

23
08.09.2023
(P.A.)RB
Court No. 12

**In The High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**MAT 1508 of 2023
With
CAN 1 of 2023
And
CAN 2 of 2023**

**Managing Director, Eastern Paper Mills Ltd.
Versus
Gora Chand Adhikary & Ors.**

**Mr. Debashsh Kundu,
... for the appellant**

**Mr. Subhas Chandra Sarkar,
Mr. Siddhartha Sankar Roy,
... for the respondents**

**Mr. Sk. Md. Galib, Sr. Adv.,
Ms. Tanwishree Mukherjee,
... for the State**

The appeal is filed against the order dated 28th April, 2023 made in WPA 2868 of 2023. The respondent Nos. 1 and 2, along with others, were refused employment by the appellant. The conciliation proceeding was initiated. On the failure of conciliation proceeding, the Government framed the following issues and had referred the matter to the respondent No. 5:

“1. Whether refusal of employment of Sarbashri Ashis Kumar Bose, Dipak Kumar Sen, Gora Chand Adhikari, Sankar Das, Joydeb Bhattacharjee, Haridas Malo and Debasish Banerjee by the management of M/s. Eastern Paper Mill Limited w.e.f. 27.12.2006 is justified?

2. What relief, if any, are the workmen entitled to?”

Before the Tribunal, both the parties let in and completed evidence to substantiate their respective cases. The respondent Nos. 1 and 2 filed application before the Tribunal under Section 15(2)(b) of the Industrial Disputes Act, 1947 (for short, “the Act”) for interim relief. The Tribunal allowed the application directing the appellants to pay the amounts equivalent to subsistence allowance as admissible under West Bengal Payment of Subsistence Allowance Act, 1969. The appellants filed writ petition being WPA 15561 of 2021 challenging the said order. At the time of hearing of the said writ petition, on 5th July, 2022, the appellants represented before this Court that industrial dispute has been dismissed on 26th May, 2022 itself and nothing survives. After coming to know of the dismissal of the industrial dispute, the respondent Nos. 1 and 2 filed review petition before the respondent No. 5. The said review petition was dismissed by the respondent No. 5 Tribunal on 6th September, 2022 on the ground that the said review petition was filed beyond the time limit prescribed in the Act. The respondent filed the present writ petition challenging both the orders of the Tribunal dated 26th May, 2022 and 6th September, 2022.

The learned Single Judge disposed of the writ petition setting aside the order of the dismissal of the industrial dispute by the respondent No. 5, Tribunal, and restored the Industrial Dispute Case No. VIII-18/2008 to its original file and directed the respondent No. 5,

Tribunal to conclude the hearing by giving opportunity to the parties to place the respective arguments. The learned Single Judge also observed that on the failure of the parties to place the arguments, the Tribunal must pass award on merits taking into consideration the case made out by the parties in the pleadings and the evidence already on record.

Challenging the said order, the appellants have come out with the present appeal.

The learned Counsel appearing for the appellant contended that:

- i) The learned Judge erred in not considering that the review application was filed after expiry of 30 days from the date of publication of the award and hence, it is not maintainable.
- ii) As per Section 17A of the Act, the award becomes enforceable after the expiry of 30 days of publication effected as per section 17 of the Act, 1947.
- iii) The Tribunal passed the award dated 11th May, 2022 and the same was published on 17th May, 2022. After expiry of 30 days, the award became enforceable and the Tribunal became functus officio.
- iv) The review application filed after expiry of 30 days of publication of the award is not

maintainable and the respondent No. 5, Tribunal has no power to consider the said application. In view of Section 17A of the Act, the Tribunal has rightly rejected the review application.

- v) The learned Counsel appearing for the appellant, in support of his contention, relied on paragraph 14 of the judgment in the case of **Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others** reported in **1980 Supp. SCC 420** and paragraphs 6 and 8 of the judgment in the case of **Sangham Tape Co. vs. Hans Raj** reported in **(2005) 9 SCC 331**.
- vi) Learned Counsel appearing for the appellant further contended that the respondents have not given sufficient reasons for non-appearance and the review application, in any event, is liable to be dismissed on this account and prayed for setting aside the impugned order of the learned Single Judge and allow the appeal.

Per contra, the learned Counsel appearing for the respondents submitted that:

- i) The respondent Nos. 1 and 2 have raised an industrial dispute with regard to the non-employment.

- ii) Pleading and evidence were completed and industrial dispute was posted for arguments.
- iii) Respondent Nos. 1 and 2 filed application under Sections 15(2(b) of the Act for interim payment pending industrial dispute and the same was allowed. The appellant filed writ petition being WPA 15561 of 2021 challenging the said order and the said writ petition was adjourned from time to time.
- iv) While the writ petition was pending, the Tribunal erroneously dismissed the industrial dispute for non-prosecution by an ex-parte award.
- v) The respondent Nos. 1 and 2 came to know about the ex-parte award only when the appellant informed about the same on 5th July, 2022 during hearing of the writ petition.
- vi) The respondent Nos. 1 and 2 immediately filed review application to set aside the ex-parte award.
- vii) The review application is maintainable even after expiry of 30 days of publication as ex-parte award is erroneous and nullity.
- viii) The Tribunal ought to have passed award on merits considering the materials available on record.

