

GAHC010173012016



2024:GAU-AS:10994

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4954/2016

Burnie Braes Tea Estate,

Rep. by its Manager, Burnie Braes Tea Company,
Having its registered office at 12,
India Exchange Place, Kolkata,
West Bengal, Pin- 700001,
P.O. Burnie Braes, Dst- Hailakandi,
Assam, Pin-788801.

.....Petitioner.

-Versus-

1. The State of Assam,

To be Rep. by the Commissioner and Secy.
To the Govt. of Assam,
Deptt. of Labour and Employment,
Assam Civil, Secretariat, Dispur, Ghy- 6.

2. The Presiding Officer,

Industrial Tribunal,
Cachar, Silchar, Dist.- Cachar
Assam, Pin- 788001.

3. The Labour Commissioner, Assam

Guwahati- 781016.

4. The Dy. Commissioner,

Hailakandi, P.S. and Dist.- Hailakandi
Assam, Pin- 788001.

5. The Secretary,

Barak Cha Sramik Union
Silchar, Dist. - Cachar
Assam, Pin- 788001.

6. Amita Rabi Das @ Anita Rabi Das

W/O- Sri Jahar Rabi Das Retrenched Workman
Burni Breas, Dist.- Hailakandi, Assam, Pin- 788113.

.....**Respondents.**

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Advocate for the Petitioner : Mr. A. B. Dey.

Advocate for the respondents : Mr. K. Gogoi.

Date of hearing & judgment : 11.11.2024

JUDGMENT & ORDER

Heard Mr. A. B. Dey, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned counsel for the respondent Nos. 1, 2, 3 & 4. No one appears for the respondent Nos. 5 & 6.

2. The management (writ petitioner) has made a challenge to the *ex-parte* Award dated 24.08.2015 passed by the learned Industrial Tribunal, Cachar, Silchar (hereinafter referred to as the learned Tribunal) in Reference Case No. 1/2014. The petitioner has also made a challenge to the order dated 22.06.2016 passed in Misc. Case No. 1/2016, which was an application filed by the petitioner under Order IX Rule 13 CPC, for modification/vacation of the *ex-parte*

Award dated 24.08.2015.

3. The case of the workman (respondent No. 6) is to the effect that she was a permanent worker at Burni Breas Tea Estate, Hailakandi and that she was terminated illegally by the petitioner without any cause. The workman's further case is that before termination of her service, the management did not issue any show cause notice, which was mandatory.

4. To cut a long story short, the following issues were framed by the Government to be decided by the learned Tribunal, which are as follows:-

“(i) Whether the management was justified in effecting work stoppage to the workman since July, 2009?

(ii) Whether the workman was entitled to reinstatement with full back wages including other fringe benefits.”

5. The petitioner did not participate in the proceedings before the learned Tribunal, despite being given time for filing written statement, on the asking of the petitioner. The learned Tribunal thereafter took the evidence of the workman and passed the impugned *ex-parte* Award dated 24.08.2015 in Reference Case No. 1/2014, by directing reinstatement of the petitioner with full back wages.

6. The writ petitioner (management) thereafter submitted Misc. Case No. 1/2016 before the learned Tribunal under Order IX Rule 13 read with Section 151 CPC, for vacating the *ex-parte* Award dated 24.08.2015. Misc. Case No. 1/2016 was dismissed, vide order dated 22.06.2016, on the ground that Order IX Rule 13 CPC was not attracted, keeping in view the fact that a petition dated 30.01.2014 had been filed by the petitioner in Reference Case No. 1/2014,

seeking time to file written statement and after that, the petitioner had not appeared on his own volition before the learned Tribunal.

7. The petitioner has thereafter filed the present writ petition, praying for setting aside the *ex-parte* Award dated 24.08.2015 passed in Reference Case No. 1/2014 and the order dated 22.06.2016 passed in Misc. Case No. 1/2016.

