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M.C.D. Vs. NaraIn Dass

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Court : Delhi

Decided On : May-23-2005

Reported in : 122(2005)DLT572

Judge : B.C. Patel, C.J. and; Sanjay Kishan Kaul, J.

Acts : Constitution of India - Article 226

Appeal No. : L.P.A. No. 1115 of 2005

Appellant : M.C.D.

Respondent : NaraIn Dass

Advocate for Def. : Pramod Gupta and ; Ajit Kalia, Advs.

Advocate for Pet/Ap. : Tarun Sharma, Adv

Judgement :
ORDER

1. Admit.

2. At the request of the learned Counsel for the parties, the appeal is taken up for final disposal.

3. The origination of the dispute is a reference made at the request of the respondent workman in respect of the scale of pay at which he was regularised,

The reference resulted in the award of the Tribunal dated 2.2.2002 whereby the workman succeeded. The award was an ex parte award.

4. The MCD filed a Writ Petition (Civil) No. 8370/2002 challenging the said award. The said writ petition was disposed of on 30.7.2004 by the learned Single Judge in terms whereof the appellants was permitted to withdraw the petition with liberty to approach the Tribunal with a specific directions that the Industrial Tribunal would deal with the applications filed by the appellant herein in accordance with law. The interim order was also directed to be continued for a certain period of time to facilitate the appellant to, approach the Tribunal.

5. It transpires that after the said order of the learned Single Judge, the Supreme Court pronounced the decision in the case of Sangham Tape Company v. Hans Raj 2004 LLR 1098 decided on 20th September, 2004. The Industrial Tribunal, relying on the said judgment refused to set aside the ex parte award on the ground that it had become functus officio. Thus, the application to set aside the award was not considered on merits but was declined on the said ground.

6. The appellant faced with this position filed Writ Petition (Civil) No. 3430/2005 once again challenging the ex parte award dated 2.2.2002. This writ petition has been dismissed in terms of the impugned order.

7. The only ground on which the petition has been held to be not maintainable is that the appellant had earlier filed Writ Petition (Civil) No. 8372/2002 challenging the same award dated 2.2.2002 and thus in view of the observations of the Hon'ble Supreme Court in Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior and Ors., : [1987]1SCR200 , such a second writ petition would not be maintainable.

8. We are unable to persuade ourselves to agree with the finding of the learned Single Judge in view of complete different set of fact which arise in the present proceedings. There can be no doubt about the ratio laid down, in case of Sarguja Transport Service case (supra) but in the present case, the earlier writ petition was withdrawn specifically with the liberty to approach the Industrial Tribunal and with the directions for the application for such setting aside of the ex parte award to be

considered on merits. This did not happen in view of the judgment in M/s. Sangham Tape Company case (supra) of the Apex Court and the Tribunal held that it was functus officio. There are no observations of the learned Single Judge in respect of the adjudication by the Tribunal of the claim of the appellant that the ex parte award ought to be set aside. Such a claim had to be considered either by the Tribunal or by the learned Single Judge on merits- The observations made in Sarguja Transport Service case (supra) were in the context of the petitioner withdrawing the petition without any liberty and in that case not being permitted to file another writ petition under Article 226 of the Constitution of India.

9. In view of the aforesaid, the impugned judgment is set aside and the matter is remanded back to the learned Single Judge to decide the question raised by the appellant in the writ petition in accordance with law.

10. The matter be listed before the learned Single Judge on 29.7.2005.

11. Since interim orders have continued to ensure for the benefit of the appellant herein, there will be stay of the award till the next date of hearing before the learned Single Judge when it will be for the learned Single Judge to also consider this issue.

CM No. 7772/2005

12. No further orders are called for in this application in view of the disposal of the writ petition.

13. The application stands disposed of.

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