1) of the Industrial Disputes (Central) Rules, 1957, the first respondent has contended that a claim statement, with relevant documents and list of witnesses should be filed within 15 days from the date of receipt of notice in the reference. Respondent has also contended that, as per Rule 10B(2) of the said Rules, the hearing date of the dispute has to be fixed not beyond one month from the date of receipt of claim statement and that the respondent has to file its written statement together with a

list of documents, within 15 days, from the date of the first hearing. The respondent has also contended that, as per Rule 10B(3), a further time of 15 days alone, can be granted and under Rule 10B(8) and the court shall not grant adjournment for a period exceeding seven days and in all, three adjournments alone can be granted, at the instance of parties. On the basis of the above rules, the first respondent, has contended that there was an inordinate delay of one year and six months, in filing the claim statement and the reasons assigned, are frivolous. Contention has also been made by the respondent that the appellant who has not filed the claim statement, within the prescribed time, and within the extended time, is not entitled to any indulgence, from the court.

6. Having regard to the intention of the Legislature in prescribing a specific time limit, for settling the industrial dispute, at the earliest, and by observing that the appellant has protracted the proceedings, for more than 1-1/2 years, and by recording that there are no justifiable reasons, to interfere with the order of the Labour Court, Puducherry, vide order dated 30.10.2006, the writ court, in W.P.No.8959/2008, sustained the order of the Labour Court made I.A.No.21/1994 in ID No.55/1993.

7. Assailing the correctness of the order of the writ court, Mrs.T.V.Sai Srujan, learned counsel for the appellant reiterated the very same grounds, urged before the Labour court/writ court, and further contended that the provisions of the Industrial Disputes Rules 10B(1), 10B(2), 10B(3) and 10B(8), referred to in the counter affidavit of the respondent, are only directory and not mandatory. It is also her contention that the Labour Court has failed to appreciate the facts and circumstances of the case, as to how the delay in filing the claim statement had occurred, and she also submitted that when the same was pointed out, the writ court, ought to have addressed the same, in proper perspective, taking note of the termination of the services of the appellant and according to her, at the relevant time, there was also talks of settlement. She also relied on a judgment in *Kailash v. Nanhku* reported in 2005 (4) SCC 480.

8. Per contra, Mr.Anand Gopalan, learned counsel for the first respondent, submitted that when ID No.55/1993 was dismissed on 6.1.1995, for not filing the

claim statement, the appellant could have very well filed a petition to set aside the exparte order, within one month from the date of dismissal of ID, which has not been done. It is also the submission of the learned counsel for the first respondent that, once an award is passed, the same requires to be published in the Gazette, within three months and inasmuch there is a failure to file the above said application, to set aside the award, within the period, the adjudicator/Labour Court, becomes functus officio. He further submitted that there is no irregularity or illegality, in the order of the Labour Court made in I.A.No.21/1995 in I.D.No.55/1993 dated 19.1.1998 and the order of the writ court, and for the reasons, stated supra, prayed for dismissal of the writ appeal.

9. On the above rival contentions, we posted the matter for orders. On this day, Ms.Akshita, learned counsel for the appellant placed reliance on a decision of the Punjab and Haryana High Court made in Technological Institute of Textiles vs. Labour court and another reported in Manu/PH/0319/1988, and contended that an exparte award, of dismissal of reference for non-prosecution simpliciter, without going into the merits of the case, cannot be treated either as an interim or final determination of the industrial dispute or any question relating thereto, to constitute an award, and therefore, the Tribunal has not become functus officio, and the Tribunal has to consider the petition, to set aside the award, if prayed for, when sufficient cause is shown. By referring to Section 2(b) of the Industrial Disputes Act, 1947, which defines an award, to mean an interim or final determination of any industrial dispute or of any question relating thereto, by any Labour Court, Industrial Tribunal or National Tribunal, and includes an arbitration award made, under Section 10A of the Act, learned counsel for the appellant submitted that even though a party remained exparte, the Tribunal ought to have recorded a finding on the dispute.

10. Placing reliance on the decision in Andhra Handloom Weavers Co-operative Society v. State of Andhra Pradesh and ors reported in (1963) II LLJ 488 AP, learned counsel for the appellant, submitted that there is no final determination of the dispute, by the Labour Court, and hence, the writ Court, ought to have addressed the above, in proper perspective.

