

(2005) 02 AHC CK 0064

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 9626 of 2001

State of U.P.

APPELLANT

Vs

The Presiding Officer, Labour
Court (II) and Mohd. Islam

RESPONDENT

Date of Decision: Feb. 22, 2005

Acts Referred:

- Industrial Disputes (Central) Rules, 1957 - Rule 16, 16(2)
- Limitation Act, 1963 - Section 10, 11, 12, 13, 14
- Uttar Pradesh Industrial Disputes Act, 1947 - Section 16(2), 6A

Citation: (2005) 5 AWC 4600 : (2005) 105 FLR 391 : (2005) 3 LLJ 645 : (2005) 2 UPLBEC 1751

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Advocate: S.C. for the Appellant; Y.K. Sinha and S.C., for the Respondent

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.

Heard counsel for the petitioner and Sri Y.K. Sinha for the contesting respondent.

2. This writ petition has been filed by the State of U.P. challenging the validity and correctness of the impugned ex-parte award dated 13.11.1997 as well as of the impugned order dated 5.8.2000 passed by the Labour Court dismissing the application moved by the petitioner for recall of the aforesaid ex-parte award Which was published on 1.6.1998 and became enforceable u/s 6-A of the Industrial Disputes Act after 30 days of the expiry of the publication, i.e., w.e.f. 1.7.1998. The petitioner filed an application on 26.9.1998 for setting aside the impugned ex-parte award, but the same was rejected by respondent No. 1.

3. This Court after discussing the case laws on the question of limitation for recall of the order of award to proceed ex-parte u/s 16(2) of the Industrial Disputes Act as

well as the provisions of the Limitation Act held as under: -

"Limitation Act, 1963 provides for limitation for suits and applications. Section 29(2) of the Limitation Act, 1963 provides as under-

"29(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law."

4. Under entry 123 limitation for moving application for ex-parte decree is 30 days but in view of Section 29(1) the limitation of 30 days. It will have to be read as 10 days in cases governed by U.P. Industrial Disputes Act, which is a special Act. The provisions of Limitation Act have not been excluded by the U.P. Industrial Disputes Act. Hence Sections 4 to 24 of Limitation Act including Section 5 thereof applies to proceedings under U.P. Industrial Disputes Act also and a party can file application under Rule 16(2) of U.P. Industrial Disputes Rules with application u/s 5 of the Limitation Act explaining the delay in not filing application within 10 days and the Labour Court has full power to decide it providing of course the application is moved within 30 days of the publication of the ex-parte order or award. If application is filed after said 30 days the Labour Court cannot entertain it as it becomes functus officio on expiry of 30 days.

5. A Full Bench of this Court in case of Badri Prasad Haridas 1983 UPLBEC 56= 1984 (48) FLR 315 relying on the case of Grindlays Bank Case 1981 SC 606 held that Labour Court/Industrial Tribunal retains power to set aside ex-parte proceedings till award is enforced after 30 days of the publication.

6. Admittedly, the notice was served on the manager of the Cinema Hall of the petitioner, hence it cannot be said that the summons had not been served on the employer. The application for setting aside the ex-parte award had been filed after about 7 months from the date of the publication of the award and the employer was negligent not even to attend the court without sufficient cause. Under Rule 16 of the U.P. Industrial Disputes Rules, 1957 framed under the U.P. Industrial Disputes Act, 1947 the application for setting aside the ex-parte award should have been moved within 10 days from the date of the passing of the ex-parte award. Any application filed beyond the aforesaid time prescribed would be beyond the limitation for which sufficient cause has to be shown. This is because the rule provides 10 grace days for moving the application for setting aside the ex-parte award."

7. In the instant case admittedly the order to proceed ex-parte was passed on 1.10.1997 and the award was published on 1.6.1998. According to Section 6-A of the

Industral Disputes Act it became enforceable on 1.7.1998. Admittedly also the application to recall the ex-parte order was not filed and has neither been challenged before the Labour Court nor in the writ petition before this Court. The application for restoration has therefore been filed after about three months from the date of enforcement of the award. The Labour Court became functus officio on 1.7.1998; hence the application for recall of the order filed on 26.9.1998 was not applicable.

8. For the reasons stated above, no interference with the impugned order, which has attained finality, is called for. The writ petition is accordingly dismissed. The interim order granted by this Court is vacated.