Jai Rapid Rolers Limited Vs The Presiding Officer, Industrial Tribunal-Cum-Labour Court and Another

Civil Writ Petition No. 6663 of 2004

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 21, 2006

Acts Referred:

Constitution of India, 1950 â€" Article 226, 227#Industrial Disputes Act, 1947 â€" Section 25F, 29, 32

Citation: (2007) 113 FLR 729 : (2006) 144 PLR 404

Hon'ble Judges: J.S. Narang, J; Arvind Kumar, J

Bench: Division Bench

Advocate: N.S. Shekhawat and Ashok Thakur, for the Appellant; Hari Om Attri and V.S. Bhardwaj, for the Respondent

Final Decision: Dismissed

Judgement

Arvind Kumar, J.

The petitioner management inducted respondent No. 2 workman on the post of Tuner w.e.f. 2.2.1994. His services

were terminated on 4.8.1995. Feeling aggrieved with his termination, the workman served a demand notice upon the management seeking re-

instatement with continuity of service and back wages. On failure of reconciliation proceedings, the appropriate Government referred the dispute to

the Labour Court for adjudication. The workman filed his claim statement before the Labour court taking the plea that his services have been

terminated illegally on 4.8.1995 without complying with the provisions of Section 25-F of the Industrial Dispute Act, 1947 (hereinafter called as

the Act) as he has worked for more than 240 days continuously with the management. It was further averred that the management had not paid

him the salary for the month of July, 1995.

2. It appears from the record that the approach of the management in contesting the claim of the workman was very causal. No reply to the claim

statement was filed by the management. Besides, it was proceed ex parte twice, firstly on 1.6.2001, which, it had succeeded in getting set aside

and thereafter secondly on 11.1.2002.

3. The Labour Court recorded the ex parte evidence of workman on 25.1.2002. After analyzing the ex parte evidence adduced by the workman,

the Labour Court vide the impugned award dated 5.2.2002 held the termination of services of workman as unjustified. Accordingly, it awarded re-

instatement with continuity of service and full back wages to the workman.

4. Thereafter, due to non-implementation of the impugned award dated 5.2.2002, the appropriate Government through the Labour Inspector, on

23.4.2003, filed a criminal complaint against the management for committing offence u/s 29 read with Section 32 of the Act.

5. Now through this petition filed under Article 226/227 of the Constitution of India the petitioner management has sought quashing of order dated

11.1.2002 vide which it was proceeded against the ex parte; subsequently ex parte award dated 5.2.2002 and the criminal complaint filed by the

appropriate Government against them in the Court of Chief Judicial Magistrate, Rewari for offence u/s 29 read with Section 32 of the Act and

subsequent proceedings thereto.

6. Upon notice of the petition, respondent No. 2-workman filed the written statement controverting the averments made in the petition. It is

averred that the proceedings before the Labour Court were well within the knowledge of the petitioner-management and that the instant petition

has been filed only to wriggle out of the provisions of Section 29 read with Section 32 of the Act. Dismissal of the petition has been sought.

7. We have heard learned Counsel for the parties and with their assistance we have carefully gone through the paper-book.

8. It has been contended that non-appearance by the representative of the management on 11.1.2002 was on account of the fact that Shri Sanjay

Parik and Shri Sanjay Kapoor, who had been representing the management before the Labour Court had resigned in October, 2001. Thus, the

absence was not intentional. The petitioner-management was not aware of the ex parte award dated 5.2.2002 as such, there was no question of its

implementation. It has also been argued that the workman had led no documentary evidence to prove his case and has referred to a decision

rendered by a Division Bench of this Court in the case of State of Punjab v. Kashmir Singh 2004 (1) R.S.J. 1 wherein the ex parte award passed

against the State was set aside by observing that the State deserves to be given a chance to put forward sits defence. We are not convinced with

the contentions of counsel for the petitioner. Normally, ex parte orders are not appreciated and it is always the desire of the Court that the parties

should contest the litigation on merits. However, where the process of the Court is sought to be misused and exploited with the idea to delay the proceedings and to scuttle the due process of law, then the courts are not to grant indulgence to such a party. In the instant case, the management

had been callous right from the beginning. They were initially proceeded ex parte on 1.6.2001, which was set aside on 12.10.2001. This was on

the second time they were proceeded ex parte on 11.1.2002. From Annexures P-5! and P-6 it reveal that said Sanay Parekh and Sanjay Kapoor

had resigned somewhere in October, 2001, whereas the management was already aware of the pendency of the proceedings before the Labour

Court. There was sufficient time with the management for making an alternative arrangement before they could again be proceeded ex parte on

11.1.2002. However, there is no explanation of having taken any action in due course of time. The present petition has been filed after about two

years of the passing of the impugned award. The negligent conduct of the petitioner is of highest magnitude. They did not care even to know the

status of the proceedings pending before the Labour Court in all these years. Such a party has to be shown the door and denied the discretion to

set aside the ex parte proceedings of the award passed against them. The present petition is only to scuttle down the rigor of Section 29 read with

Section 32 of the Act, which admittedly has been initiated against them for non compliance of the award. The petitioner-management cannot seek

any assistance from Kashmir Singh''s cane (supra) as in that case the representative of the management had to appear in number of cases and he

had a direction to appear in some of the case and there was some confusion with regard to non-representation on behalf; of the management,

which is not the case here. A bare perusal of statement of workman (Annexure P-8) it reveals that he had claimed to have worked with the

management from 2.2.1994 to 4.8.1995 and has placed on record E.S.I. card as Ex. W1 re-grading the proof of job. The petitioner-management

has not placed on record any document to show that the Court could come to a contrary, view if the management had led evidence.

For the foregoing reasons, we do not find any merit in this petition. The same is dismissed accordingly.