

D.D.A. Vs. Asharfi Devi and anr.

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Court : Delhi

Decided On : Feb-25-2005

Reported in : 120(2005)DLT689

Judge : Mukul Mudgal, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 17A; [Constitution of India](#) - Article 226

Appeal No. : W.P. (C) No. 14396 of 2004 and CM 10158 of 2004

Appellant : D.D.A.

Respondent : Asharfi Devi and anr.

Advocate for Def. : Varun Prasad, AR for Respondent No. 1

Advocate for Pet/Ap. : Arun Birbal, Adv

Disposition : Petition dismissed

Judgement :

Mukul Mudgal, J.

1. Rule, with the consent of the learned Counsel for the parties, the writ petition is taken up today for final hearing.

2. This writ petition challenges the Award dated 30th July, 2002, passed in ID No. 74/2000 by the Presiding Officer, Industrial Tribunal No. 2 Karkardooma Courts, Delhi (hereinafter referred to as the 'Tribunal') which found Smt. Asharfi Devi, the respondent No. 1 (hereinafter referred to as the workman') eligible for pensionary benefits in accordance with the rule and regulations of the Horticulture Department, DDA.

3. In this case since the petitioner management/DDA had not filed the written statement, it was proceeded ex parte in the matter by the Tribunal's order dated 9th July, 2001. Accordingly on 5th October, 2001, an application was moved by the petitioner DDA for setting aside the ex parte proceedings against the petitioner management before the Tribunal which was dismissed for default by the Order dated 15th January, 2002 as none appeared for the DDA before the Tribunal. Again on 15th July, 2002 an application for restoration of the said application, disclosing the circumstances of the management's non-appearance, moved before the Tribunal was rejected on 15th July, 2002. The wordings of the Presiding Officer of the Tribunal on the order dated 15th July, 2002 are eloquent and eloquently demonstrated the indifference and apathy of the petitioner management to the proceedings and read as under:

'....At this stage, the management has filed an application through Shri Ashish Sharma, ARM for setting aside the ex parte order dated 15.1.2002, Copy of the same is supplied to the opposite side. The application has been opposed on the ground that in the present case the management was granted time for filing the written statement. On 29.11.2000 the case was adjourned to 21.3.2001 for filling the written statement, and the case is adjourned to 9.7.2001 from 21.3.2001. On 9.7.2001, nobody appeared for the management for filing the written statement. Consequently, my predecessor passed the order of proceeding ex parte and fixed the case for ex parte evidence of the workman and the case was adjourned, to 5.10.2001. On 5.10.2001 when the workman was to lead the evidence, an application was moved to setting the ex parte order and my predecessor was pleased to adjourned, the case for 15.1.2002 for filing the reply to the application of setting aside ex parte order. Again on 15.1.2002, nobody appeared for the management. Then, the application under Order 9 Rule 7 for setting aside the ex

parte order was dismissed in default. The present application had been moved for setting aside order dated 15.1.2002 by which the application for setting aside the Order dated 9.7.2001 was dismissed in default. In the application opportunity has been sought for grant of filing the written statement.

It is pertinent to mention that reference made in the present case is as under:

'Whether the demand of Smt. Asharfi Devi for pension after her superannuation is justified and if so, to what relief is she entitled and what directions are necessary in this respect?'

The act of the management for getting the matter proceeded ex parte time and again and then, moving the application for setting aside the same and not allowing the proceedings to pass the award continued unendable. It is also pertinent to mention that even till date written statement has not been prepared what to say to file in the Court. Apparently, the purpose first to get the order dated 15.1.2002 set aside and then to revive the earlier application elated 15.1.2002 for setting aside the order dated 9.7.2001 and revert back to the original position. In such circumstances, I do not find any ground for setting aside the ex parte order dated 15.1.2002 in which the application for setting aside the order dated 9.7.2001 was dismissed in default. Consequently, the application is dismissed and the case is reserved for award.'

The above order found that on 29th November, 2000 and 21st March, 2001, the opportunity was given to the petitioner management to file a written statement. Eventually the case was adjourned to 9th July, 2001 from 21st March, 2001. However, on 9th July, 2001, no written statement was filed by the petitioner management in spite of the aforesaid opportunities and consequently the management was proceeded ex parte and the case was adjourned to 5th October, 2001. On 5th October, 2001 on the day when the workman was to lead her evidence an application was moved before the Tribunal for setting aside the ex parte order dated 9th July, 2001 and the case was adjourned to 15th January, 2002 for filing reply to the said application. On 15th January, 2002 nobody appeared on behalf of the management/DDA and the said application was, therefore, dismissed in default. An application was moved to set aside the ex

parte order dated 15th January, 2002 by which the application for setting aside the ex parte order dated 9th July, 2001 was dismissed for default. It will not be out of place to mention that the demand and the reference relates to the claim of pension by the workman who is a lady currently aged 67 years and had worked for about 12-13 years for the petitioner management.

