



GAHC010006132011

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2855/2011

PANKAJ SARMA
S/O JATIN SARMA, R/O VILL. BORDEKAPUR, KAMALPUR, DIST. KAMRUP
R, ASSAM.

VERSUS

MANAGEMENT OF M/S ABDOS LAMITUBES PVT LTD and ORS
JALUKBARI, GUWAHATI-35, DIST. KAMRUP, ASSAM.

2:THE STATE OF ASSAM

REP. BY THE DY. SECY. TO THE GOVT. OF ASSAM
LABOUR AND EMPLOYMENT DEPTT
DISPUR
DIST. KAMRUP M
ASSAM

3:THE ASSTT. LABOUR COMMISSIONER

ULUBARI
GUWAHATI-7
DIST. KAMRUP M
ASSAM

4:THE PRESIDING OFFICER

LABOUR COURT
ASSAM
GUWAHATI
DC OFFICE BUILDING
PANBAZAR
DIST. KAMRUP
ASSA

Advocate for the Petitioner : Mr. A. Biswas, Advocate

Advocate for the Respondents : Mr. A. Dasgupta, Sr. Advocate
Ms. B. Das, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 03.08.2023

Date of Judgment : 03.08.2023

JUDGMENT AND ORDER (ORAL)

The instant writ petition has been filed by the petitioner challenging the order dated 28.03.2011 passed in Misc. Case No.1/2010, arising out of the Reference Case No.12/2008.

2. The facts leading to the filing of the instant writ petition are that the Government of Assam by a Notification No.G.L.R.46/08/30 dated 4th of July, 2008 referred the dispute that had arisen between the respondent No.1 and the petitioner to the learned Labour Court, Guwahati, Assam on the basis of which a Reference Case being Reference Case No.12/2008 was registered and numbered. The terms of reference, as per the said Government notification dated 4th of July, 2008, are reproduced herein under:-

- (i) Whether the management is justified in terminating or dismissing or discharging Shri Pankaj Sarma, complainant by not treating as a workman under the Industrial Disputes Act, 1947.
- (ii) Whether the management is justified in terminating or discharging



Shri Pankaj Sarma, complainant without furnishing him the copy of the Enquiry Report and without following the basic principles of natural justice as alleged?

(iii) If not, what relief he is entitled to?

3. From the order sheets of Reference Case No.12/2008 enclosed as Annexure-B and Annexure-B1 to the writ petition, it transpires that on 12.09.2008, the respondent No.1 appeared before the learned Labour Court whereas the petitioner was absent and the learned Labour Court fixed the case on 29.09.2008 for filing written statement by both the parties. On 29.09.2008, the respondent No.1 filed the written statement with a copy to the workman. The workman was absent on that day, and as such, the learned Labour Court fixed the matter on 20.10.2008 for filing of the written statement by the workman. On 20.10.2008, the respondent No.1 remained absent without steps. The learned Labour Court, taking into account that the service upon the workman, i.e. the petitioner was not duly effected, directed reissuance of notice to the workman through the Process Server and fixed 07.11.2008 for return of notice. On 07.11.2008, the workman appeared and filed the petition No.409/2008 praying for adjournment to file written statement. However, the respondent No.1, i.e. the Management did not appear. On 21.11.2008, the workman, i.e. the petitioner filed his written statement along with some documents. The Management/respondent No.1 remained absent on that date also. It further appears from the certified copy of the order sheets of Reference Case No.12/2008 enclosed as Annexure-B1 that the respondent No.1 chose not to appear in the said Reference Proceedings inspite of knowing and participating in the said Reference Proceedings at the initiation.

4. The learned Labour Court vide the ex-parte award dated 30.07.2009,

decided the Reference Case No.12/2008 holding inter-alia that the respondent No.1 was not justified in discharging the petitioner from service and the petitioner was entitled to reinstatement with full back-wages and other benefits entailing. It was further directed that the respondent No.1 shall reinstate the petitioner immediately and clear the back-wages within three months.

5. The said ex-parte award was notified by the Government of Assam, Labour and Employment Department vide the notification dated 06.11.2009. Subsequent thereto, vide another communication dated 30.12.2009, the Assistant Labour Commissioner, Ulubari, Guwahati forwarded the Award passed in Reference Case No.12/2008 to the respondent No.1 as well as the petitioner.