8. The petitioner's counsel submits that the petitioner had submitted a letter dated 30.01.2014 in Reference Case No.1/2014, which the learned Tribunal should have accepted as the written statement of the petitioner. He further submits that the management neither terminated the service of the respondent No. 6 nor initiated any domestic proceeding against her. As the respondent No. 6 was absent from service from June, 2009, the petitioner had no other alternative, but to stop making payment of wages on account of no work no pay. He also submits that though the management had repeatedly informed the respondent No. 6 to attend to her duties, but she neither attended to her duties, nor gave reasons for her absence to the management. He submits that due to there being no Presiding Officer, for a certain period of time to preside over the learned Tribunal, the petitioner was expecting that a notice would be issued to it, as and when the Presiding Officer started presiding over the learned Tribunal, without realising that the concerned District Judge was in-charge Presiding Officer of the learned Tribunal, during the absence of the Presiding Officer. He accordingly submits that the *ex-parte* Award dated 24.08.2015 and the order dated 22.06.2016 passed in Reference Case No. 1/2014 and Misc. Case No. 1/2016 respectively, should be set aside and the matter should be remanded back to the learned Tribunal, to enable the petitioner to file his written statement and contest Reference Case No. 1/2014.

9. The petitioner's counsel submits that as the petitioner was prevented from sufficient cause from appearing before the learned Tribunal and in terms of Order IX Rule 13 CPC, the *ex-parte* Award dated 24.08.2015 can be set aside, upon such terms that may be allowed by this Court to be just, subject to payment of cost.

10. Mr. K. Gogoi, learned counsel for the respondent Nos. 1 to 4 submits that the *ex-parte* order dated 24.08.2015 passed in Reference Case No. 1/2014 was published in the Assam Gazette on 15.02.2016, which has been referred to in the letter dated 21.03.2016 issued by the Assistant Labour Commissioner, Silchar, i.e. Govt. Notification No. GLR.216/2013/15 dated Dispur, the 15th February, 2016, having Memo No. GLR.216/2013/15-A dated Dispur, the 15th February, 2016.

11. The counsel for the respondent Nos. 1 to 4 submits that in terms of Section 17(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), subject to the provision of Section 18(A), an award published under Sub-section (1) of Section 17 shall be final and cannot be called into question by any Court in any manner whatsoever. Section 17 of the Act states as follows:-

“17. Publication of Reports and Awards -

(2) Subject to the provisions of Section 17-A, the award published under sub-section (1) shall be final and shall not be called in question by any Court in any manner whatsoever.

12. The counsel for the respondent Nos. 1 to 4 further submits that the letter dated 30.01.2014 issued by the Manager of the writ petitioner cannot be

considered to be a written statement, inasmuch as, the petitioner's application under Order IX Rule 13 CPC in Misc. Case No. 1/2016, states that on receiving notice from the Court on 26.01.2014, the management filed one petition on 30.01.2014, praying for time for filing written statement. He accordingly submits that as it is not denied by the petitioner that notice was received by the petitioner, Order IX Rule 13 CPC would not be attracted. Due to the non-submission of a written statement and non-appearance of the petitioner before the learned Tribunal in Reference Case No. 1/2014, the passing of the *ex-parte* Award by the learned Tribunal did not suffer from any infirmity. Similarly, there was no infirmity in dismissing the application under Order IX Rule 13 read with Section 151 CPC in Misc. Case No. 1/2016.

13. I have heard the learned counsels for the parties.

14. In the *ex-parte* Award dated 24.08.2015 passed in Reference Case No. 1/2014, the learned Tribunal has made the following observation:-

“After receipt of the said Reference Case from the Government, notice had been issued to the both sides to submit their respective W/S. In response notice issued by the Court. Union side has appeared through their counsel and submitted their written statement. In spite of receipt of the notice, management side did not turn up to submit their W/S. Although management has received notice issued by the Court and sought time to submit their W/S. Accordingly, petition submitted by the management side is allowed. After the aforesaid petition, management side did not turn up to submit their written statement. Although several opportunities were given to the management side to submit their W/S and ultimately this Court, Vide Order dated 13.02.2015, passed an order that this case will proceed ex parte against the management.

