

(2012) 10 CAL CK 0020

Calcutta High Court

Case No: Writ Petition No. 8557 (W) of 2008

Shri Shikshayatan College

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Oct. 16, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 17, 17A, 27(ii), 27(iii)

Citation: (2013) 2 CALLT 627

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Soumya Majumder and Mr. S.M. Obaidullah, for the Appellant; Sudip Ghosh and Mr. Sk. Hedayatullah for the fourth respondent, for the Respondent

Final Decision: Allowed

Judgement

Jayanta Kumar Biswas, J.

The petitioner in this WP under Article 226 of the Constitution of India dated May 5, 2008 is questioning an order of the Second Industrial Tribunal, West Bengal dated April 9, 2008 (WP p.28) allowing an application of the fourth respondent (Anjani Prasad) for setting aside of a no-dispute award (WP p.16) pronounced by it on October 15, 2007. Anjani Prasad was working in Shri Shikshayatan College as a sweeper. Alleging that he was wrongfully retrenched with effect from November 16, 1999 a union espousing his cause raised an industrial dispute. The dispute was ultimately referred by the Government of West Bengal to the Second Industrial Tribunal, West Bengal. The issues specified in the order of reference dated August 8, 2007 were as follows:-

1. Whether the retrenchment of Shri Anjani Prasad w.e.f. 16.11.1999 by the management of Shri Shikshayatan College is justified.

2. What relief, if any, he is entitled to?

2. On October 15, 2007 the Tribunal pronounced the following award:--

This proceeding was initiated at the instance of an order of reference issued by the Labour Department, Govt. of West Bengal on 8th August, 2007. Upon a perusal of the materials on record, I find that although, Management appeared and filed D-2 form duly signed and vakalatnama authorising one Advocate on behalf of the management was also filed. But none appeared for the union. However, on the next date notice was issued to the union and the same was duly served upon the union. No step was also taken on behalf of the union on that date. Accordingly, the matter was fixed for passing "No dispute" award.

3. Upon a careful perusal of the different materials available on record, I find that the union has not taken any steps to proceed with this case although notice was served duly upon the union representing the workman. Such being the position, I find no reason to drag this proceeding for an indefinite period of time. In that case if a "No dispute award is passed that will meet the ends of justice. Hence, it is, Ordered that a "No dispute" award is passed in this case. Along with this the order of reference together with the issues framed thereunder are disposed of in above terms.

This is my Award.

4. On November 27, 2007 the Government of West Bengal passed the following order:--

Whereas under the Government of West Bengal, Labour Department Order No. 898IR, dated the 08.08.2007 the Industrial Dispute between Messrs Shri Shikshayatan College, 11, Lord Sinha Road, Kolkata-700 071 and Shri Anjani Prasad represented by School and College Non-Teaching Employees Association (Regd. No. 13855), 112, Kalighat Road, Kolkata-700 026 regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Disputes Act, 1947 (14 of 1947), was referred to adjudication to the Judge, Second Industrial Tribunal West Bengal.

AND WHEREAS the said Judge Second Industrial Tribunal, West Bengal, has submitted to the State Government its award on the said Industrial Dispute;

NOW, THEREFORE, in pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said award as shown in the Annexure hereto.

5. On December 18, 2007 Anjani Prasad filed an application (WP p.19) for setting aside of the no-dispute award of the Tribunal dated October 15, 2007. He requested the Tribunal to give him an opportunity of contesting the reference on merits and stated that for reasons beyond control he could not attend the Tribunal.

6. The petitioner submitted an objection dated February 29, 2008 (WP p.23); and referring to and relying on the provisions of Rule 27 of the West Bengal Industrial Disputes Rules, 1958 it contended that since Anjani's application for setting aside of the no-dispute award was filed out of time, it was not entertainable.

7. The Tribunal rejected the petitioner's objection saying as follows:--

The Ld. Advocate for the company, on the other hand has contended that since 30 days have been passed after passing the "No Dispute" award this Tribunal is *functus Officio* and therefore, this Tribunal has got no power to rescind, set aside or recall the award passed by it. In support of his submission he has referred to decision reported in Cal. (H.C.) FLR 133. By referring this decision he has urged that the Hon'ble Division Bench affirmed the order of the Hon'ble Single Bench of High Court because of the fact that the observation of the Tribunal that after expiry of the 30 days of the date of publication of award the Tribunal has no power to set aside the "No Dispute" award. But, in this case before the publication of award the application for setting aside the award was filed by the applicant u/s 17A of the I.D. Act.

8. Mr. Majumder appearing for the petitioner and relying on the Division Bench decision of this Court in Raniganj Chemical Works Mazdoor Sangh and Another Vs. Raniganj Chemical Works and Others, that was cited also before the Tribunal, has submitted that the Tribunal could not entertain the application for setting aside of the no-dispute award even on the grounds that the application had been filed before expiration of 30 days from the date the award was published.

