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Triveni Structurals Ltd. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Dec-09-2002

Reported in : 2003(3)AWC2235; [2003(96)FLR642]; (2003)1UPLBEC644

Judge : Anjani Kumar, J.

Acts : Constitution of India - Article 226

Appeal No. : C.M.W.P. No. 45853 of 1999

Appellant : Triveni Structurals Ltd.

Respondent : State of U.P. and ors.

Advocate for Def. : Ram Sheel Sharma, Adv. and ;S.C.

Advocate for Pet/Ap. : P.K. Mukerji, Adv.

Disposition : Writ petition dismissed

Judgement :

Anjani Kumar, J.

1. Petitioner-employer M/s. Triveni Structural Limited approached this Court by means of the present writ petition under Article 226 of the Constitution of India against the order dated 1.9.1999, Annexure-2 to this writ petition, whereby the Industrial Tribunal (I), Allahabad, (hereinafter referred to as the 'Tribunal') has

rejected the application filed by the petitioner-employer dated 17.5.1999, copy of which is attached as Annexure-5 to this writ petition and refused to set aside the ex parte award dated 25.9.1998, Annexure-1 to the writ petition, passed in Adjudication Case No. 1 of 1998.

2. The facts leading to the filing of present writ petition are that the respondent-workman was appointed on 13.1.1994, according to the case set up by the petitioner-employer in the present writ petition, on daily rate as casual worker. Thereafter he was appointed on different dates and lastly he was appointed, according to the petitioner, from the period from 13.11.1995 till 20.12.1995. The petitioner-employer further submitted that on 20.12.1995, the services of the workman concern stand automatically terminated- From the different dates, it is clear that the workman was initially appointed on 13.1.1994 and with artificial breaks, he was allowed to continue till 19.12.1995, when his services were terminated. It is further submitted that an application was filed by the respondent-workman before the Deputy Labour Commissioner for conciliation on 26.2.1996. The notice of this conciliation proceeding was issued by the Deputy Labour Commissioner and the petitioner-employer represented their case and ultimately since no conciliation was possible, therefore the matter was referred to the Tribunal for adjudication. The reference of the Tribunal runs as under :

^^D;k Isok;kstdksa }kjk viuslacfU/kr Jfed Jh xqykc pUnz iky iq= jh lnu yky dh lsok;sa fnukad 20-12-1995 lslekIr dj fn;k tkuk mfpr rFkk@vFkok oS/kkfud gS ;fn ugha] rks lacaf/kr Jfed D;k fgrykHk@vuqrks'k fjyhQ ikus dk vf/kdkjh gS ,o~e vU; fdl fooj.klfgr **

3. After receipt of the reference, the Tribunal has registered a case and issued notices to the respective parties. The respondent-workman has appeared pursuance to the aforesaid notice issued by the Tribunal, but the petitioner-employer, though the notices were sent by registered post A/D, did not turn up. The Tribunal has no option but to proceed ex parte after fixing several dates and thereafter given an ex parte award on 25.9.1998 holding that the termination of the services of the workman concerned was illegal and . unjustified and that the workman is entitled for re-instatement with continuity of service and full back

wages.

4. According to the employer, though the award dated 25.9.1998, was published on 15.4.1999, a letter dated 8.5.1999 was sent to the employer along with the copy of the award dated 25.9.1998 and it is clear from the date of despatch that the aforesaid letter along with the copy of the award was received by the employer on 14.5.1999. It is further submitted that after the receipt of the aforesaid award, the employer filed an application dated 17.5.1999, for setting aside the aforesaid ex parte award dated 25.9.1998 on the ground that they had no knowledge or information of the proceedings being going on before the Tribunal as the notice sent by the Tribunal has never been served or received by them (employer). The employer further stated that it is also clear from the order sheet of the Tribunal that the notices sent by the Tribunal to the employer by registered post A/D were presumed to have been served as neither the acknowledgment, nor undelivered cover was received back by the Tribunal. The employer, therefore, stated in the application that in fact this presumption of service being a rebuttable presumption. They have now sufficiently demonstrated from the affidavit filed in support of the aforesaid application that in fact they had never been served with any notice and also they have no knowledge in which only letter of the workman dated 14.5.1999 was attached. The workman filed reply/object ion denying the allegation of the employer made in the application for setting aside the ex parte award.

5. The Tribunal has elaborately dealt with the proceedings chronologically and has come to the conclusion that in fact the presumption that has been drawn by the Tribunal with regard to the service of notice upon the employer is in accordance with law and the employer have failed to demonstrate that in fact the notice was not served on them. The Tribunal has taken into consideration the affidavit filed by the employer that the employer have not stated that the address given in the notice was either incorrect, or such that postal department could not locate the address. On the contrary, at the back of the certified copy of the award, there is an endorsement of the process server with regard to the award that he went to the employer's premises, but he was not allowed to enter even in gate of the premises and, therefore, he returned back with the certified copy of the award and submitted a report dated 6.5.1999. It is the case of the workman that the employer have set

up their case that they have for the first time come to know about the ex parte award only when the workman concerned have filed an application for implementation of the award dated 25.9.1998. The Tribunal has considered the respective case set up by the employer as well as the contesting workman and refused to set aside the ex parte award and have recorded a finding that the employer have failed to demonstrate before the Tribunal that in fact they have no knowledge of the proceeding going on before the Tribunal. The employer in their application for setting aside the ex parte award have gone to the extent that even the conciliation proceedings were proceeded ex parte and that is why absolutely they have no idea which was from the record of the conciliation proceedings and were summoned by the Tribunal, were found to be incorrect. In this view of the matter, the Tribunal has refused to set aside the award and rejected the application vide its order dated 1.9.1999.

6. Apart from the decisions referred to by the Tribunal in the award, Constitutional Bench of the Apex Court in the case in JT 2002 (7) SC 631, have explained the scope of interference by the High Court in exercise of supervisory power under Article 226 of the Constitution of India and have observed that the High Court can interfere with the findings only when it comes to the conclusion that no reasonable person can come to the conclusion on which the authority has arrived at or that any important peace of evidence has not been considered. This being not a decision in the present case, it is correct as laid down in the case of Grindlays Bank Ltd. v. Central Government Industrial Tribunal, 1981 (42) FLR 88. The Tribunal, in my opinion, has rightly refused to set aside the ex parte award by rejecting the application filed by the employer.

7. In view of what has beenstated above, no interference underArticle 226 of the Constitution of Indiais required by this Court with theimpugned award. This writ petition,therefore, is devoid of any merit anddeserves to be dismissed and herebydismissed. The interim order, if any,stands vacated. However, the partiesshall bear their own costs.

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