

The Principal Vs. P.Thangam.

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Court : Chennai

Decided On : Mar-22-2012

Judge : K.Chandru, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 10(4); Industrial Dispute Rules, 1958 - Rule 48(2), 10-B(9)

Appeal No. : W.P.No.6822 of 2012 and M.P.Nos.1 and 2 of 2012

Appellant : The Principal

Respondent : P.Thangam.

Advocate for Pet/Ap. : Mr.M.Vaidyanathan, Adv.

Judgement :

ORDER

1. This is a very unfortunate case and for wrong reasons, the parties are before this Court. The petitioner is Kendriya Vidyalaya School, Kattobomman, Vijayanarayanam, Nanguneri Taluk, represented by its Principal. The petitioner has filed this Writ Petition challenging the award made in I.D.No.5 of 2011 dated 06.06.2011.

2. By the impugned award, the Central Government Industrial Tribunal cum Labour Court, after examining the first respondent and marking exhibits WW1 to

WW6 and having already set the petitioner ex parte, found that the reference was to be answered in favour of the first respondent. Therefore, it observed that the action of the Management in terminating the services of the workman was not legal and justified and she was entitled for reinstatement with back wages and continuity of service vide award dated 06.06.2011. Challenging the said award, the petitioner has filed this Writ Petition.

3. When the matter came up on 20.03.2012, this Court directed the petitioner to serve notice on the counsel who appeared for the first respondent before the Central Government Industrial Tribunal cum Labour Court. Accordingly, notice was issued and Mr.K.M.Ramesh, learned counsel appears for the first respondent and he expressed willingness to take notice on her behalf.

4. The case of the second respondent is that she was working as Basic Servant at Kendriya Vidyalaya School, Kattobomman, Vijayanarayanam, Nanguneri Taluk, and as against her termination, she initially raised a dispute before the labour Court of State Government and on getting a failure report from the Conciliation Officer, she filed a Claim Statement before the labour Court, Tirunelveli, and the labour Court took up the dispute as I.D.No.30 of 1999. When notice was issued to the petitioner, they objected the maintainability of the dispute before the State Government since the proper Government is only the Central Government. Hence, the first respondent withdrew the dispute and raised fresh dispute before the Central Government, Labour Department, more particularly, before the Assistant Labour Commissioner (Central), Madurai. As the said Conciliation Officer could not make the party to arrive at a settlement, sent a failure report to the Central Government on 30.03.2009. The Central Government represented by the Ministry of Labour, by an order dated 18.05.2009, declined to refer the dispute for adjudication on the ground that the dispute was stale and the first respondent was guilty of laches.

5. The second respondent filed a Writ Petition before the Madurai Bench of this Court in W.P.(MD) No.8587 of 2009, challenging the order declining to refer the dispute. This Court, by an order dated 18.10.2010, allowed the Writ Petition and directed the Central Government to refer the dispute. Pursuant to the direction, the

Central Government, Ministry of Labour, by its order dated 22.12.2010, referred the dispute for adjudication by the Central Government Industrial Tribunal cum Labour Court as to whether the action of the Management of Kendriya Vidyalaya, Vijayanarayanam, Nanguneri Taluk, in not considering the reinstatement with back wages to the workman P.Thangam from 06.03.1996 is legal and justified. After the receipt of notice of Industrial Dispute, the Tribunal has numbered it as I.D.No.5 of 2011 and issued notice to both parties. Unfortunately, the petitioner did not make effective arrangements to represent themselves before the Tribunal and there were as many as six adjournments. Though the person appearing for the School mentioned before the Tribunal that they have engaged a counsel from Chennai, no Vakalat was filed and hence, they were set ex parte. The very same Tribunal, thereafter, found that even though the first respondent was not present, a claim statement was filed and passed an award on 20.04.2011 dismissing the Industrial Dispute and held that the first respondent was not entitled for any relief. In paragraph No.5 of the award dated 20.04.2011, the Tribunal has observed as follows:

5. Respondent being not present or represented by any advocate duly engaged, though it had been initially represented that the Vakalat is proposed to be filed for it but having not filed on several adjournments of the case from time to time it was called absent and set ex-parte. The matter, thereafter, while stood posted for adducing evidence on behalf of the petitioner, petitioner also was not present or represented for several adjournments to which the case stood posted further. Therefore it is a case in which both sides are absent. Though petitioner filed Claim Statement, a Counter Statement has not been filed by the Respondent who is ex-parte altogether. Needless to say there is no evidence adduced on either side especially by the petitioner who had filed a Claim Statement by way of pleading, which per se, is not evidence. The burden of proof in this case being on the petitioner who has not only adduced no evidence but also has not been present when the case was taken up for hearing it is only to be held that the action of the Management is only legal and justified and the petitioner is not entitled to any relief. It is so held.

