Satnam Verma vs Union Of India (Uoi) on 19 October, 1984

Equivalent citations: AIR1985SC294, [1985(50)FLR6], 1985LABLC738, (1985)ILLJ79SC, 1984SUPP(1)SCC712, AIR 1985 SUPREME COURT 294, 1985 LAB. I. C. 738, 1985 ICR 39, 1984 SCC (SUPP) 712, (1985) 66 FJR 221, (1985) 50 FACLR 6, (1985) 1 LABLJ 79, (1985) 2 LAB LN 55, 1985 SCC (L&S) 362

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Bench: A.N.Sen, D.A. Desai

JUDGMENT

D.A. Desai, J.

1. Special leave granted.

2. We heard Mr. Harhans Lal, learned Counsel for the appellant and Mr. Atul C. Jain, learned Counsel for the respondent.

3. Art industrial dispute arising out of the termination of service of the appellant who was employed as a conductor, by the Chandigarh Transport Undertaking was referred to the Labour Court for adjudication and it was numbered as Reference No. 55 of 1981. On receipt of the notice of the reference, the workman and the employer both filed, their respective statements. The reference came up for hearing on February 23, 1982 and when it was called out neither the appellant nor his representative one Shri M.L. Gupta was present. The Labour Court directed the matter to be heard ex parte. After making that Order, the Labour Court proceeded to observe that as no evidence has been led by the appellant, there is nothing to show that the termination of service was illegal or invalid, and concluded that the appellant was therefore, not entitled to any relief. Soon thereafter an application was moved by the appellant for recalling the Order disposing of the reference ex parte. It was stated in the application that the date given to the appellant to appear before the Court was February 26, 1982 and not February 23, 1982 when the reference was disposed of ex parte. The employer contended that as the award has already been published in the Gazette there is no provision for recalling the award made ex parte nor restoring the case to file. In the meantime the presiding officer of the Labour Court was transferred arid some other presiding officer was appointed and before him the application came up for hearing. The Labour Court held that once the award was published in the Gazette, the Labour Court has no jurisdiction to recall the award or to set aside the ex parte award and to restore the case to file. The appellant moved the High Court under Article 226 of the Constitution.

4. A Division Bench of the High Court observed that 'the Labour Court was right, after examining the record, in turning down the plea of the petitioner that some date other than 23-2-1983, was fixed for the hearing of the case. The petitioner obviously failed to prove any sufficient ground for absenting himself on the said date. Hence no case is made out for interference with the impugned Order. The High Court therefore, dismissed the writ petition in limine. Hence this appeal by special leave.

5. The question before the High Court was whether the Labour Court committed any error in rejecting the application of the appellant for setting aside the ex parte award on the sole ground that once an award is published in the Official Gazette, even if it be an ex parte one, the Labour Court has no jurisdiction to entertain an application for setting aside such an award. This was the only question of law going to the root of the matter which was canvassed before the High Court and surprisingly there is not a word about it in the brief speaking Order of the High Court rejecting the writ petition of the appellant in limine.

6. On behalf of the respondent the same contention was canvassed before us. The distressing feature of the situation is that even" though the contention which found favour both with the Labour Court and the High Court is wholly untenable in view of the decision of this Court in Grindlays Bank Ltd. v. Central Government Industrial Tribunal rendered on December 12, 1980, the matter has been brought to this Court and yet today the same contention Is pressed which clearly discloses total ignorance about the law laid down by this Court. How proceedings multiply interminably for failure to investigate the law applicable to the legal proposition and thereby condemn the parties to unnecessary cost and prolixity of litigation is amply demonstrated.The decision of this Court was rendered on December 12, 1980 and appeared in law reports soon thereafter, yet on April 16, 1983 the correct legal position as laid down by this Court does not appear to be properly appreciated.

