

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.5336 OF 2016

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ORDER:

This Writ Petition, filed under Article 226 of the Constitution of India, challenges the award dated 08.10.2013 passed by the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad, in I.D.No.117 of 2007 and the consequential order vide UR.SR.No.386 of 2014, dated 23.07.2014.

2. Heard Sri M.V.Praveen Kumar, learned counsel, appearing for the petitioner and Smt.P.Sarada, learned counsel, appearing for the respondents.

3. The petitioner herein raised Industrial Dispute LC No.117 of 2007, assailing the order of termination dated 15.07.1991, passed by the Chief General Manager, Bharat Sanchar Nigam Limited, Hyderabad – 3rd respondent herein.

4. The Tribunal by way of an award dated 08.10.2013, dismissed the said I.D. Thereafter, the petitioner herein filed an application before the Tribunal seeking restoration of the *ex parte* award. The Tribunal by way of an order dated 23.07.2015 rejected the application on the ground that the Labour Court became Functus-Officio to entertain the said application. The said orders passed by the Tribunal are under challenge in the present Writ Petition.

5. It is submitted by the learned counsel for the petitioner herein that the order passed by the Labour Court, dismissing the application filed by the petitioner for restoration of I.D., is opposed to the very spirit and object of Rule 22 of the Industrial Disputes (Central) Rules, 1957. It is further submitted that the said order passed by the Tribunal is also

contrary to the law laid down by the Hon'ble Apex Court in **Anil Sood Vs. Presiding Officer, Labour Court II**^[1].

6. On the contrary, it is submitted by the learned counsel for the respondents that there is no illegality nor there exists any material infirmity in the impugned orders, as such, the same are not amenable for judicial review of this Court under Article 226 of the Constitution of India.

7. The material available on record vividly discloses that seeking restoration of the I.D.L.C.No.117 of 2007 passed by the Central Industrial Tribunal, the petitioner herein filed an application. In this connection, it may be appropriate to refer to the provisions of Rule 22 of the Industrial Disputes (Central) Rules, 1957, which read as under:

“22. Board, Court, Labour Court, Tribunals, National Tribunal or Arbitrator may proceed ex-parte:-

If without sufficient cause being shown, any party to proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the board, Court, labour Court, Tribunal, National tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

8. While dealing with the provisions of Rule 22 of the Central Rules, the Hon'ble Apex Court in **Anil Sood Vs. Presiding Officer, Labour Court II (cited supra)**, at Paragraph Nos.5 and 6, held as follows:

“5. The power to proceed ex parte is available under R.22 of the Central Rules which also includes the power to inquire whether or not there was sufficient cause for the absence of a party at the hearing, and if there is sufficient cause shown which prevented a party from appearing, then if the party is visited with an award without a notice which is a nullity and therefore the Tribunal will have no jurisdiction to proceed and consequently, it must necessarily have power to set

aside the ex parte award.

6. If this be the position in law, both the High Court and the Tribunal (sic Labour Court) fell into an error in stating that the labour Court had become functus officio after making the award through ex parte. We set aside the order made and the award passed by the Labour Court and affirmed by the High Court in this regard, in view of the fact that the learned counsel for the respondent conceded that application filed by the appellant be allowed, set aside the ex parte award and restore the reference. To decide the matter afresh, the parties shall appear before the Labour Court on 11.12.2000 to take further directions as regards the proceedings. As the matter is very old, it would be appropriate for the Labour Court to dispose of this reference as expeditiously as possible but not later than six months from today.”

9. In view of the provisions of Section 22 of the Central Rules and the law laid down by the Hon'ble Apex Court, the reason assigned by the Central Industrial Tribunal-cum-Labour Court, Hyderabad that it became Functus-Officio after rendering the award, cannot be sustained in the eye of law. Accordingly, the order dated 23.07.2014 is liable to be set aside.

10. For the aforesaid reasons, Writ Petition is allowed in part, setting aside the order dated 23.07.2014 passed by the Central Industrial Tribunal-cum-Labour Court, Hyderabad vide UR.SR.No.386 of 2014 and the matter is remanded for fresh consideration of the application filed by the petitioner for restoration of I.D., in accordance with law, after giving notice and opportunity of hearing.

11. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

15.03.2016
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[\[1\]](#) (2001) 10 SCC 534