

Ralliwolf Ltd. Vs. Association of Engineering Workers and ors.

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Court : Mumbai

Decided On : Jun-21-1995

Reported in : [1996(73)FLR1012]

Judge : B.N. Srikrishna, J.

Appeal No. : Writ Petition No. 5343 of 1989

Appellant : Ralliwolf Ltd.

Respondent : Association of Engineering Workers and ors.

Judgement :

B.N. Srikrishna, J.

1. By this writ petition under Article 226 of the Constitution of India, the petitioner has impugned an Award dated 30th September, 1989 made by the Third Labour Court, Thane, in Reference (IDA) No. 137 of 1980 under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act').

2. According to the First Respondent-Union, the workmen concerned in the Reference, M.Y.Joshi was suffering from Schizophrenia from or about 9th August, 1979, resulting in his remaining absent from work. The petitioner company sent a registered A.D. letter to his address, which was returned unserved. It also attempted to serve a charge-sheet on the said workman for remaining absent for

more than a consecutive period of 10 days from 9th August, 1979. The charge-sheet also remained unserved. A notice about the charge-sheet and inquiry was published in a local Marathi daily, after which the company held an ex-parte inquiry against the workman and dismissed him from service. The First Respondent-Union raised an industrial dispute demanding reinstatement of the workman, which came to be referred to the Labour Court vide Reference (IDA) No. 137 of 1980.

3. The Labour Court in its Award has recorded a finding that the concerned workman had proved that he was prevented from attending his duty and also the inquiry on account of the mental sickness and that his relations had informed the Petitioner Company about the said fact. In paragraph 32 of the Award, there is reference to a Postal Receipt No. 4962 dated 9th February, 1980 and the original postal acknowledgment showing that the registered letter written by the wife of the concerned workman, Smt. Sunanda N. Joshi, was received by the Petitioner on 11th February, 1980, though a copy of the letter has not been filed on the record by the workman.

4. Mr. Bhatkal, learned counsel appearing for the Petitioner, pointed out the contention raised in paragraph 11 of the petition and urged that the petitioner had no opportunity to test the veracity of the three documents described in paragraph 11 of the petition, which were suddenly produced on 5th March, 1987 by the First Respondent after the close of the oral evidence and taken on record by the Labour Court. He contended that the petitioner had objected to the production and exhibition of the said documents and yet the Labour Court accepted the said documents without proper proof and relied on their contents for arriving at his Award. On this ground alone, the Petition should be allowed, according to Mr. Bhatkal.

5. It is true that proceedings before a Labour Court ought not to be technical, particularly with regard to admissibility of documents. Nonetheless, important documents of the nature described in paragraph 11 of the petition cannot suddenly be placed on record without the affected party having adequate opportunity to test their veracity. In the present case the Petitioner's stand was that it was not aware of the mental illness of the workman concerned. It had also denied receipt of the

letter dated 9th February 1980 sent by the wife of the concerned workman, Smt. Sunanda N. Joshi, by Registered A.D. post. In these circumstances, there appears to be some substance in the grievance that the Labour Court erred in taking document any evidence on record after the conclusion of the oral evidence, without opportunity to the Petitioner to test their veracity, and placing reliance thereupon. I am, therefore, of the view that the Award would have to be set aside on this short ground and the reference remanded to the Labour Court for giving proper opportunity to the parties. Mr. Kochar has no objection to this.

6. In the circumstances, the impugned Award dated 30th September 1989 is hereby quashed and set aside. Reference (IDA) No. 137 of 1980 is remanded to the Third Labour Court, Thane, for trial and disposal in accordance with law. The Labour Court shall specifically go into the proof and evidentiary value of the following three documents described in paragraph 11 of the Writ Petition :-

(i) Postal Receipt dated 9th December, 1980.

(ii) Registered Acknowledgment dated 9th December, 1980 and

(iii) Medical Certificate dated 15th February, 1980.

The parties shall be given opportunity to adduce further evidence only in order to prove or disprove the said documents and their contents. After recording evidence on these issues, the Labour Court shall hear the parties and make an Award deciding the Reference as expeditiously as possible, at any rate within six months from today.

7. In view of the fact that this Writ petition has been hanging fire for considerable time for no fault of the workman. I am of the view that the interests of justice would require an order of payment of subsistence amounts to the workman till the Reference is finally disposed of. Pending the Award, the workman shall be continued to be paid the amount payable under Section 17B of the Industrial Disputes Act at the last drawn rate as on the date of the Award, i.e. 30th September, 1989.

8. Rule is accordingly made absolute. There shall, however, be no order as to costs.
9. Office to send the writ immediately.
10. Certified copy expedited.

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