

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.25452 OF 2001

ORDER:

The petitioner-employer filed this writ petition to quash the order dated 10.12.2001 passed in I.A.No.257 of 2001 in I.D.No.89 of 1998 whereby the Labour Court dismissed the said I.A., which was filed under Section 11 of the Industrial Disputes Act, 1947 (for short 'the Act') to set aside the *ex parte* award dated 08.08.2001 of the Labour Court-II, Hyderabad.

2. The case of the petitioner is that it has engaged in the manufacture of Pre-laminated particle boards and other allied products. For that purpose, it engaged about 166 persons and the 2nd respondent was appointed as a Trainee Security Guard on 01.03.1989. Later, the 2nd respondent tendered his resignation on 28.01.1994, which was accepted by the petitioner and all terminal benefits were paid including the Provident Fund. Pending reference of the dispute before the competent Government, suppressing the said fact, the 2nd respondent filed an application under Section 2-A(2) of the Act before the 1st respondent-Labour Court and the same was numbered as I.D.No.61 of 1998. Resisting the application, a detailed counter was filed by the petitioner. Later, the dispute was referred to the 1st respondent-Labour Court for adjudication, which was numbered as I.D.No.89 of 1998 and a notice was served on

the petitioner. In those circumstances, I.D.No.61 of 1998 was dismissed on 05.08.1999 by recording thus:

“Documents of Respondent 1 not filed. Petitioner’s counsel endorsed on the petition that the petition is not pressed.”

The petitioner was served with a notice on 21.10.1998 in I.D.No.89 of 1998. On being notice misplaced in the files, the petitioner could not pursue the matter further before the 1st respondent-Labour Court. When the petitioner was called absent on 17.11.1998, the petitioner was set *ex parte* by the Labour Court and basing on the evidence on record, *ex parte* award was passed on 08.08.2001. Aggrieved by the same, the petitioner filed the present writ petition.

3. This Court, while admitting the writ petition, passed interim suspension on 14.12.2001 in WPMP No.32213 of 2001. Thereafter, the 2nd respondent filed vacate petition in WVMP No.793 of 2002, but the same was dismissed by making the interim order absolute.

4. The 2nd respondent filed counter denying the averments of the writ affidavit, mainly stating that on termination, conciliation proceedings were initiated before the competent Labour authorities; on failure of the conciliation proceedings and as the petitioner has not cooperated in filing any documents, the failure report was submitted to the competent Government to refer the matter under Section 10

of the Act to the competent Labour Court to decide the issue viz., whether the dismissal of Sri Akbar Basha with effect from 26.08.1995 by the Management of M/s.Novopan India Ltd., Patancheru, Medak District is justified? If not, to what relief the workman is entitled to?

When the reference got delayed, the 2nd respondent/workman was constrained to file I.D.No.61 of 1998 under Section 2-A(2) of the Act before the Labour Court-II, Hyderabad. Though the petitioner received notice in the said I.D.No.61 of 1998, he failed to appear before the Court and as such he was set *ex parte* on 17.11.1998 and I.D. was pending for adjudication on merits. In the meanwhile, the Government referred the matter under Section 10 of the Act to the 1st respondent-Labour Court and the same was numbered as I.D.No.89 of 1998 wherein also the petitioner received notice on 21.10.1998, but failed to appear before the Labour Court. The 2nd respondent denied the contention of the petitioner that he has resigned on 28.01.1994 and received the terminal benefits and provident fund and stated that the same was not brought before the Conciliation Officer by the petitioner at the time of conciliation proceedings and now, only for the purpose of this petition, he averred the said facts, which are incorrect. The 2nd respondent further stated that on 05.08.1999 when I.D.No.61 of 1998 was taken up hearing, the learned counsel for the 2nd respondent endorsed on the docket that the petition is not pressed for the reason

that on reference I.D.No.89 of 1998 is taken up and pending before this Court and he wants to pursue the reference I.D. instead of I.D. filed under Section 2-A(2) of the Act. Hence, the contention of the petitioner that I.D.No.89 of 1998 is barred by the principles of *res judicata* is not applicable to the present case and on delayed reference by the competent Government after numbering the reference I.D.No.89 of 1998, he had withdrawn the earlier I.D.No.61 of 1998 filed under Section 2-A(2) of the Act and the same was dismissed as not pressed.

The 2nd respondent further states that the petitioner filed this writ petition only to drag on the issue and delay the payments as per the award and only to harass the 2nd respondent-workman without any sufficient reasons. For non-appearance of the petitioner before the Court on 17.11.1998, the petitioner simply states that the notices received were misplaced. Such a plea of the petitioner, being an institution represented by the Personal Manager, amply proves that the petitioner is not diligent in pursuing the matter and no sufficient reasons were shown to the satisfaction of the Labour Court. Hence, the Labour Court dismissed the I.A. rightly.

