

**SUPREME COURT OF INDIA**

Ram Shiroman Mishra

Vs.

Vishwanath Pandey

S.L.P.(Civil)No.7225 of 2008

(Aftab Alam and Ranjana Prakash Desai,JJ.)

08.08.2012

**ORDER**

**Aftab Alam,J.**

1. Delay condoned.

2. The petitioner has challenged order dated 27/4/2007 passed by the Delhi High Court in Writ Petition (Civil) No.3042 of 2007. The case of the petitioner, in short, is that the respondent has taken advantage of the kindness shown by him by allowing him to stay in his house free of cost from 1988 to 1991. According to the petitioner, when he requested the respondent to vacate his house and, in fact got his house vacated, the respondent was annoyed. He, therefore, raised a dispute to the Union falsely alleging that he was working with Messrs Ram Saroman Mishra Jali Factory of the petitioner as a machine-man since 1986 and his last drawn wages were Rs.1,100/- per month. He further alleged that his services were terminated illegally in violation of Section 25F of the Industrial Disputes Act (for short, "the ID Act") on 31/12/1991 and his wages for the months of 1/10/1991 to 31/12/1991 were also not paid. He claimed that he was unemployed since the date of his termination and he is entitled to full back wages and continuity in service. According to the petitioner he does not own any jali factory as alleged and therefore there is no question of employing the petitioner as a machine-man.

3. The Secretary (Labour), Delhi Administration, Delhi, referred the said dispute to the Labour Court, Tis Hazari, and Delhi. The terms of reference were as under:

“Whether the services of Shri Vishwa Nath Pandey have been terminated illegally and/or unjustifiably by the management and, if so, to what relief is he entitled and what directions are necessary in this respect?”

4. Before the Labour Court, the respondent filed an affidavit. It is the case of the petitioner that he was not served with the notice and consequently, he did not appear before the Labour Court. The award of the Labour Court however notes that the management was duly served of the claim but no written statement was filed by it and, therefore, it was proceeded ex-parte. The Labour Court observed that the material on record clearly showed that the respondent had served the management for more than one year when his services were terminated on 31/12/1991 without any valid reason and in violation of Section 2(OO) of the ID Act. The Labour Court further observed that since there was no compliance of Section 25F of the ID Act, the retrenchment was illegal. The Labour Court ordered reinstatement of the respondent with continuity in service and full back-wages calculated at the last drawn wages which were Rs.1,100/- per month.

5. According to the petitioner, he was unaware of this award since notice was not served on him. He came to know about this on 19/3/2003 when some person came to his house and informed him that he has to appear on 20/3/2003 at 10.00 a.m. in the Implementation Cell. The petitioner thereafter moved an application for setting aside the ex-parte award before the Labour Court. The Labour Court vide its order dated 5/3/2005 rejected the application of the petitioner. The Labour Court observed that the application was filed by the petitioner after publication of the award and after issuance of the recovery certificate i.e. after the award had become enforceable under the provisions of the ID Act. The Labour Court relied upon the judgment of this court in *Sangham Tape Co. v. Hans Raj*<sup>1</sup> to come to a conclusion that after the award is published and recovery certificate is issued, the Industrial Tribunal and/or the Labour Court becomes functus officio. The Labour Court, therefore, did not have any jurisdiction to entertain the application for setting aside the award.

6. The petitioner challenged the said order before the Delhi High Court. The Delhi High Court dismissed the writ petition filed by the petitioner. The High Court observed that no explanation was given by the petitioner as to why no steps were taken to challenge the award expeditiously. The judgment of the High Court indicates that the High Court was not satisfied with the explanation given by the petitioner and the writ petition was rejected on the ground of delay and laches. Being aggrieved by the said judgment, the petitioner has preferred this special leave petition.

7. On 20/7/2012 we heard learned counsel for the petitioner and reserved the judgment.

8. The High Court has not referred to the judgment of this court in *Sangham Tape Co.* The High Court has simply dealt with the aspect of delay. But, since it has confirmed the Labour Court's view which is based on *Sangham Tape Co.*, it was necessary for us to examine whether the reliance placed by the Labour Court on the said judgment is apt. While

examining this, we noticed that on the question whether the Industrial Tribunal/Labour Court becomes functus officio after 30 days of the pronouncement/publication of the award and it loses all powers to recall an ex-parte award on an application made by the aggrieved party after 30 days from the date of pronouncement/publication of the award, two Division Bench decisions have taken apparently conflicting view. In Sangam Tape Co., a two Judges Bench held and observed that an application for recall of an ex- parte award may be entertained by the Industrial Tribunal/Labour Court only in case it is filed before the expiry of 30 days from the date of pronouncement/publication of award. A contrary view was taken by a two Judges Bench to which one of us (Aftab Alam, J.) was a party, in *Radhakrishna Mani Tripathi v. L. H. Patel*<sup>2</sup>. In both cases, the court referred to and relied upon the earlier decisions in *Grindlays Bank Ltd. v. Central Government Industrial Tribunal*<sup>3</sup> and *Anil Sood v. Presiding Officer, Labour Court II*<sup>4</sup> but read and interpreted those two decisions completely differently. Noticing this conflict, a Division Bench in *M/S. Haryana Suraj Malting Ltd. V. Phool Chand* (SLP (C) No. 6091/2010, to which one of us (Aftab Alam, J.) was a party has referred the said issue to a larger Bench. Since the same issue is involved in this case, it is not possible for us to dispose of this matter. We will have to await the decision of the larger Bench. In the circumstances, we grant leave.

9. Office Report dated 26/4/2012 indicates that though show cause notice was issued to the respondent, neither AD card nor unserved cover was received back by the office and, therefore, the petitioner filed an application for leave to serve the respondent by publication. The said application was granted. The respondent has been served through publication and to that effect, the petitioner has filed an affidavit with proof of publication. Though served, the respondent has neither appeared in person nor has he appeared through a counsel. In the circumstances, the execution of award bearing No.ID-375/1992 titled as “Management of M/s. Sri Ram Shiromani Mishra Jali Factory, Plot No.14A, Gali No.7, Cement Ghati Road, Anand Road Industrial Area, New Delhi versus Sh. Vishwa Nath Pandey, C/o. Jan Jagran Morcha, CS No.9/95, Rakhi Market, Jakhira, New Delhi” dated 5/6/1992 passed by the Labour Court, Tis Hazari, Delhi, is stayed. Registry is directed to call for the record from the Labour Court, Tis Hazari, Delhi. Registry is further directed to tag this matter to Special Leave Petition (c) No. 6091/2010.

#### *Judgment Referred*

<sup>1</sup>(2005) 9 SCC 0331

<sup>2</sup>(2009) 2 SCC 0081

<sup>3</sup>(1980) Supp. SCC 0420

<sup>4</sup>(2001) 10 SCC 0534