4. The cavalier conduct of the petitioner in being careless even about an application for setting aside the ex parte order as noted above continued thereafter. Even the writ petition is considerably belated. The Explanationn for laches in filing the present writ petition as given by the petitioner management makes interesting reading and reads:

'That the certified copy of the award was sent by the Advocate of the DDA who was conducting the case before the Tribunal on or around 29.11.2002. Since the award was sent without any comments the file was again sent to the lawyer for his comments. The Advocate opined that the award has held that the claimant is entitled to pension in accordance with the rules and regulations of Horticulture Department of DDA. Since there were no such rules/policy, the Advocate felt that it would not be possible to give any comments and accordingly returned the file. Thereafter the award was looked into by the relevant department of DDA and in view of the circular No. F.1(51)/Misc/95/469 dated 17th May, 1995 and relevant statutory rules it was felt that the respondent is not entitled to pension. The file was then placed before Director (Horticulture) North Zone for appropriate order. The Director also felt ordered that since there is no prejudice to the DDA on account of the award, there is no reason for challenging the award by way of a writ petition.

19. That by way of abundant caution, the service records of respondent were again examined and it was again confirmed on 30th January, 2003 that the respondent did not complete the requisite qualifying service of 10 years and hence she was not entitled to pension.

20. The case file was also sent to the Law Officer of the department who also opined that there is no reason to file a writ petition before this Hon'ble Court as the award of the Tribunal itself says that the pension be paid in accordance with the norms. Since the respondent does not fall within the norms, the respondent be

also informed. The respondent was accordingly informed vide letter dated 24.2.2003, copy of which is annexed as Annexure P14 to the writ petition.

21. That after keeping quiet for almost six months, the respondent in August 2003 moved the Labour Department of Govt. of NCT of Delhi for execution of the award. Copy of her claim is annexed as Annexure P15 to this petition. The DDA duly appeared before the Implementation Officer and an attempt was made to apprise him of the position that the respondent is not entitled to pension in accordance with the prevailing norms of DDA as she had not completed 10 years of qualifying service. At the advice of the Counsel the stand of DDA was also confirmed by a registered letter, copy of which is annexed as Annexure P16 to this petition. However the Implementation Officer felt that irrespective of the Rule/Regulations of DDA and the qualifying service of the respondent the DDA is bound to pay pension to the respondent and directed the DDA to deposit a sum of Rs. 1,25,912/- i.e. the amount claimed by respondent.

22. That considering the totality of the facts and circumstances of the case including the fact that implementation department was not willing to look into the rules of DDA which have statutory force, the case was discussed between the learned Chief Legal Advisor, DDA and the Advocate, who was appearing before the implementation cell on 29th March, 2004. It was decided that it would be appropriate that a writ petition be filed before this Hon'ble Court.

23. That accordingly the case file was entrusted to an Advocate before this Hon'ble Court to file appropriate petition against the award. The file after signatures on the Power of Attorney and completion of other formalities was received by the Advocate in the last week of April 2004. It was noticed that the file was not complete and accordingly further documents were collected and thereafter the present writ petition was got drafted. This Hon'ble Court was closed for summer vacations in the month of June, 2004. Thereafter the present writ is being filed without any delay.

24. That in the circumstances, it is submitted that there has been no delay in filing the writ petition. The case was actively considered by the DDA. After taking opinion of all relevant officials a bona fide decision was arrived at that since the

award was not to the prejudice of DDA, no writ petition can be filed. The respondent was intimated this position as back as in February 2003. The respondent kept quiet for six months and thereafter moved the applications for implementation, Since the Implementation Officer felt that DDA shall be liable irrespective of rules/regulations and in a mechanical manner proceeded to accept the claim of the respondent it was decided to file the present writ petition.'

5. Thus even this conduct discernible from the above averments in the writ petition shows that the petitioner has remained extremely indifferent in its attitude about challenging the award and the order of implementation thereof. The shuttling of files between the departments of the petitioner management cannot condone the delay and laches in filing the present writ petition particularly when an award dated 30th July, 2002 has been passed against the petitioner management. In such an event, the petitioner ought to have acted with dispatch. The award was dated 30th July, 2002. In the case of award it becomes enforceable 30 days after its publication as per Section 17A of the ID Act. The Explanationn for delay omits to state the date of the publication of the award and only states that the DDA was sent the certified copy of the award by its Advocate on 29th November, 2002 without stating when the certified copy was available. Furthermore in a challenge to an award a certified copy is of no significance. The recovery certificate to implement the award was also issued on 17th December, 2003. On 29th March, 2004 the DDA appeared before the Implementation Cell and thereafter it was decided to challenge the award before this Court. Even then after becoming aware of the order of implementation at least on 29th March, 2004, if not earlier, the writ petition was filed in this Court only on 20th August, 2004. Thus even thereafter on its showing the DDA had sent incomplete instructions to its Counsel in April, 2004 and complete file was sent later and even then after the reopening of the Court in July, 2004, the writ petition was not filed and only filed in August, 2004. Accordingly there are laches, and indifference in order dated 17th December, 2003. Thus the writ petition is liable to be dismissed for laches alone. Even on the merits also there is no cause shown for interference with the impugned orders/award in a writ jurisdiction under Article 226 of the Constitution as it grants pension to lady employee who is currently aged 67 years.

6. Accordingly the writ petition is dismissed.

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