11. Per contra, Mr. Anand Gopalan, learned counsel for the respondent submitted that the award has not been challenged, on the above grounds, but the appellant has only challenged the order in I.A.No.21/1995 in ID No.55/1993 dated 19.1.1998, and therefore, it is not open to the appellant, to advance arguments, for the first time, before this court in this appeal, when there was no challenge to the award. According to him, none of the grounds or arguments advanced, are tenable, to set aside the petition filed, and orders, impugned. According to him, arguments advanced for the first time, before this court, are not canvassed, either before the Labour Court or the writ court, as the case may be. On the facts and circumstances of this case, it could be deducted that, as rightly pointed out by the learned counsel for the respondent, exparte award has not been questioned, on the above grounds.

12. Following enquiry into the charges, on 14.05.1993, the appellant has been terminated from service. On the basis of a reference in G.O.RT. No.1245/93-LAB-ALL, dispute raised has been numbered on 15.12.1993, as ID No.55/1993, by the Labour Court, Pondicherry. Thereafter, the matter has been posted for filing claim statement, for several hearings. Adjournments have been granted for nearly 1-1/2 years. On 6.1.1995, ID No.55/1993 has been dismissed, for not filing the claim statement.

13. Material on record discloses that the appellant, has filed I.A.No.21/1995 on 24.8.1995, to set aside the order of dismissal of ID No.55/1993, under Section 11(1) of the Industrial Disputes Act, 1947, and filed a claim statement dated 23.8.1995, setting out the reasons, extracted supra. The appellant, has not, challenged the award, on the submissions, now made, for the first time, before this court.

14. Prayer to set aside the dismissal, has been opposed on the grounds that the appellant cannot enclose a claim statement, along with the interim application, unless the latter is considered and allowed. Relief sought for in I.A.No.21/1995 in I.D.No.55/1993 has also been opposed, on the ground that once the Labour Court, has become functus officio, there is no power to review, alter or modify the award. Further contention has been made by the first respondent that the petition to set

aside dismissal of I.A.No.55 of 1993, filed on 24.8.1995, is belated, and no valid reasons have been assigned.

15. Adverting to the above rival contentions and taking note of Rule 10B(1) of the Industrial Disputes Act, 1947, the learned Presiding Officer, Labour Court, Pondicherry, vide order dated 19.01.1998, in I.A.No.21/1995 in I.D. No.55/1993, has passed the following order:

"7. As per Rule 10B(1) of the Industrial Dispute for adjudication to a Labour Court or Tribunal by the Government the party raising the dispute has to file a statement of claim complete with relevant documents, list of reliance and witnesses within fifteen days of the receipt of the order of reference and as per Rule 10B(2) of the said rules on receipt of the claim statement the date of hearing be fixed not beyond one month from the date of order of the reference and written statement by the respondent shall be filed with list of documents and witnesses within fifteen days from the date of first hearing. Under Sub Rule 3 of Rule 10B of the said Rules further period of fifteen days may be granted. As per Rule 10B of the said Rules, the Court shall not ordinarily grant an adjournment for a period exceeding a week at time but in many case not more than three adjournments at the instance of the parties to the dispute. Therefore it is clear that the provisions of the Industrial Dispute (Central) Rules contemplate that the dispute be settled at an early point within the prescribed time limit and the parties shall have a duty to perform their part of obligation, so that the court, can perform its duty as per rule.

8. The averments made in the affidavit do not disclose any valid reason for non-filing of claim statement. The non-filing of the claim statement for over a year would show that the petitioner is not interested in the I.D.55/93 but only filed it with ulterior motive. There is no just cause to set aside the order of dismissal passed on 6.1.1995 by my learned predecessor."

16. Rule 10B of the Industrial Disputes (Central) Rules, 1957, reads as follows:

10B. Proceeding before the Labour Court, Tribunal or National Tribunal. (1) While referring an industrial dispute for adjudication to a Labour Court, Tribunal or National Tribunal, the Central Government shall direct the party raising the dispute

to file a statement of claim complete with relevant documents, list of reliance and witnesses with the Labour Court, Tribunal or National Tribunal within fifteen days of the receipt of the order of reference and also forward a copy of such statement to each one of the opposite parties involved in the dispute-.

