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HIGH COURT OF DELHI : NEW DELHI

W.P (C) No. 4809 of 2007

GREAVES COTTON LIMITED Petitioner
Through: Mr. D. R. Thadani, Adv.

Versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents
Through: Mr. B. K. Pal, Adv.

Judgment decided on : 28.09.2010

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MANMOHAN SINGH, J.

1. The present writ petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India seeking direction to quash the order dated 09.05.2007 passed by the Labour Court whereby the Presiding Officer allowed an application filed by the respondent No.3 in October 2002 for setting aside the ex-parte award dated 1.8.2002.

2. The brief facts of the case leading up to the present writ petition are that the petitioner is a Public Limited Company registered under Section 3 of the Indian Companies Act, 1956 with its registered

office at Mumbai and regional office in New Delhi. The respondent No. 3 claims to be an employee of the petitioner and he moved the respondent Nos. 1 & 2 for conciliation and for making a reference to the Labour Court regarding a dispute of his alleged termination by the petitioner. The petitioner was issued a notice and therefore the petitioner made an appearance before the respondent Nos. 1 & 2 and denied having any employer and employee relationship with the respondent No.3.

3. Since no settlement could be arrived at between the parties, Respondent Nos. 1 & 2 passed the order dated 24.04.1995 referring the dispute to the Labour Court to decide the following :

“Whether the services of Sh. Abhay Singh Yadav have been terminated illegally and/or unjustifiably by the management and if so, then what relief is he entitled and what directions are necessary in this respect”

4. In his statement of claim filed before the Labour Court on 01.09.1995 respondent No.3 stated that he was employed as driver with the petitioner w. e. f. 25.07.1991 and on 29.11.1991 his services were illegally terminated by the petitioner. The petitioner denied the claim of the respondent No.3 and further stated that infact respondent No. 3 was employed by Shri Y. K. Chib who was the Dy. Regional Manager of the petitioner as his personal driver. During the proceedings the matter was adjourned from time to time and the workman/respondent No. 3 remained absent on five hearings, ultimately on 22.07.2002 when the matter was listed for cross-examination of respondent No. 3 who was again absent, the matter was reserved for orders and on 01.08.2002 an

Ex-parte Award was passed by the Labour Court.

5. Admittedly, an application for setting aside the order dated 1.8.2002 was made by the respondent No.3 on 22.10.2002. The award was published on 21.2.2003 and it became enforceable with effect from 23.3.2003.

6. The finding of the Labour Court is that since the application for restoration was pending before the award was enforced, therefore, the Court had the jurisdiction to deal with the same.

7. The learned counsel for the petitioner has argued that under the Scheme of Industrial Disputes act, 1947, the file is deemed to have been withdrawn from the Labour Court on the enforcement of the award and the Court having become functus officio on the enforcement had no further jurisdiction to deal with the matter in any manner whatsoever. It is further argued that after passing the award, the dispute was no longer pending before the Labour Court. Therefore, the application filed by the respondent No.3 could not have been entertained by the Labour Court. In support of his submissions, he has referred to the following judgments:

1. **Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others**, 1980 (Supp.) SCC 420.
2. **Sangham Tape Co. Vs. Hans Raj**, 2005 (9) SCC 331.
3. **Jammu Tehsil Vs. Hakumar Singh and Others**, 2007 (1) SCC (L & S) 940.
4. **Hindusthan Commercial Bank Ltd. Vs. Punnu Sahu (Dead) Through Legal Representative**, 1971 (3) SCC 124.
5. **Shiv Kumar Sharma Vs. Santosh Kumari**, 2007 (8) SCC 600.
6. **Hari Singh Mann Vs. Harbhajan Singh Bajwa**

and Others, 2001 (1) SCC 169.

7. **M/s. Lakshmiratan Engineering Works Ltd. Vs. Asst. Commissioner (Judicial) I. Sales Tax, Kanpur Range, Kanpur and another**, AIR 1968 SC 488.

8. After having gone through the judgments referred to by the learned counsel for the petitioner, I am of the considered view that none of the judgments referred will help the case of the petitioner. The crux of the law is that the application for setting aside ex-parte award is not maintainable after the publication of the award as under Section 17-A of the Act and an award becomes enforceable after the expiry of 30 days from the date of its publication and thereafter Tribunal becomes functous officio on the date of enforcement. However, at the same time the Tribunal would be deemed to continue till the date on which the award becomes enforceable under Section 17-A of the Act retain jurisdiction over the dispute referred to it for adjudication and upto date it has the power to entertain the applications in connection with such dispute. The jurisdiction of the Tribunal had to be seen on the date of the application made to it. Nothing contrary has been held in the decisions referred by the learned counsel for the petitioner. On the contrary, the said decisions do help the case of the respondent No.3. Thus, the Tribunal rightly took the view that since the application for recalling the order was made before the award had become enforceable and the Tribunal under these facts of the case had not become functous officio and had jurisdiction to entertain the application for recalling the order.

9. For the above said reasons, I am of the considered view that

the present writ petition deserves to be dismissed. No costs.

MANMOHAN SINGH, J.

September 28, 2010

jk/dp