.....

Learned counsel on behalf of management side had failed to appear in the Court, so evidence led by the Union side remains unchallenged.”

15. The learned Tribunal passed the operative portion of the *ex-parte* Award dated 24.08.2015 in Reference Case No. 1/2014 as follows:-

“Considering all aspects and evidence adduced by the union side and perusal of the documents submitted by the union side, order passed by the management for stoppage of work of the delinquent workman since July 2009 Is 'set aside. As management has failed to contest this case and also failed to justify the stoppage of work of the delinquent workman since July 2009 by providing sufficient documentary evidence. So, the workman is to be reinstated to her service with all full back wages. Award is accordingly passed with the aforesaid observations. Send 5 (five) copies of award to the Government for notification in the Official gazette. This case is accordingly disposed of ex parte. Award is accordingly passed with the aforesaid observations.

Send 5 (five) copies of award to the Government for notification in the Official gazette.

This case is accordingly disposed of ex-parte.

Given under my hand and seal of this Court, this 24th day of August, 2015.”

16. The observations of the learned Tribunal made in the *ex-parte* Award dated 24.08.2015 clearly show that the writ petitioner had received notice and had also sought time to file written statement, which it did not do so. The petitioner also failed to appear before the learned Tribunal on subsequent dates. Though

the petitioner has tried to make out a case that the letter dated 30.01.2014 issued by the Manager of the writ petitioner company should have been treated as a written statement by the learned Tribunal, para 2 of the petitioner's petition under Order IX Rule 13 CPC petition, registered as Misc. Case No. 1/2016 before the learned Tribunal, goes to show that the same could not be treated as a written statement, as the said letter was for seeking time to file written statement.

17. Para 2 of the petitioner's Misc. Case 1/2016 is reproduced herein below as follows:-

“2. That the Management side received notice from the Court on 26.01.2014, and the date was fixed on 30.01.2014 for appearance and W/S. Accordingly, the Management side filed one petition on 30.01.2014, praying for time for filing the W/S objection.”

18. The petitioner's Order IX Rule 13 CPC petition was made on 19.04.2016, while the *ex-parte* order dated 24.08.2015 was notified in the official Gazette earlier, i.e. on 15.02.2016.

19. The above being said, Order IX Rule 13 CPC provides that the Court shall make an order for setting aside the *ex-parte* order, if the Court is satisfied that summons were not duly served or that the defendant was prevented by any sufficient cause from appearing when the suit was called for hearing.

20. Order IX Rule 13 CPC states as follows:-

“13. Setting aside decree ex-parte against defendants - In any case in

which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

¹*[Provided further than no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.]*

²*[Explanation.—Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte decree.]*

21. On a query raised by this Court to the writ petitioner's counsel as to whether the respondent No. 6 was working at present with the writ petitioner, the petitioner's counsel submits that he does not have any instruction/knowledge with regard to the above query.

22. On considering the fact that the petitioner had consciously failed to file the written statement, even though it had asked for time to file the written statement, besides not appearing on subsequent dates fixed by the learned

Tribunal without giving sufficient cause for the same, this Court does not find any infirmity with the learned Tribunal in passing the *ex-parte* Award dated 24.08.2015. With regard to the challenge made to the rejection of the petitioner's application under Order IX Rule 13 CPC, this Court is of the view that the said provision is not attracted to the facts of this case, as the petitioner had received notice and no sufficient cause/reason has been shown as to why the petitioner did not appear before the learned Tribunal on subsequent dates.

23. Accordingly, in view of the above reasons, this Court does not find any ground to exercise its discretion in this case. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant