

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(L) No. 367 of 2010**

Municipal Corporation, Bilaspur Through its Commissioner, Municipal Corporation Bilaspur, Distt.-Bilaspur (CG)

---- Petitioner

Versus

1. Ashok Tande S/o Late Shri Kangalu Tande, aged about 50 years, Ex. Plumber, Resident of Village and Post Mangala, District Bilaspur, (CG)
2. The Labour Court Through its Presiding Officer, Labour Court, Bilaspur, Distt.-Bilaspur (CG)

---- Respondents

For Petitioner	:	Shri Manish Nigam, Advocate
For Respondent No.1	:	Ms. Anubhuti Marhas, Advocate
For Respondent No.2/State:	:	Shri Bhupendra Singh, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****04/09/2015**

The challenge in the present writ petition is the award dated 30.07.2009 Annexure P-1 passed by the Labour Court in Case No. 16/IDA/2008(Ref.).

2. The facts in nutshell are that the respondent No.1 was working as a Plumber in the petitioner establishment since 1989 and continued to work with the petitioner establishment till 10.08.2000 when the services of the deceased workman was discontinued. Subsequently, the respondent workman raised a dispute under the provisions of Industrial Dispute Act which was referred to the State Industrial Court at Bilaspur with the following terms:

“Whether the dispute of termination of services raised by the respondent workman even after elapse of eight years is liable to be considered? If yes, whether the termination of services of the respondent workman is proper and legal? If no, then for which assistance the Respondent No.1 is eligible? In this regard, what is the order to the Petitioner?”

3. The matter was registered as Case No. 16/IDA/2008(Ref) before the Labour Court which proceeded to decide the case on merit. However,

in spite of proper service being made upon the second party i.e. Municipal Corporation, Bilaspur, they chose not to appear before the Labour Court. Accordingly, the Labour Court proceeded ex parte against the Petitioner and finally after recording the evidence of the respondent workman and hearing the arguments led on his behalf, passed the impugned award dated 30.07.2009 in favour of the respondent workman. The said award, according to the counsel for the petitioner, was published in the Gazette of the State Govt. somewhere in the month of October, 2009.

4. It is this award dated 30.07.2009 which the petitioner has now challenged before this Court for invoking the writ jurisdiction under Article 226 of the Constitution of India challenging the award of the Labour Court on merit raising various grounds.

5. The present writ petition was filed on 19.01.2010 and by now it is almost about 5 ½ years that the writ petition is pending before this Court and till date according to the respondent workman, the petitioner has not complied with the mandatory requirement under Section 17 B of the Industrial Dispute Act in spite of the award being passed by the Labour Court ordering for reinstatement of the petitioner in service. It is also pertinent to note that in addition to the non-compliance of the provisions of Section 17 B, the writ petition preferred by the petitioner is also silent on the aspect whether the notice was properly served upon the petitioner during the proceeding drawn by the Labour Court or not and the initiation of the ex-parte proceeding by the Labour Court against the petitioner was proper legal and just or not. The petitioner has preferred this writ petition ignoring the said facts and without there being any evidence, pleadings or submissions to counter the case of the respondent workman.

6. According to the counsel for the petitioner, the Corporation came to know about the award late and since they could not have the remedy of approaching the Labour Court for setting aside the ex parte proceeding before the Labour Court, they have chosen to prefer the Writ petition challenging the said award on merit. According to the counsel for the petitioner, the non availing of the remedy of seeking setting aside of the ex parte proceeding by the Labour Court would not debar the right of the petitioner for challenging the award on its merit under the writ petition.

7. Counsel for the petitioner relied upon a judgment of the Supreme Court passed in the case of Jammu Tehsil v. Hakumar Singh and Others reported in (2006) 12 SCC 193 wherein, according to him, the provisions of Order 9 Rule 13 CPC would not be strictly applicable in the proceedings under Industrial Dispute Act and that after the award is passed the Labour Court becomes functus officio in any application moved by the either parties to the dispute.

8. Opposing the petition, counsel for the respondent workman submits that the petitioner till date has not complied with the mandatory requirement of Section 17 B of ID Act in as much as neither the petitioner establishment has taken back the respondent workman in employment nor the workman has been paid the wages last drawn from the time the writ petition was filed by the petitioner.

9. Counsel for the respondent workman submits that the workman is being made to run from pillar to post to meet both ends meal in spite of there being an award in his favour passed by the Labour Court. She further submits that the respondent employee has reached the stage of penury where he is not able to sustain himself in spite of there being a categorical verdict of reinstatement by the Labour Court in his favour more than six years back.

10. This Court on 20.08.2013 had issued a specific direction to the petitioner Corporation to show how they have complied with the provisions of Section 17 B of the ID Act in respect of the workman. In spite of almost two years having passed, the petitioner Corporation till date have not been able to show whether they have complied with the provisions of 17 B of ID Act or not. On the contrary, counsel for the respondent workman submits that in fact, the Petitioner Corporation have not complied the mandatory requirement under Section 17 B of ID Act.