9. Mr. Ghosh appearing for Anjani Prasad and relying on a single Judge decision of this Court in Haran Chandra Naskar Vs. The State of West Bengal and Others, has submitted that there was no question of any limitation, because the application was for the recall of the no-dispute award and the period of limitation mentioned in the second proviso to Rule 27 of the West Bengal Industrial Disputes Rules, 1958 would have been applicable only if the application was for a review of the no-dispute award.

10. Rule 27 of the West Bengal Industrial Disputes Rules, 1958 is quoted below:--

27. Correction of errors and review of an award.--The Labour Court, Industrial Tribunal or Arbitrator may--

(i) correct any clerical or arithmetical mistake arising from an accidental slip or omission in any award made by it or him, and

(ii) review an award on the ground of some mistake or error apparent on the face of the record, either of its/his own motion or on the application of any of the parties;

(iii) for sufficient cause set aside after notice to the opposite party or parties, as the case may be, the *ex parte* award or an award on the footing that the industrial

dispute under reference is no longer in existence either of its/his own motion or on the application of any of the parties:

Provided that no correction shall be made without previous notices to the parties or opposite party, as the case may be:

Provided further that no application for review under clause (iii) shall be entertained on the expiry of the 15th day from the date of the award.

11. The facts of Raniganj Chemical were these. Raniganj Chemical dismissed one Ram Subhag Rai who was in its employment. The Government of West Bengal referred an industrial dispute to the Fourth Industrial Tribunal, West Bengal. Since no-one appeared, the Tribunal passed a no-dispute award on June 29, 1994. The award was published on June 5, 1995. The union espousing Subhag's cause filed an application for setting aside of the award on June 6, 1995. By an order dated December 20, 1996 the Tribunal set aside the award dated June 29, 1994.

12. In Raniganj Chemical one of the questions before the Division Bench was whether the Tribunal was competent to entertain the application for setting aside of the no-dispute award filed after 15 days from the date of the award, the period mentioned in the second proviso to Rule 27 of the rules.

13. After examining the provisions of Rule 27 of the rules, quoted hereinbefore, their Lordships of the Division Bench said and held as follows:--

12. ...Which regard to the language used in Rule 22 of the said Rules is concerned, we cannot agree with the view expressed by the learned Single judge in M/s. Eagle Wood Agencies Pvt. Ltd. (*supra*) that second proviso to Rule 22 has to be ignored because of the error apparent on the said Rules. It cannot be said that in the second proviso the period of limitation is only for review as contemplated u/s 27(ii). When the second proviso made it clear that no application for review under Clause (iii) shall be entertained on the expiry of 15th day from the date of the award and Clause (iii) of Rule 27 and the second proviso were incorporated by the same notification on the same day. Accordingly, it is clear to us that the Rule making authority when decided to confer power upon the Tribunal to set aside an ex-parte award, the Rule making authority thought it fit to impose a period of limitation and accordingly the same was done. Originally there was no clause (iii) of Rule 27 and there was no second proviso. Second proviso was introduced with Rule 27(iii) of the said Rules. Accordingly, we have to hold that the power under Rule 27(iii) is controlled by the period of limitation as provided under second proviso to that Rule.

14. Both Mr. Majumder and Mr. Ghosh have agreed that what the Division Bench was saying in the part of the decision quoted hereinbefore was regarding the second proviso to Rule 27 of the rules, because Rule 22 of the rules had or has no proviso at all. Rule 22 of the rules is quoted below:--

22. Procedure when both parties fail to appear. - If without sufficient cause being shown both the parties fail to appear before a Board, Court, Labour Court, Tribunal or Arbitrator, the Board, Court, Labour Court, Tribunal or Arbitrator may submit a suitable report to the State Government and the Labour Court, Tribunal or an Arbitrator may submit an award to the State Government on the footing that the Industrial dispute under reference is no longer in existence.

15. It is evident from what the Division Bench said that for setting aside of the award in question Anjani Prasad could file his application only within 15 days from the date of the award. It means that he could file the application that he filed on December 18, 2007 only within 15 days from October 15, 2007. He filed the application admittedly after 15 days from the date of the award.

16. Having said and held as noted hereinbefore, their Lordships of the Division Bench then said and held as follows:--

13. The High Court sitting in writ jurisdiction had not been conferred with any power to make any correction in respect of a legislation. Power of review of the High Court in Article 226 of the Constitution does not extend to sit over any judgment, over any law or Rules framed by the Rule making Authority and to correct and/or to make it clear or remove any ambiguity if it appears even on the face of it, but reading the provisions of Rule 27(iii) and the second proviso to that Rule, which were introduced on the same day, by the same notification, we have no doubt in our mind that the intention of the rule making authority was clear that the power u/s 27(iii) could be exercised within the aforesaid period and that is why the period of limitation was fixed....