7. In the case of Grindlays Bank Ltd., the specific contention canvassed was whether where an ex parte award is made and published in the Official Gazette, the Industrial Tribunal has the jurisdiction to entertain the application for setting it aside if sufficient cause is shown for absence of appearance on the date on which an ex parte award was made and it was answered in the affirmative. this Court referred to Rule 22 and Rule 24(b) of the Industrial Disputes (Central) Rules, 1957 and held that the Industrial Tribunal had the power to pass an Order setting aside the ex parte Order. In reaching this conclusion, the Court observed that if the Tribunal has the power to proceed ex parte as provided by Rule 22, it should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. The. Court then proceeded to examine the scheme of the relevant rules and observed that Rule 22 unequivocally confers jurisdiction on the Tribunal to proceed ex parte. The Tribunal can proceed ex parte if no sufficient cause for absence of a party is shown. This power was interpreted to comprehend that if sufficient cause was shown which prevented a party from appearing, then in the terms of Rule 22, the Tribunal will have had no jurisdiction to proceed ex parte and consequently, it must necessarily have power. to set aside the ex parte award. The Court in terms observed that the power to proceed ex parte is subject to the fulfillment of the condition laid down in Rule 22 and therefore it carried with it the power to enquire whether or not there was sufficient cause for the absence of a party at the hearing. The Court then referred to Rule 24(b) and

held that where the Tribunal or other body makes an ex parte award, the provisions of Order IX, Rule 13 of the CPC are clearly attracted and it logically follows that the Tribunal was competent to entertain an application to set aside an ex parte award. The Court then proceeded to examine the Contention that once an award is published in the Official Gazette, be it an ex parte one, does the Tribunal become functus officio and therefore, will have no jurisdiction to set aside the ex parte award and that as contended before us the appropriate Government alone could set it aside and rejected it holding that no finality is attached to an ex parte award because it is always subject to its being set aside on sufficient cause being shown. The Court held that the Tribunal had the power to deal with an application properly made before it for setting aside the ex parte award and pass suitable Orders. We have extensively referred to this decision because it effectively answers all the limbs of the contention canvassed before us and which unfortunately, found favour with the Labour Court and the High Court :

8. It needs hardly to be pointed out that Rule 22 and Rule 24(b) of Industrial Disputes (Central) Rules, 1957 are in pari materia with Rules 22 and 24 of the Industrial Disputes (Punjab) Rules, 1958 which are applicable to the facts of the present case. Therefore, the decision of this Court would mutatis mutandis apply in the matter pf interpretation of the Punjab Rules. It must follow as a necessary corollary that the Labour Court as well the High Court denied to itself the jurisdiction vested in it to entertain an application for setting aside an ex parte award and reached an erroneous conclusion.

9. A feeble attempt was made to urge before us that the High Court accepted the view of the Tribunal that on merit no case was made out for setting aside an ex parte Order. We remain unconvinced. In fact the Labour Court was overwhelmed by its erroneous approach that it had no jurisdiction to entertain an application for setting aside an ex parte Order and that appears to have influenced its decision in rejecting the application for setting aside the ex parte award.

10. Turning to the facts of the case, the first date of the hearing of the reference was, according to the Labour Court, February 23, 1982 and the date was fixed for framing issues, leading evidence and disposal of the reference, a sort of an omnibus stage. That apart according to the appellant, he was given the date February 26, 1982. He appeared on Feb. 26, 1982, when he found that the matter was disposed of ex parte on February 23,1982. On the same day, he moved an application pointing out that his information about the date was incorrect. This seems to be a bona fide assertion not seriously controverted. The Labour Court was therefore in error in rejecting this request promptly made. We are therefore, satisfied that both the Labour Court and the High Court were in error in rejecting the application even on merits.

11. This appeal accordingly succeeds and is allowed and the ex parte award made by the Labour Court is set aside as well as the decision of the High Court rejecting the writ petition is also quashed and set aside and the matter is remitted to the Labour Court for proceeding further according to law after giving both the parties opportunities to lead the evidence. There will be no Order as to costs of hearing in this Court. As the matter is an old one, the Labour Court is directed to give top priority to it and dispose it of within four months from today.