

GAHC010206362016



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

Case No. : WP(C)/4882/2016

M/S SOUTH ASSAM ROADWAYS LIMITED FLEET OWNER
PREMIER ROAD CARRIER CIRCLE OFFICE, 37, NATIONAL HIGH WAY,
LAKHRA, GHY-37, DIST- KAMRUP METRO, REP. BY ITS DIRECTOR

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE SECY. TO THE GOVT. OF ASSAM, LABOUR and EMPLOYMENT
DEPTT., DISPUR, GHY-6

2:LALAN CHOUDHURY
C/O ASSAM BENGAL PARIVOHAN
OPP. FOREST GATE
LAKHRA
GHY-34
KAMRUP METRO
PIN-78103

Advocate for the Petitioner : MR.L P SHARMA, MR.R THAKURIA,MS B GOSWAMI,MR P
CHOUDHURY,MR S CHAKRABORTY

Advocate for the Respondent : MS.M TALUKDARR-2, MR.S SAHU(R-2),GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

For the petitioner : Mr. S. Chakraborty, Advocate

For the respondents : Mr. S. R. Baruah (R1)
Mr. S. Sahu (R2)

Dates of hearing : 28.11.2024

Date of Judgment : 02.12.2024

JUDGMENT AND ORDER (CAV)

Heard Mr. S. Chakraborty, learned counsel for the petitioner. Also heard Mr. S. Sahu, learned counsel for the respondent No.2.

2. The petitioner (Management) has put to challenge the impugned ex-parte Award dated 31.12.2014 passed by the learned Labour Court, Guwahati in Reference Case No.2/2014 on two grounds. Firstly, on the ground that the learned Labour Court had issued the order dated 22.07.2014, directing that Reference Case No.2/2014 would proceed ex-parte against the petitioner, without any notice being received by the petitioner and without there being any returns being stated in the summons, endorsing the time and manner of service of the alleged notice alleged to be served on the petitioner, in terms of Order 5 Rule 18 CPC. Secondly, on the ground that there is no proof that the respondent is a workman employed by the petitioner, inasmuch as, the money receipt dated 04.08.1997, which has been exhibited as Ext-1, is not proof of payment of money to the respondent No.2 by the petitioner.

3. The petitioner has also put to challenge the order dated 30.04.2016

passed by the learned Labour Court, Guwahati in Misc. Case No.1/2015, which was in relation to an application submitted by the petitioner for setting aside the ex-parte Award dated 31.12.2014 passed in Reference Case No.2/2014.

4. The petitioner's counsel submits that the learned Labour Court had directed that Reference Case No.2/2014 should proceed ex-parte against the petitioner, vide order dated 22.07.2014, when there was no service report made by the Process Server in terms of Order 5 Rule 18 CPC. The petitioner's counsel further submits that at the time of pendency of Misc. Case No.1/2015, the Process Server DW-2 Sri Nayanmoni Sarma in his cross-examination stated that he did not submit any report after serving the notice dated 09.06.2014 to the petitioner. As such, there was no basis for the learned trial Court to have decided that notice had been served upon the petitioner.

5. He also submits that the respondent No.2 had submitted his written statement (statement of claim) only on 08.08.2014, i.e., after the case was directed to be proceeded ex-parte against the petitioner. He submits that it is only after a statement of claim is submitted by the respondent No.2, who is the party raising the dispute, that the petitioner is to file a written statement against the statement of claim. However, the petitioner has been proceeded ex-parte even before a statement of claim has been submitted by the respondent No.2. He submits that the filing of a statement of claim and the subsequent filing of a written statement against the statement of claim, has to be done in terms of Rule 10B of the Industrial Disputes (Central) Rules, 1957 (hereinafter referred to as the '1957 Rules').

6. The counsel for the petitioner further submits that the impugned Award passed by the learned Labour Court has come to a finding that the respondent No.2 was a workman engaged by the petitioner on the basis of Ext-1, which is a money receipt, which shows that the respondent No.2 had received Rs.1,37,684/- from the petitioner. However, Ext-1 is not a money receipt showing payment of money to the respondent No.2, but is actually a money receipt issued by the petitioner, for receipt of money from M/s HPC/CPM, Panchgram (Assam).

7. The petitioner's counsel submits that there is no evidence to show that the respondent no.2 was a workman, engaged by the petitioner or that his service had been terminated by the petitioner.

8. The petitioner's counsel accordingly prays that the impugned Award dated 31.12.2014 passed in Reference Case No.2/2014 and the order dated 30.04.2016 passed in Misc. Case No.1/2015 by the learned Labour Court, Guwahati, should be set aside.

