

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.4524 of 2006

ORDER:

This writ petition by the petitioner, under Article 226 of the Constitution of India, is directed against the Award dated 9th February, 2004 of the learned Chairman and Presiding Officer, Industrial Tribunal-cum-Labour Court, Visakhapatnam, passed in I.D.No.98 of 2001.

2. I have heard the submissions of Sri K.Venkatesh, learned counsel appearing for the petitioner and of Sri K.V.Seshagiri Rao, learned counsel appearing for the respondents.

3. I have perused the material record.

4. The short but important question that arises for consideration in this writ petition is this:

“Whether the Industrial Tribunal-cum-Labour Court, Visakhapatnam, is justified in not adjudicating the reference made to it on merits and in passing the ‘nil’ award on the petitioner/workman remaining absent on the date of hearing?”

5. The case of the petitioner in nutshell is as follows: “Petitioner joined the services of the 1st respondent-management on 06.06.1994 as an Attender and worked continuously without any break and was discharging his duties as a workman by assisting the officers. Indeed, he was discharging the duties of Clerical nature though he was designated as an Attender. The 1st respondent-management is a Unit of 2nd respondent-management and it was constituted for the purpose of issue of interest-free loans for various groups

of Societies for integrated development of co-operative groups. The 2nd respondent is the principal and the 1st respondent has to execute the given projects under the guidance of the 2nd respondent. Considering the services of the petitioner, his services were regularized by the 2nd respondent on the recommendation of the 1st respondent vide resolution dated 02.01.1995 passed in the meeting of the Board of Directors and the salary was raised to Rs.1,100/- per month and accordingly, the petitioner was receiving monthly salaries instead of daily wages while discharging the same duties that were entrusted to him earlier. When the petitioner attended to his duties on 24.06.1995, the Office Superintendent of the 1st respondent-management informed him verbally that his services are no longer required and that his name was therefore struck off from the rolls and that the ICDP Unit has been merged with the District Cooperative Central Bank Ltd., the principal organization. Thus, the services of the petitioner were abruptly terminated without notice of removal by either of the respondents and no amounts are paid towards the retrenchment compensation either. No salary was paid in lieu of notice period. Further, while removing some of the workmen, the 2nd respondent-management retained workmen who are juniors to the petitioner but deprived benefits arising out of seniority to the petitioner. Therefore, the action of the respondents particularly that of the 1st respondent-management is contrary to law and principles of natural justice. Nothing has been stated in reply to the representation made by the petitioner to the General Manager, District Cooperative Central Bank, Kakinada/2nd respondent.

6. Though the application was made by an individual workman, the Industrial Tribunal-cum-Labour Court-II deemed the dispute to be an

industrial dispute considering the nature of the dispute. Thereafter, the industrial dispute was adjourned to 9th February 2004 for hearing. On that day, the petitioner was absent and his counsel reported no instructions stating *inter alia* that the despite intimation of date of posting to the petitioner by him, the petitioner did not appear before the Tribunal-cum-Labour Court. The Tribunal-cum-Labour Court, having waited for the appearance of the petitioner till 5.05 pm on that day, passed verbatim the following order:

“Though the matter is kept pending, the petitioner is not appeared. No useful purpose would be served in keeping the petition pending. Hence the petition is dismissed and ‘nil’ award is passed.”

7. Aggrieved thereof, the petitioner is before this Court.
8. The learned counsel for petitioner, narrating the chronology of events upto the date of passing of the ‘nil’ award which are stated supra, *inter alia* submits that when an industrial dispute has been raised it is the duty of the Industrial Tribunal-cum-Labour Court to hold its proceedings, adjudicate the dispute and pass an award on merit, but, without adjudicating the dispute on merits, a ‘nil’ award cannot be passed merely for the absence of the petitioner. He has also drawn the attention of the Court to Rule 12 of the A.P. Industrial Dispute Rules, 1958, dealing with proceedings before the Labour Court or Tribunal, and submitted that even the procedure prescribed in the Rule contemplates disposal of the matter on merits by passing of award on merits. He therefore, submits that the ‘nil’ award in the facts and circumstances of the case, is liable to be set aside and that the matter is liable to be remitted to the Industrial Tribunal-cum-Labour Court for adjudication

on merits and passing an award on merits. In support of the said contentions, he placed reliance on a decision in **T. S. Zingade v. Karnataka State Road Transport Corporation, Bijapur**¹, wherein, it was held that when a reference of a dispute is made to a Labour Court, even when the workman was placed *ex parte*, the Tribunal was not absolved of its duty to make its determination on the industrial dispute which it was called upon to decide and that the Tribunal has no power to reject the reference merely on the ground that one or the other of the parties was absent on the date of hearing and that even when the workman remains *ex parte*, the Tribunal/Labour Court ought to call the respondent to justify its action of dismissal and that closing the case merely on the ground that the petitioner was absent would amount to failure on the part of the Labour Court/Tribunal to discharge duty imposed upon it under Section 15 of the Industrial Disputes Act, 1947. The learned counsel for petitioner would therefore submit that the 'nil' award is no award in the eye of law.

8. On the contrary, the learned counsel for the 2nd respondent would submit that even as per the version of the petitioner, he was informed that his services were not required, on 24.06.1995, but he belatedly raised the dispute in the year 2001 and that the 'nil' award was passed in the year 2004 and that the present writ petition was filed in March 2006 and that on account of the delay and laches on the part of the petitioner in raising the dispute as well as in filing the writ petition, there is no merit in the case of the petitioner and no purpose would be served even if the dispute is to be adjudicated at this distance of time. He would also submit that if the petitioner was aggrieved

¹ 1979 (38) FLR 202

of the 'nil' award, the petitioner ought to have filed, within 30 days of publication thereof, a petition to set aside the *ex parte* award and that the petitioner failed to do so and that in fact the petitioner failed to raise the dispute within a reasonable time and that despite the fact that the writ petitioner was informed in June, 1995, that his services were not required, he raised the dispute belatedly in the year 2001 and that the award was passed in February, 2004, but, the writ petition was filed belatedly in March, 2006 and that about a decade after the alleged cause of action arose, no relief can be granted to the petitioner as he slept over the matter and is not diligent through out in the matter. The learned counsel for the 2nd respondent, therefore, prayed for dismissal of the writ petition on the ground of delay and laches.

9. In reply, the learned counsel for the petitioner would submit that a similar contention was also raised against the workman's case before the Karnataka High Court in the decision cited, but such contention was not countenanced, holding that the writ petition was filed immediately after the petitioner became aware of the *ex parte* award and that in the present case also, the petitioner filed the writ petition immediately on coming to know of the passing of the *ex parte* award and that once the award was published, as was done in this case on 22.06.2004, and on expiry of 30 days from the date of publication of the award, the Industrial Tribunal-cum-Labour Court would become *functus officio* and that it does not retain any jurisdiction to set aside the award passed by it and that the petitioner is, therefore, obliged to approach this Court by way of this writ petition. In support of the said contentions reliance was placed on the decision in **Sangham Tape**

Company v. Hans Raj². The learned counsel would also submit that the petitioner has also stated in the affidavit filed in support of the writ petition that he was involved in family disputes with his wife and that his wife filed a case under Section 498-A of the Indian Penal Code against him and that the said criminal case ended in acquittal recently and that for that reason and on account of the death of his father, he could not approach this Court immediately after the award was passed, and that therefore, the delay has been explained and there are no laches on the part of the petitioner.

10. The learned counsel for the 2nd respondent would submit that when the parties fail to appear for proceeding with the hearings in the matter the Labour Court or the Tribunal need not go on adjourning the matter endlessly and wait at the mercy of the parties for adjudication of the dispute on merits and that when the parties fail to appear even after giving reasonable opportunities, the Labour Court is having power to pass a 'nil' award and that even the facts and ratio in the decision of the Supreme Court in **Sangham Tape Company v. Hans Raj** would reflect that an *ex parte* award can be made by the Labour Court or the Tribunal and also that the time for setting aside the 'nil' *ex parte* award is 30 days from the date of publication thereof and that in view of the cited decision of the Supreme Court, the petitioner cannot be heard to say that the Labour Court or the Tribunal has no power to pass an *ex parte* award or 'nil' award or that a 'nil' award is no award in the eye of law.

11. I have bestowed my attention to the facts and given earnest consideration to the submissions.

² 2005 (1) ALD 54 (SC)

12. Dealing first with the aspect of delay, what it is to be noted is that the case of the petitioner is that when he attended to his duty on 24.06.1995, the Office Superintendent of the 1st respondent-management informed him verbally that his services are no longer required and that his name was therefore struck off from the rolls and that the ICDP Unit has been merged with the District Cooperative Central Bank Ltd., the principal organization. In-fact, the learned counsel for the 2nd respondent urged that in view of the merger of the 2nd respondent with the principal organization, there was no possibility to continue the services of non regular employees and that since the petitioner is not a regular employee on rolls, he is not entitled to any relief or even raise a dispute under the Act. Be that as it may. The petitioner was informed on 24.06.1995 that his services were not required but he belatedly raised the dispute in the year 2001. The 'nil' award was passed in the year 2004 and was published on 22.06.2004. He filed the present writ petition in March 2006. The petitioner failed to explain the delay. In the facts and circumstances of the case, when the delay is deliberate and on account of the negligence of the petitioner and when the conduct of the petitioner reflects that he was not diligent in the matter throughout, the question of entertaining the writ petition for considering a grievance allegedly occasioned in the year 1994 does not arise for consideration. On the above analysis this Court finds that the writ petition is liable to be dismissed on the ground of delay.