- ix) Learned Judge has considered all the materials placed before him and has given valid reasons for allowing the writ petition and prayed for dismissal of the appeal.

Heard learned Counsels appearing for the appellants and the respondents and perused the entire materials on record.

The following two issues arise to determine the appeal:

- i) Whether the review application filed by the respondents after expiry of 30 days of publication of the award is maintainable?
- ii) Whether respondents have given sufficient reasons for the non-appearance to set aside the ex-parte award?

Issues 1 and 2

Sections 17 and 17A of the Act deal with the passing of award, publication of award and when the award becomes enforceable. It has been held in number of cases that Industrial Disputes Act is a beneficial legislation and balance must be struck between the management and workers to do justice. In the judgment reported in ***Grindlays Bank Ltd. (supra)*** relied on by learned Counsel for the appellant, the Hon'ble Apex Court has held in paragraph 6 as follows:

“..... But it is a well known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or

incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary....”

In the judgment reported in ***Sangham Tape Co. (supra)***, the Hon’ble Apex Court held that award becomes enforceable after expiry of 30 days and when the award becomes enforceable, the Industrial Tribunal and/or Labour Court becomes functus officio.

Both the above judgments do not advance the case of the appellant in view of the judgment of the Hon’ble Apex Court in the case of ***Haryana Suraj Malting Limited vs. Phool Chand*** reported in ***(2018) 16 SCC 567***.

The issue whether the Tribunal/Labour Court become functus officio or not was referred to a Bench of three Judges as there was a conflicting judgments of two Judges Bench. The Hon’ble Apex Court held that an award to be binding, it should be passed in compliance with principles of natural justice. An award passed denying an opportunity of hearing when there was sufficient case for non-appearance can be challenged on the ground of nullity. If an award is nullity, the Tribunal/Labour Court can entertain a review application even after expiry of 30 days of publication. The relevant paragraphs of the said judgment are quoted herein below:

“34. In case a party is in a position to show sufficient cause for its absence before the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal, in exercise of its ancillary or incidental powers, is competent to entertain such an application. That power cannot be circumscribed by limitation. What is the sufficient cause and whether its jurisdiction is invoked within a reasonable time should be left to the judicious discretion of the Labour Court/Tribunal.

35. It is a matter of natural justice that any party to the judicial proceedings should get an opportunity of being heard, and if such an opportunity has been denied for want of sufficient reason, the Labour Court/Tribunal which denied such an opportunity, being satisfied of the sufficient cause and within a reasonable time, should be in a position to set right its own procedure. Otherwise, as held in Grindlays [Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal, 1980 Supp SCC 420 : 1981 SCC (L&S) 309] , an award which may be a nullity will have to be technically enforced. It is difficult to comprehend such a situation under law.

x x x

37. Merely because an award has become enforceable, does not necessarily mean that it has become binding. For an award to become binding, it should be passed in compliance with the principles of natural justice. An award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being nullity. An award which is a nullity cannot be and shall not be a binding award. In case a party is able to show sufficient cause within a reasonable time for its non-appearance in the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal is bound to consider such an application and the application cannot be rejected

on the ground that it was filed after the award had become enforceable. The Labour Court/Tribunal is not functus officio after the award has become enforceable as far as setting aside an ex parte award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. It needs to be restated that the Industrial Disputes Act, 1947 is a welfare legislation intended to maintain industrial peace. In that view of the matter, certain powers to do justice have to be conceded to the Labour Court/Tribunal, whether we call it ancillary, incidental or inherent.”

In the present case, the respondents have contended that they could not appear before the Tribunal due to pendency of the writ petition in this Court filed by the appellant, challenging the interim order passed in the application, filed under Section 15(2)(b). The respondent No. 5 Tribunal, without considering the pendency of the writ petition and stage of the industrial dispute, erroneously passed ex-parte order without affording an opportunity to the respondents. As per the judgment of Hon’ble Apex Court in the judgment reported in ***Haryana Suraj Malting Limited (supra)***, the impugned award is a nullity and the review application filed beyond 30 days of application of award is maintainable. The respondents have shown sufficient cause for the non-appearance in the application filed to set aside the ex-parte award. The learned Judge has considered all the materials placed before him in proper perspective and giving cogent and valid reasons, allowed the writ petition.

There is no reason to interfere with the order of the learned Single Judge in the writ appeal.

Accordingly, the appeal fails and is dismissed.

(V.M. Velumani, J.)

(Rai Chattopadhyay, J.)