5. Sri S.Ravindranath, learned counsel for the petitioner, would contend that the 2nd respondent was appointed as a Trainee Security Guard on 01.03.1989 and he tendered his resignation on 28.01.1994. The 2nd respondent, having

received the terminal benefits and provident fund, got referred the dispute under Section 10 of the Act and the same was numbered as I.D.No.89 of 1998, suppressing the earlier I.D.No.61 of 1998 filed under Section 2-A(2) of the Act and as such continuation of present I.D.No.89 of 1998 is barred by principles of *res judicata*. He would further contend that the petitioner received the notice on 28.10.1998 in I.D.No.89 of 1998 and the same was unfortunately misplaced in the office files. Thereafter, the petitioner lost track of the case and only after receipt of the copy of the award on 22.09.2010 he could found that he was set *ex parte* and an *ex parte* award was passed. Immediately, he filed I.A.No.257 of 2001 in I.D.No.89 of 1998 under Section 11 of the Act on 24.09.2001 to set aside the *ex parte* order stating that the Personal Manager of the petitioner received notice on 21.10.1998 and the same was misplaced in the office files and immediately after coming to know about passing of *ex parte* award dated 08.08.2001, on 22.09.2001 a petition in I.A.No.257/2001 to set aside the *ex parte* award was filed. However, the Labour Court on erroneous appreciation of fact and law dismissed the said I.A. stating that the petitioner was set *ex parte* on 17.11.1998 and *ex parte* award was passed on 08.08.2001 and though the matter was pending for more than 2 ½ years for adjudication, the petitioner had not taken any steps to set aside the *ex parte* order and pursue the matter. The Labour Court grossly erred in holding that the petitioner has not given any

sufficient reason for non-appearance and not pursuing the matter while dismissing the I.A. on 10.12.2001, which is contrary to the judgment of the Hon'ble Apex Court held in *Grindlays Bank Limited Vs. Central Government Industrial Tribunal & Others*¹.

6. Per contra, the learned counsel for the 2nd respondent while reiterating the averments of the counter contended that the petitioner is not diligent in pursuing the matter before the Labour Court and hence the Labour Court rightly dismissed the I.A. on being not satisfied with the reasons given in the petition filed under Section 11 of the Act to set aside the *ex parte* award. The petitioner is intending to drag on the litigation to deprive the workman benefits accrued to him by virtue of the award.

7. In the facts and circumstances of the case and in considered view of this Court the respondent-workman raised conciliation proceedings about his illegal termination. His grievance was referred to the Conciliation Officer and he submitted a report to refer the dispute to the Labour Court. As the reference was pending with the competent Government for a long time, he filed I.D.No.61 of 1998 under Section 2-A(2) of the Act before the first respondent and notice was serviced on the petitioner. In the meanwhile, the competent Government referred the dispute pending before it to the Labour Court and the reference was numbered as I.D.No.89

¹ AIR 1981 SC 606

of 1998 and a notice was issued to the petitioner. Having received the notice and having knowledge about the reference made to the Labour Court, the petitioner failed to appear before the Labour Court. When the matter is called on 17.11.1998, the petitioner called absent and it was set *ex parte*. Thereafter, the petitioner failed to take any steps for about 2 ½ years when the I.D. is pending for consideration. On 08.08.2001, the Labour Court passed *ex parte* award and the same was published on 24.09.2001 as required under Section 17 of the Act. After receiving the *ex parte* award on 22.09.2001, the petitioner filed I.A.No.257 of 2001 in I.D.No.89 of 1998 on 24.09.2001 under Section 11 of the Act to set aside the *ex parte* award passed in I.D.No.89 of 1998 dated 08.08.2001 on the ground that the petitioner received notice and the same was misplaced in office files. The Labour Court considered the I.A.No.257 of 2001 and held that the petitioner, having received the notice in reference and I.D.No.89 of 1998, had not shown any interest in pursuing the I.D.No.89 of 1998 and if the petition is allowed, there is no end for the litigation and the 2nd respondent would be deprived to receive the benefits as per the award. The learned counsel for the petitioner is placed reliance on the judgment of the Hon'ble Apex Court rendered in *Grindlays Bank Limited Vs. Central Government Industrial Tribunal & Others* (1 supra), but it has no help as the facts and circumstances in that case are different from that of this case. In that case,

sufficient reasons were shown by the workman for non-appearance, whereas in this case, no sufficient reasons acceptable for this Court are shown.

8. The Personal Officer of the petitioner, being a responsible employee, has misplaced the notice and failed to inform the petitioner about the proceedings before the Court are unbelievable. The Labour Court found that there is no sufficient reason for not attending the Court on 17.11.2008, the date on which the petitioner was set *ex parte*, and no steps were taken during the pendency of the dispute before the Labour Court till passing of the *ex parte* award on 08.08.2001, which was published on 24.09.2001. The Labour Court, having found that there are no sufficient reasons for setting aside the *ex parte* award, dismissed I.A.No.257 of 2001 and this Court also finds that there is no error of law or fact to interfere with the said order of the Labour Court passed in I.A.No.257 of 2001 in I.D.No.89 of 1998 dated 10.12.2001.

9. Accordingly, the Writ Petition is dismissed. No order as to costs.

10. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE M.GANGA RAO

29-06-2018
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