(2) The Labour Court, Tribunal or National Tribunal after ascertaining that copies of statement of claim are furnished to the other side by party raising the dispute shall fix the first hearing on a date not beyond one month from the date of receipt of the order of reference and the opposite party or parties shall file their written statement together with documents, list of reliance and witnesses within a period of 15 days from the date of first bearing and simultaneously forward a copy thereof to the other party.

(3) Where the Labour Court, Tribunal or National Tribunal, as the case may be, finds that the party raising the dispute though directed did not forward the copy of the statement of claim to the opposite party or parties, it shall give direction to the concerned party to furnish the copy of the statement to the opposite party or parties and for the said purpose or for any other sufficient cause, extend the time limit for filing the statement under subrule (1) or written statement under sub-rule (2) by an additional period of 15 days.

(4) The party raising a dispute may submit a rejoinder if it chooses to do so, to the written statement(s) by the appropriate party or parties within a period of fifteen days from the filing of written statement by the latter.

(5) The Labour Court, Tribunal or National Tribunal, as the case may be, shall fix a date for evidence within one month from the date of receipt of the statements, documents, list of witnesses, etc., which shall be ordinarily within sixty days of the date on which the dispute was referred for adjudication.

(6) Evidence shall be recorded either in court or on affidavit but in the case of affidavit the opposite party shall have the right to cross-examine each of the deponents filing the affidavit. As the oral examination of each witness proceeds, the Labour Court, Tribunal or National Tribunal shall make a memorandum of the substance of what is being deposed. While recording the evidence the Labour

Court, Tribunal or National Tribunal shall follow the procedure laid down in rule 5 of Order XVIII of the First Schedule to the Code of Civil Procedure, 1908.

(7) On completion of evidence either arguments shall be heard immediately or a date shall be fixed for arguments oral hearing which shall not be beyond a period of fifteen days from the close of evidence. (8) The Labour Court, Tribunal or National Tribunal, as the case may be, shall not ordinarily grant an adjournment for a period exceeding a week at a time but in any case not more than three adjournments in all at the instance of the parties to the dispute: Provided that the Labour Court, Tribunal or National Tribunal, as the case may be, for reasons to be recorded in writing, grant an adjournment exceeding a week at a time but in any case not more than three adjournments at the instance of any one of the parties to the dispute.

(9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal or National Tribunal, as the case may be, may proceed with the reference ex parte and decide the reference application in the absence of the defaulting party: Provided that the Labour Court, Tribunal or National Tribunal, as the case may be, may on the application of either party filed before the submission of the award revoke the order that the case shall proceed ex parte, if it is satisfied that the absence of the party was on justifiable grounds-

(10) The Labour Court, Tribunal or National Tribunal, as the case may be, shall submit its award to the Central Government within one month from the date of arguments oral hearing or within the period mentioned in the order of reference whichever is earlier.

(11) In respect of reference under section 2A, the Labour Court or Tribunal, National Tribunal, as the case may be, shall ordinarily submit its awards within a period of three months:

Provided that the Labour Court, Tribunal or National Tribunal, may, as and when necessary, extend the period of three months and shall record its reasons in writing to extend the time for submission of the award for another specified period.

17. When the averments made in the affidavit, filed in I.A.No.21/1995 in I.D.No.55/1993, for not filing the claim statement within the prescribed period under Rule 10B of the Industrial Disputes (Central) Rules, 1957, are denied, as false, by the respondent, we examined the same, and of the considered view that there is no supportive material, to substantiate the same. Even taking for granted that there was some negotiation with the management, on the material placed before this court, we find that there is no supportive material. Needless to state that mere averments do not amount to proof. Delay of one year and six months, is inordinate, and not satisfactorily explained. Though learned counsel for the appellant made sincere efforts, to reverse the decision of the writ court, while taking note of the contra submissions, advanced by the respondent, and considering the reasons assigned, by the appellant, to set aside the exparte award, and on the facts and circumstances of the case, we are not inclined to interfere with the order of the writ court.

18. Considering the statutory provisions extracted supra, facts and circumstances of the case, reasons assigned by the appellant, for not filing the claim statement, for more than 1-1/2 years, due appreciation of the rival contentions made before the Labour court and the writ court, we are of the view that there is no illegality or irregularity, in the orders, impugned.

In the light of the above discussion and decision, this court is not inclined to reverse the order impugned in this appeal. Consequently, writ appeal is dismissed. No costs.

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