9. Mr. S. Sahu, learned counsel for the respondent No. 2 submits that there is no requirement for a Process Server to give a service report that the notice issued by the learned Labour Court had been served upon the writ petitioner, prior to the learned Labour Court proceeding with the case ex parte the petitioner. He submits that Order 5 of Rule 9 CPC does not provide for such a situation. He submits that an ex parte proceeding can be made even if no report is made by the Process Server, inasmuch as, notice was served upon the writ petitioner by special messenger.

10. The counsel for the respondent No. 2 further submits that Ext. 1, which was a receipt for money paid by M/s HPC/CPM, Panchgram (Assam) to the petitioner, was received by the respondent No. 2, on behalf of the petitioner and subsequently paid to the petitioner. The same proved that the respondent No. 2 was a workman working under the petitioner and the learned Labour Court rightly referred to Ext. 1 as proof of the respondent No. 2 working for the petitioner. He also submits that Rule 10B of the Industrial Disputes (Central) Rules, 1957 (hereinafter referred to as the Rules) deals with a situation where both the parties are present. As such, the non-appearance of the petitioner before the learned Labour Court, justified the order passed by the learned Labour Court proceeding with the case ex parte the petitioner. He also submits that as Rule 18 of the 1957 Rules specifically deals with service of summons of notice to parties, the provisions of the CPC would not be applicable. Thus, the issue of the Process Server/Special Messenger requiring to submit a report regarding the service of summons to the petitioner does not arise.

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

12. Rule 18 of the 1957 Rules states as follows:-

*“**18.** Service of summons or notice Subject to the provisions contained in rule 20, an notice, summons, process or order issued by a Board, court, Labour Court, Tribunal, National Tribunal or an arbitrator empowered to issue such notice, summons, process or order, may be served either personally or by registered post and in the event of refusal by the party concerned to accept the said notice, summons, process or order, the same shall be sent again under certificate of posting.”*

13. A perusal of Rule 18 shows that subject to the provisions of Rule 20, any notice issued by the Board, Court, Labour Court, Tribunal may be served by personally or by registered post and in the event of refusal by the party concerned to accept the said notice, the same shall be sent again under certificate of posting.

14. In the present case, there is nothing to show that the petitioner had received the notice, inasmuch as, there are two seals in the notice dated 09.06.2014. However, the presence of the seals do not indicate as to whether any of the seals is the correct seal of the petitioner. Even assuming that the seals are correct, there is nothing to show as to who has received the notice on behalf of the petitioner. In any event, the fact remains that there has been no service report made by the Process Server or special messenger regarding service of notice upon the petitioner or refusal on the part of the petitioner to accept the notice. Unless a Process Server/Special Messenger states that notice was served upon the petitioner or notice was refused, it was not proper on the part of the learned Labour Court to have issued the order directing that the case would be proceeded ex parte against the petitioner. Further, in terms of Rule 18 of the 1957 Rules, notice was to be sent again under a certificate of posting, which was not done. Thus, there was no basis for the learned Labour Court to have proceeded the case ex parte against the petitioner.

15. The above being said, the finding of the learned Labour Court that the respondent No. 2 was a workman of the petitioner, has been made solely on the basis of the Ext. 1, which is a money receipt, showing that money had been paid by M/s HPC/CMP Panchgram (Assam) to the petitioner. The learned Labour Court in the impugned ex parte award dated 31.12.2014 has held that Ext-1

proved that the respondent No. 2 (workman) had received Rs.1,37,684/- from the petitioner. However, the above finding of the learned Labour Court is not even the pleaded case of the respondent No. 2, inasmuch as, the respondent No. 2 in his examination-in-chief before the learned Labour Court, while exhibiting Ext-1, stated as follows:-

“Exhbt. No. 1- is the original copy of the bill/chalan received by me for and on behalf of the management of South Assam Roadways Ltd as proof of my service to them.”

16. Thus, the finding of the learned Labour Court that the respondent No. 2 is a workman of the petitioner, is not even the case of the respondent No. 2 himself. There is no other document by which the learned Labour Court has decided that the respondent No. 2 is the workman of the petitioner. The evidence recorded by the learned Labour Court does not prove that the petitioner is a workman under the petitioner. As Ext. 1 does not support the finding/decision of the learned Labour Court, this Court is of the view that the impugned ex parte award 31.12.2014 passed in Reference Case No. 2/2014 by the learned Labour Court, Guwahati is not sustainable. Accordingly, the above-said Award is set aside.

17. The case is remanded back to the learned Labour Court to try the case *de-novo*, after giving an opportunity of participation in the Reference case to the writ petitioner herein.

18. The writ petition is accordingly allowed.

19. Send back the LCR.

JUDGE

Comparing Assistant