13. In view of the finding of this Court that the writ petition is liable to be dismissed on the ground of delay, there is no need to consider any other contentions of the writ petitioner. Nevertheless, since a contention with

regard to the validity of the 'nil' award was raised, this Court deems it fit to also formally deal with the said aspect. Dealing now with the aspect as to whether the Industrial Tribunal is empowered to return a 'nil' Award, it is to be noted that in the instant case, the Industrial Tribunal-cum-Labour Court returned a 'nil' Award for the absence of the petitioner on the date of hearing and his counsel reporting no instructions on the failure of the petitioner to attend before the Court/Tribunal despite intimation of the date of posting by him to the petitioner. The learned counsel for the petitioner could not bring to the notice of the Court any provision which specifically prohibited the Labour Court—cum-Tribunal from returning such an Award. Under Section 15 of the Industrial Disputes Act, 1947, where an Industrial Dispute has been referred to a Labour Court or a Tribunal, it shall hold its proceedings expeditiously and shall as soon as it is practicable submit its Award to the appropriate Government, on conclusion of the proceedings. The Award is being published by the Government whether or not it is an Award on merits or a 'nil' Award. Under Rule 12 of the A.P. Industrial Dispute Rules, 1957, the parties representing the workman and the employer involved in the dispute shall file with the Labour Court all statement of demands relating to the issues only as are included in the order of reference and shall also forward a copy of such statement to each one of the opposite parties involved in the said dispute and within two weeks of the receipt of the statement referred to in sub-rule (1) the opposite party shall file its rejoinder with the Labour Court and simultaneously forward a copy thereof to the other party. If the parties fail to file the respective statements as required under law, the Labour Court-Tribunal would be in a position of not being able to proceed

with the matter as both the parties are equally at fault. In such circumstances and in the absence of any material placed by either side, the Labour Court-Tribunal has no other option but to dismiss the matter for default or make a 'nil' Award. Even in a case where both the parties file their statements but fail to take interest in participating in the enquiry and do not participate in the enquiry, the Labour Court-cum-Tribunal would be left with no other option but to dismiss the matter for default or return a 'nil' Award. In such situations, the Labour Court-cum-Tribunal is not expected to keep the dispute pending endlessly and wait at the mercy of the parties to hold the proceedings. The decision of the Supreme Court in **Sangham Tape Company v. Hans Raj** (supra) would show that an *ex parte* Award or a 'nil' Award can be made and that the time limit for seeking to set aside such an Award is 30 days from the date of publication of such Award and that after expiry of the said limit the Labour Court/Tribunal becomes *functus officio*. When the Rules are silent regarding a procedural aspect, the inherent power of the court can come to its aid to act *ex debito justitiae*. Such power inheres in every Court. In the considered view of the Court, the inherent power of the Court is not taken away or in any way restricted by any provision of law under the Act and the Rules made thereunder. Further, in the case on hand, the cause of the petitioner is not a common cause or a collective cause of a class of employees and the present dispute is not a dispute concerning a class or category of workmen and is not one espoused by a union. The dispute is purely concerning the workman who is not a regular employee on rolls and who was instructed on one day that his services are no longer required. He, therefore, is espousing his individual

cause and did not show interest to appear in the matter and participate in the enquiry proposed to be held before the Labour Court-cum-Tribunal. Therefore, the passing of a 'nil' Award though may be considered as a technical termination of the proceedings before the Labour Court-cum-Tribunal, it would not create a difficult situation either for the management or the workman as when the workman is himself not interested in pursuing the remedies the 'nil' Award serves the purpose and does not result in disturbance of industrial peace and harmony between the management and the workmen. Therefore, the contention that the 'nil' Award is no Award in the eye of law and is unsustainable deserves no countenance in the facts and circumstances of the case.

13.1 Assuming for a moment that the 'nil' Award ought not to have been passed by the Labour Court or the Tribunal, yet this Court is not inclined to set aside the award on that ground as this Court has already held supra that on the ground of delay the writ petition is liable to be dismissed.

14. In the result, the Writ Petition is dismissed.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

27th January 2017

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