(2012) 03 AHC CK 0228

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 13453 of 1998

Dukh Haran Prasad		APPELLANT
	Vs	
Presiding Officer, Labour Court and Others		RESPONDENT

Date of Decision: March 26, 2012

Acts Referred:

- Industrial Disputes (Central) Rules, 1957 - Rule 13

Citation: (2012) 5 ADJ 391 : (2012) 4 AWC 4343

Hon'ble Judges: A.P. Sahi, J

Bench: Single Bench

Advocate: Santosh Kumar Srivastava, for the Appellant; A.K. Singh and C.S.C., for the Respondent

Final Decision: Dismissed

Judgement

Hon"ble A.P. Sahi, J.
Heard learned counsel for the petitioner.

A counter-affidavit has been filed on behalf of the respondent No. 2. This petition is directed against the order passed by the Labour Court and the Presiding Officer recalling the award dated 7.8.1991 and the order of computation passed u/s 33-C(2).

The challenge is raised on the ground that the respondent employer had also put in appearance and filed a written statement and thereafter absented from the proceedings, and as such neither the award was exparte nor the computation proceedings were ex parte. He further contends that as a matter of fact the respondent employer refused to accept the notice as a result whereof the Presiding officer had no option but to carry out the computation.

2. The submission of the learned counsel for the petitioner is that the appellant was fully represented and having failed to avail the opportunity before the Labour Court, the contention that the award was ex parte, is unsustainable. The respondent filed an application for considering the recall of the order of computation on the ground that the proceedings went ex parte, in these circumstances and the back ground of the case for which reliance has been placed on the order sheet of the Labour Court.

Learned counsel for the petitioner has brought on record the order sheet of the adjudication case from 23.5.1988 to 7.8.1991 as Annexure 3 to the writ petition.

3. Having perused the record, what appears is that the employer had put in appearance, but absented in 1990. On 9.10.1990 in the absence of employer an order was noted by the official of the Court below that the Presiding Officer had resigned and therefore the matter was being adjourned.

What appears is that the Court fell vacant thereafter and the cases remained pending. It is after a new Presiding Officer who took over charge that the order sheet was maintained in 1991 and the ex parte proceedings were conducted. Thereafter orders were reserved and an award was announced on 7.8.1991. A recall was filed contending that there was no notice to the employer about the proceedings of 1990 after the resignation of the Presiding Officer.

4. A perusal of Rule 13 of the U.P. Industrial Disputes Rules 1957 states that sitting of the Labour Court or Tribunal or of an Arbitrator, and the dates should be fixed by the Presiding Officer or the Arbitrator, as the case may be. Rule 13 is quoted below:

13. Place and time of hearing.--The sittings of a Labour Court or Tribunal or of an Arbitrator shall be held at such times and places as the Presiding officer or the Arbitrator, as the case may be, may fix and the Presiding Officer or Arbitrator, as the case may be shall inform the parties of the same in such matter as he thinks fit.

In the instant case after the Presiding Officer had resigned on 9.10.1990 there does not appear to be any notice sent by the Court after the joining of the new Presiding Officer. The new Presiding Officer did not send any notice or information to either of the parties as per the order sheet about fixing of any date.

Accordingly in the opinion of the Court ex parte award was rightly recalled and it was in consonance with the Rule 13 of the U.P. Industrial Disputes Rules, 1957 read with Rules 12 and 16.

In view of this the writ petition is dismissed and the interim order is discharged with a direction to the Labour Court to proceed to decide and adjudicate the dispute as expeditiously as possibly preferably within a period of 6 months from the date of production of a certified copy of this order before him.