17. Their Lordships of the Division Bench lastly said and held as follows:--

14. Lastly, we cannot uphold the contention of the learned Counsel appearing on behalf of the petitioner that the Tribunal has inherent power to pass any order that may be necessary for the interest of justice as provided u/s 151 of the CPC. The Tribunal is a statutory authority and cannot discharge any power or function unless expressly conferred. But it is well-known principle that when a power is conferred by a statute, in that event, that authority must have the power to do anything which is ancillary or incidental to such power as may be necessary for effective discharge of its function. But in the instant case, when the Rules of limitation have been imposed by the Rule making authority and when the Rule making authority has taken away the power of the Tribunal to entertain any application for recalling of an ex-parte order after expiry of 15 days from the date of the award, in that event, in view of the express prohibition the Tribunal cannot be said to have any power inherent or otherwise to exercise the power of recalling an order or setting aside an order after the period mentioned in the second proviso to Rule 27 of the West Bengal Industrial Dispute Rules, 1958 as well as the award has become enforceable in view of provisions of section 17A of the Industrial Disputes Act.

18. In Haran Chandra Naskar the facts were these. Haran was working in one Switz Foods Private Limited. He was dismissed. An industrial dispute raised by a union espousing his cause was referred to the First Industrial Tribunal, West Bengal. Recording that inspite of opportunities the union stayed away from the proceedings, the Tribunal passed a no-dispute award on January 31, 2002. On February 26, 2002 the union filed an application for setting aside of the award. By an order dated April 17, 2002 the Tribunal rejected the application on the grounds that it was filed beyond the period mentioned in the second proviso to Rule 27 of the rules.

19. The question before the single Judge giving the decision in Haran Chandra Naskar was whether the application for setting aside of the no-dispute award filed after expiration of the period mentioned in the second proviso to Rule 27 of the rules was entertainable.

20. The Division Bench decision of this Court in Raniganj Chemical was cited before the single Judge who said and held as follows:--

29. The petition filed by the Union representing the workman for recalling the "No Dispute Award" cannot be treated as an application by the Union under Rule 27(iii) of the West Bengal Industrial Disputes Rules, 1958 and as such the prescribed period of limitation for filing an application under Clause (iii) cannot be made applicable in respect of the aforesaid petition filed by the Union for recalling of the "No Dispute Award".

30. For the aforementioned reasons, I am of the view that the decisions of the Division Bench of this Court as cited by Mr. Ghosh namely Raniganj Chemical Works Mazdoor Sangh & Anr. (supra) and Shiraz Golden Restaurant (supra) have no manner of applications in the facts of the present case.

21. With respect to the single Judge decision in Haran Chandra Naskar, Mr. Majumder has submitted that since the issue involved therein and the issue involved in Raniganj Chemical were identical, arising from identical relevant facts, the single Judge, bound by the Division Bench decision, could not take the view that the application for setting aside of the award filed by the union was not an application under Rule 27(iii) of the rules.

22. In response, Mr. Ghosh has submitted that though the issues in Haran Chandra Naskar and Raniganj Chemical were identical, arising from almost identical facts, considering "the power to recall aspect," an aspect not considered by the Division Bench, the single Judge relying on the Supreme Court decision in Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, considered also by the Division Bench, took a different view.

23. It is not for me to decide whether the Single Judge decision in Haran Chandra Naskar is a correct decision; for I am bound by it and also by the Division Bench

decision in Raniganj Chemical. But I have no doubt that the issue involved in this WP is identical to the one that was involved in Raniganj Chemical. Hence in view of the binding Division Bench decision in that case, I am unable to accept the argument that since it was a request to recall the ex parte no-dispute award, the Tribunal was competent to entertain the application filed after expiration of the 15-day period mentioned in the second proviso to Rule 27 of the rules. It is to be noted that the Tribunal, however, did not proceed on this basis. It proceeded on a clearly erroneous" proposition that the application filed before the publication of the award was entertainable. No provision of law said so. Besides, the Tribunal was wrong in saying that the application had been filed before publication of the no-dispute award. The award was published on November 27, 2007 and the application was filed on December 18, 2007. It is evident that the Tribunal misread and misapplied the Division Bench decision in Raniganj Chemical, The application was just not entertainable.

For these reasons; I set aside the impugned order, and allow the WP. It is made clear that nothing herein or in the no-dispute award shall prevent Anjani from seeking a second reference of the dispute, and the Government from considering the request, if made, according to law. No costs. Certified xerox.