

THE HON'BLE SRI JUSTICE DILIP B.BHOSALE

AND

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT APPEAL No. 238 of 2015

P.C.: (per the Hon'ble Sri Justice Dilip B.Bhosale)

This writ appeal is directed against the order, dated 28.10.2014, passed in W.P.No.21800 of 2001, whereby the writ petition filed by the appellant has been dismissed. In the writ petition, the appellant had challenged the award, dated 20.10.2000, passed in I.D.No.63 of 2000. The dispute was arising from a reference made by the Government of Andhra Pradesh under Section 10 (1) (c) of the Industrial Disputes Act, 1947 (for short 'the Act') for adjudication of the question "whether the demands of Simhachalam Devasthanam Staff and Workers Union for regulation of NMR Barbers (as per list) and introduction of 8 hours work to all Barbers working in Devasthanam and shift system are justified?".

Despite the notice to the appellant, they chose not to appear before the Industrial Tribunal and as a result thereof, the Tribunal passed *ex parte* award and directed the appellant to regularize the services of NMR Barbers as per G.O.Ms.No.212, dated 22.04.1994 and G.O.Ms.No.201, dated 12.02.1982. While directing the appellant to regularize their services, the Tribunal observed in paragraph '6' that all the concerned employees, who

have been serving as workers/barbers (NMRs), are working from generation to generation on hereditary basis for more than 8 hours a day. G.O. provides that if on the cut off date (25.11.1993), a workman has completed five years of service, he would be entitled for regularization.

Against this backdrop, learned Judge dismissed the writ petition observing in concluding paragraph No.21 thus:

As already said, there is not even a prayer in the writ petition to set aside the ex parte award. The writ petition is filed only to set aside the award on merits by taking the plea that the petitioner Devasthanam is not an industry within the meaning of Section 2(J) of the Industrial Disputes Act. Having regard to the facts and circumstances of the case, this Court would not examine the dispute on merits for the first time in the present writ petition since there has already been adjudication by the Industrial Tribunal and the petitioner has not availed the statutory remedy available to it under the Industrial Disputes Act to make an application for setting aside the ex parte award. The scope of the enquiry in the present writ petition is very limited to the extent as to whether there are any reasonable grounds to set aside the ex parte award by the Industrial Tribunal in exercise of powers under Article 226 of the Constitution of India. On account of non-availing of statutory remedy by the petitioner, in spite of ample opportunity available to it and on account of the laches on its part in approaching this Court invoking jurisdiction under Article 226 of the Constitution of India, this Court is of the view that there are no valid reasons to set aside the award which has been passed by the Industrial Tribunal and published long ago. The Executive Officer of the petitioner having participated in the conciliation proceedings and who is very well aware of the proceedings before the Industrial Tribunal cannot plead ignorance of passing of the award. Therefore, in the considered opinion of this Court there are no valid grounds to set aside the ex parte award passed by the Industrial Tribunal in exercise of the jurisdiction under Article 226 of the

Constitution of India.

From perusal of the order of learned Single Judge, it is clear that the writ petition was dismissed mainly on two grounds. Firstly, the appellant failed to file an application for setting aside the *ex parte* award within 30 days from the date of publication of the award, and secondly, there are no reasonable grounds to set aside the *ex parte* award.

It is now well settled, as observed by the Supreme Court in **Sangham Tape Co. Vs. Hans Raj**^[1], that an Industrial Court would have a jurisdiction to set aside the *ex parte* award, having regard to the provisions contained in Section 17-A of the Act, provided an application therefor must be filed before expiry of 30 days from the date of publication of the said award. After expiry of the period of 30 days, the Industrial Court becomes *functus officio* and the award becomes enforceable. Learned Judge, in support, also referred to the judgments of the Supreme Court in **Anil Sood Vs. Presiding Officer, Labour Court-II**^[2] and **Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others**^[3]. In view of the settled position of law, we do not find anything wrong in the observation made by learned Single Judge that the appellant ought to have filed application for setting aside the *ex parte* award within a period of 30 days from the date of its publication.

It is not in dispute that though a notice was served on the appellant, they did not enter appearance before the Industrial

Tribunal. That apart, even the writ petition was filed after one year from the date of the award. Hence, we confirm the order of the learned Single Judge.

We also find that in the writ petition, the petitioners, for the first time raised several disputed questions of fact. For instance, the workmen claim that they were working for generations on hereditary basis and they put in more than five years of service on the cut off date and therefore, they are entitled for regularization, as held by the Industrial Tribunal. As against this, in the writ petition, the appellant has stated that the workmen did not complete five years of service on the cut off date. Such a disputed question of fact, in our opinion, cannot be entertained, examined and addressed for the first time in writ jurisdiction under Article 226 of the Constitution of India. As a matter of fact, we find, even according to the appellant, the members of respondent No.3-union started working with the appellant-Devasthanam some time in 1992, and since then, till today, they have been working with them continuously. In the circumstances, the learned Single Judge, in our opinion, has rightly dismissed the writ petition.

We do not find any merit in the writ appeal. Hence, the appeal is dismissed.

Consequently, miscellaneous petitions, if any, also stand disposed of.

DILIP B.BHOSALE,J

A.RAMALINGESWARA RAO,J

Dt:31.03.2015

kdl

[\[1\]](#) (2005) 9 SCC 331

[\[2\]](#) (2001) 10 SCC 534

[\[3\]](#) 1980 (supp) SCC 420