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Court : Rajasthan

Decided On : Jul-12-1996

Reported in : 1997(1)WLC128; 1996(2)WLN250

Judge : B.J. Shethna, J.

Appeal No. : S.B. Civil Writ Petition No. 1084 of 1987

Appellant : Rashbeg Singh and anr.

Respondent : Authority Under the Minimum Wages Act and ors.

Disposition : Petition dismissed

Judgement :

B.J. Shethna, J.

1. The petitioner employer has challenged the ex-parte order passed by the respondent No. 1. Authority under the Minimum Wages Act and the order at Annex. 8 rejecting the application to set aside the ex-parte order passed by it.

2. Learned Counsel Shri Agarwal vehemently submitted that the respondent No. 1, Authority should not have passed the ex-parte order against the petitioners when their advocate pleaded no instructions before him. This submission of Mr. Agarwal

cannot be accepted for the simple reason that the said order was not an ex-parte order. The petitioners were duly served by the notice. In fact they have filed their appearance through their advocate. The petitioner No. 2 who is son of petitioner No. 1 used to remain present before the authority. The registered notice was also received by him on behalf of his father, petitioner No. 1. But, thereafter, did not remain present and, therefore, the advocate had to plead no instructions. Thereafter, the authority had to proceed in absence of the petitioners and pass the order. Therefore, it cannot be said to be an ex-parte order. At the most it can be said to be an order passed in absence of the petitioners. The Authority under the Minimum Wages Act has rightly rejected the application filed by the petitioners for setting aside the earlier order by giving valid reasons for the same. This is a petition under Article 227 of the Constitution of India, scope of which is very narrow and limited. Unless and until jurisdictional error is committed by the authority this Court cannot interfere with its order. In this case no error much less jurisdictional error is committed while passing the order at Annex. 8. Learned Counsel Shri Agarwal submitted that the petitioners had already made payment to the workmen for which he not only produced the affidavits of the workmen but also produced the photo stat copies of the receipts bearing thumb impression of the workmen which were duly attested by the Tehsildar. On the basis of the affidavits and receipts he submitted that the payment was already made to the workmen in spite of that the Inspector has wrongly filed a case against them before the authority under the Minimum Wages Act. He submitted that the averments made on oath in this petition have remained uncontroverted by the respondents, therefore the averments made on oath should be accepted and the orders at Annex. 1 and 8 be quashed and set aside by this Court. Affidavits and receipts are produced for the first time before this Court in this petition. It is not open to this Court to take into consideration the same. This was never pointed out before the Authority when they filed the application to set aside the order at Annex. 1, passed in their absence. It is not necessary that in each and every case the averments made on oath should be accepted by this Court when it is not controverted by the other side. In this case respondent workmen No. 3 to 8 are poor illiterate persons. It is not possible for them to come and defend themselves before this Court in such matters they have been exploited by the petitioners and for which only

Inspector can file a case on their behalf before the Authority under the Minimum Wages Act. Therefore, merely because the averments have remained uncontroverted it does not mean that this Court should accept the averments and quash the orders at Annex. 1 and 8. Last submission made by Mr. Agarwal is that this case is pending before this Court for last 10 years and stay was operation in their favour, therefore, it is not open for this Court to dismiss this petition. This submission is devoid of any merit and straight away rejected. Merely because matter is pending for last 10 years and stay was operating in favour of the petitioners is no ground to set aside the impugned orders, if they are otherwise found to be in accordance with law.

3. Before parting with the judgment must mention that Mr. Agarwal has tried to rely upon the Supreme Court decision reported in 1994 Suppl. (2) S.C.C. Page 399. I fail to understand how that judgment is applicable on the facts of this case. In the aforesaid case the ex-parte decree was passed against the defendant who was not aware of the ex-parte decree. The facts of the present case are contrary to the above case. In the instant case the petitioner No. 2 used to remain present for quite sometime, thereafter, he completely stopped remaining present therefore, their advocate was totally helpless and he had no alternative but to plead no instructions. Therefore, the Court had to pass an order in their absence. The argument made by Mr. Agarwal that when the advocate pleaded no instructions then the Authority ought to have issued fresh notices to the petitioners. If it is permitted then the parties can successfully delayed the litigation in all cases where the labourers are ex plotted. It is not a case of the petitioners that they were never served with the notice and there is no provision that authority is bound to issue fresh notice to the petitioners when their advocate pleaded no instructions. Hence, this submission of Mr. Agarwal is rejected.

4. In view of the above discussion, this petition fails and is hereby dismissed with no order as to costs. The stay granted earlier stands vacated forthwith.