11. The Supreme Court in the case of Dena Bank v. Kiritikumar T. Patel AIR 1998 SC 511, has held that Section 17B has been enacted by the Parliament with a view to give relief to workman who has been ordered to be reinstated under the award of a Labour Court or the Industrial Tribunal during the pendency of the proceedings in which the said award is under challenge before the High Court or the Supreme Court. The object underlining the provision is to relieve to a certain extent the hardship that

is caused to the workman due to delay in the implementation of the award of reinstatement.

12. Following the judgement of *Dena Bank v Kiritikumar* (supra) the Supreme Court in the case of *Dena Bank vs Ghanshyam* 2001 (5) SCC 169 has held that Section 17B provides that where the employer prefers any proceedings against an award directing reinstatement of any workman the employer shall be liable to pay said workman during the pendency of the proceedings in the High Court, full wages last drawn by him.

13. By the said provision the Parliament intended that the workman should get last wages drawn from the date of the award till the challenge to the award is finally decided. The inescapable conclusion from the aforesaid pronouncement of the Supreme Court is that denial of benefits as granted to the workman under Section 17B of the Act of 1947, would defeat the spirit of the enactment. The Section in effect has codified the rights of the workman to get their wages which they could not get in time because of long drawn out process caused by the methods employed by the employer/employer management. Similar view has also been taken by this Court in the case of *State of Chhattisgarh & Ors. v. Labour Court & Ors.* reported in 2007 LAB. I. C. 1682. For the aforementioned reasons and also relying upon the judicial pronouncement referred to in the preceding paragraphs, this Court is of the opinion that the present is a fit case for being rejected only on the ground of non-compliance of the statutory requirement of the provisions under Section 17B of the ID Act and also for non-compliance of the Order of this Court in the present case on 28.10.2013.

14. The jurisdiction under Article 226 is discretionary jurisdiction and unless the impugned order is found to be illegal or irrational the Writ jurisdiction would not be invoked as a matter of routine. Under Article 226 seeking issuance of Writ of Certiorari, the jurisdiction of the High Court is limited. The award of the Tribunal can be quashed only when it is established that the Tribunal has committed an error of law apparent on the face of the record or that the findings of facts of the Tribunal is perverse.

15. The findings of the Labour Court can not be challenged in proceeding seeking Writ of Certiorari on the ground that relief and likely evidence adduced before the Labour Court is insufficient or inadequate. The High Court can interfere with the award of the Labour Court provided that the findings so arose is perverse.

16. The scope of judicial review is only to correct errors of law or procedural errors leading to manifest injustice or violation of principles of industrial disputes. The High Court, infact is, court of appeal while hearing a writ petition chellenging award of the Labour Court. The High Court would not reappreciate the entire evidence and give fresh findings of facts while excercising its writ jurisdiction. Once when it is found that all procedural requirements have been complied with clearly, the High Court would not interfere with the findings of facts. In the instant case there is no pleading what so ever in this regard by the Petitioner stating that the findings of the Labour Court is firstly contrary to the evidence of record or is a perverse findings of facts. As stated earlier it is also not the case of the Petitioner that the Labour Court has committed an error while proceeding ex-parte against the Petitioner. The Petitioner has also not sought a relief by setting aside the award of the Labour Court from the stage they have been proceeded ex-parte, thereby they can contest the case on its merits.

17. The law against the award passed by the Labour Court is well settled that in the event of ex parte proceedings having been initiated by the Labour Court under the ID Act, parties to the dispute can move an application for setting aside the ex parte award within 30 days from the date of its publication. According to the petitioner, in the instant case, the award was published in the State Gazette somewhere in the month of October, 2009. The petitioner having come to know about the publication of the award could have easily moved an application before the Labour Court which has not been done and has preferred the present petition challenging the award on its merit.

18. The judgment cited by the counsel for the petitioner itself in paragraph-4 categorically envisages the fact that the award made by an Industrial Court becomes enforceable under Section 17-A of the Act only on the expiry of 30 days from the date of its publication. In the case of

Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal reported in 1980 Supp SCC 420, it has been categorically decided by the Supreme Court that in case the parties to the dispute approach the Labour Court within 30 days from the date of publication of the award seeking for setting aside the ex parte award, the application so made by the parties is fully maintainable and entertainable and that the Labour Court would not become functus officio.

19. In the instant case, a perusal of the pleadings to the writ petition also would show that the petitioner Corporation have not shown any justification of their not appearing before the Labour Court or for that matter in showing any illegality on the part of the Labour Court while proceeding ex parte against the petitioner Corporation. The petitioner Corporation have challenged the award on its merit without making any efforts for contesting the case before the Labour Court itself where the petitioner was granted due opportunity to enter appearance and to contest the case on merit. The Petitioner has also not sought for a relief of setting aside of the award and for remitting the matter after giving an opportunity to contest the case before the Labour Court on its merits. Under such circumstances this Court is of the opinion that it is not a fit case where this Court in exercise of its power under Article 226 of the Constitution of India which is an extraordinary power for invoking the writ jurisdiction require interference of the award passed by the Labour Court. In absence of any pleadings in this regard or for that matter the Petitioner not giving any explanation for not appearing before the Labour Court, no good ground has been made out by the Petitioner calling for interference with the impugned award.

20. For the foregoing reasons, the instant writ petition being devoid of merit is accordingly rejected.

Sd/-
(P. Sam Koshy)
JUDGE