6. After the dismissal of the Industrial Dispute, the workman filed an interim application in I.A.No.54 of 2011 for setting aside the ex parte award. The Tribunal curiously, without notice to the petitioner Management, not only restored the dispute but also proceeded to pass a fresh award on 06.06.2011 in I.D.No.5 of 2011. This time, the Central Government Industrial Tribunal cum Labour Court, decided to grant relief in favour of the first respondent and in Paragraph No.8, it has observed as follows: 8. Respondent being not present or represented by any advocate duly engaged, though it had been initially represented that the Vakalat is proposed to be filed for it but having not filed on several adjournments of the case from time to time it was called absent and set ex-parte. The matter, thereafter, while stood posted for adducing evidence on behalf of the petitioner, he filed proof affidavit in lieu of chief examination and proved Ex.W1 to W6 in support of her contentions, which do not stand rebutted by any cross examination. The claim of the petitioner as made in the reference thus stands substantiated. Therefore she is entitled to succeed and is entitled to relief. Hence it is held that the action of management in not considering her reinstatement with back wages from 6.3.1996 is not legal and justified. She is entitled to forthwith reinstatement with back wages, continuity of service and all attendants benefits.

7. Aggrieved by the same, the Writ Petition is filed by Management Kendriya Vidyalaya School. This Court initially was not willing to entertain the Writ Petition on the ground that there is sufficient remedy provided under the Industrial Dispute Rules, 1958, more particularly, in Rule 48(2), a provision has been made for setting aside the ex parte award.

8. Mr.M.Vaidyanathan, learned counsel for the petitioner contended that the Tribunal having rejected the reference by earlier award dated 20.04.2011 did not give any reason for favourably considering the application filed by the workman in I.A.No.54 of 2011 and therefore, there has been gross injustice done to the Management. In order to verify the said fact, a notice was directed to be given to the counsel, who appears for the first respondent.

9. Mr.K.M.Ramesh, learned counsel for the first respondent, has fairly conceded that no notice was given to the petitioner Management. May be this was under the

impression that the Management was set ex parte by the Tribunal even earlier and therefore, there is no necessity to give any fresh notice. If that is true, in passing the present impugned order, the Central Government Industrial Tribunal cum Labour Court, need not state that the first respondent was not present and was not represented by any advocate. When once an award has been finally passed and it is sought to be restored at the instance of one of the aggrieved parties, it is mandatory to serve notice on the other side. Otherwise, it will result in unnecessary hardship to the other side. The party, who succeeded by the earlier award, will be under the impression that there is no necessity to further represent as already relief has been granted to him. In any event, having set the petitioner Management ex parte earlier and the first round of litigation is also over, if it is sought to be restored, necessarily all parties must be given notice.

10. Learned counsel for the petitioner also pointed out that even while passing the impugned award, the Central Government Industrial Tribunal cum Labour Court, did not confirm the procedure to be adopted and it has passed an award without giving any reason and merely referred to the oral evidence given as well as the documents marked. As per Rule 10-B(9) of the Industrial Disputes (Central) Rules, 1957, the Tribunal has power to proceed with the ex parte and decide the reference in the absence of the defaulting party. As per section 10(4) of the Industrial Disputes Act, the Tribunal has to pass award in terms of the reference which were made and consider those points for adjudication. Certainly it is not open to the Central Government Industrial Tribunal cum Labour Court, to pass an award by merely referring the exhibits and the oral evidence let in by the party, without discussing the contents of the same. Accordingly, the impugned order is liable to be interfered by this Court. In this context, it is necessary to refer to the judgment of the Division Bench of this Court in Tamil Nadu Housing Board, Madras and The Presiding Officer, II Additional Labour Court, Madras and another reported in 1997 (1) LLJ 923, wherein in paragraphs 6 to 8, it was observed as follows:- 6. Thus, from the aforesaid award, it is clear that the Labour Court has not considered the evidence on record. Even though the appellant remained absent, nevertheless, there was evidence on record. There were the statements of the case pleaded by the petitioner and the respondent. The Labour Court was required to consider and give reasons for passing the award in favour of the 2nd

respondent workman. As no such reason is given, not even the facts of the case are stated, the award cannot at all be considered to be a speaking order, as such it cannot be sustained. The Presiding Officer, is an Officer of the District Judge grade. He should not have decided the dispute in such a manner. There is no judicial application of mind of the Presiding Officer of the Labour Court. Such exercise of jurisdiction causes great and incalculable damage to the parties and also to the administration of justice. The Presiding Officer would do better, if he discontinues such a habit of disposal of cases.

7. As the delay is also due to the fact that the appellant has failed to avail the opportunity afforded to it, it is a case, in which exemplary costs should be awarded.

8. We accordingly, allow the appeal, set aside the order dated February 8, 1996 passed in the writ petition, and allow the writ petition in the following terms. The award dated March 28, 1994 passed in I.D.309 of 1993 is quashed with costs of Rs.5,000/- (Rupees Five thousand only) to be paid by the appellant to the 2nd respondent on or before September 18, 1996 on which date the Labour Court, Madras, shall call this case and restore the I.D to its file. K.CHANDRU, J.

11. In the light of the above, this Writ Petition is allowed and the impugned award passed in I.D.No.5 of 2011 dated 06.06.2011 stands set aside and the matter is remitted back for fresh disposal by the second respondent Central Government Industrial Tribunal cum Labour Court, Chennai. However, in both the awards, the Tribunal noted that the petitioner has not been represented though a promise was made to file Vakalat by a Chennai advocate and their absence was noted as many as six times. Therefore, it is a fit case where costs should be awarded to the first respondent payable by the petitioner Management. The costs is quantified at Rs.2,000/-. On payment of Rs.2,000/- to the first respondent and costs memo being filed before the second respondent, the Tribunal shall issue fresh notice to both sides and after giving opportunity to both sides, pass an award on merits and shall take note of the observations made by this Court in this order. 22.03.2012