6. It further reveals from the record, more particularly, from the Annexure-5 that a Miscellaneous Application was filed for vacating the ex-parte award dated 30.07.2009 by the respondent No.1. It is interesting to note that the said application was filed by the respondent No.1 through an Advocate. From the perusal of the said application which was registered and numbered as Misc. Case No.1/2010, the ground so taken is that the respondent No.1 did not take any leave of the Court as well as the consent of the petitioner as required under Section 36 (4) of the Industrial Disputes Act, 1947, and as such, there was no negligence and laches on their part in not appearing before the learned Labour Court on the date fixed in the Reference Case No.12/2008. It was the specific stand of the respondent No.1 in the said application that the respondent No.1 under the impression that the said Reference Case would be heard after due compliance of the provisions of Section 36 (4) of the Industrial Disputes Act, 1947 and they would be intimated accordingly.

7. To the said application so filed, the petitioner filed objection stating inter-alia that prior to the award being passed and notified, the learned Labour Court



has become functus officio and cannot entertain such an application. It was further mentioned that neither in the Industrial Disputes Act, 1947 nor under the Assam Industrial Disputes Rules, 1958, there is any requirement of any intimation or notice to be given by the learned Labour Court to either of the parties after both the parties in the dispute have appeared before it and filed their respective written statement. It may also be relevant herein to mention that an objection was raised on the question of delay in filing the application seeking vacation of the ex-parte award and for that purpose, evidence was also taken.

8. Be that as it may, vide an order dated 28.03.2011, the learned Labour Court had set aside the ex-parte award dated 30.07.2009 in

Reference case No.12/2008 and restored the Reference Case No.12/2008 to the file for contest. The learned Labour Court in the said order dated 28.03.2011 held that in the notice which was issued by the learned Labour Court at the initiation of the Reference Case, the parties were asked to file their written statements along with the documents with the copy to the other side with a further direction that the paper may be sent by post to reach the Court at the Headquarter at Guwahati on or before 26.08.2008. The learned Labour Court further observed that in the said notice, nowhere it was stated that the parties were directed to contest the case by appearing in the Court on all the dates, but only to send written statement along with documents relied upon. In that backdrop, the learned Labour Court held that the plea of the respondent No.1 that after filing of the written statement by them, the Court will pass necessary order under Section 36 (4) of the Industrial Disputes Act, 1947 and call upon them to take steps in the case cannot be held to be a illegitimate belief. It is on

the basis thereof, the learned Labour Court held that it amounted to a sufficient reason and ground for not taking steps in the Reference Case after filing of the written statement. The petitioner, being aggrieved, has therefore filed the instant writ petition challenging the order dated 28.03.2011.

9. The instant writ petition was filed on 18.05.2011 and this Court vide an order dated 06.06.2011 issued notice and directed that until further order, all further proceedings in Reference Case No.12/2008, pending before the learned Labour Court, Guwahati shall remain stayed. The said interim order still continues to hold the field.

10. I have heard the learned counsel for the parties and perused the materials on record. This Court had also taken note of the Industrial Disputes Act, 1947 as well as the Assam Industrial Disputes Rules, 1958.

11. Section 11 of the Industrial Disputes Act, 1947 stipulates that subject to any Rules that may be made in this behalf, an Arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the Arbitrator or other authority concerned may think fit. Rule 12 of the Assam Industrial Disputes Rules, 1958 stipulates as to how the proceedings before the Labour Court/Tribunal are to be conducted. The said Rule, being relevant for the purpose of instant dispute is reproduced herein under:-

“12. Proceedings before the Labour Court/Tribunal– (1) *Where the State Government refers any case for adjudication to a Labour Court/Tribunal, it shall send to the Labour Court/ Tribunal concerned and to the opposite party concerned in the industrial dispute a copy of every such order of reference together with a copy of the statement received by that Government under sub-rule (4) of Rule 11.*

(2) *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 or Tribunal, as the case*

may be, and simultaneously forward a copy thereof to the other party :

Provided that such rejoinder shall relate only to such of the issues as are included in the order for reference:

Provided further that where the Labour Court or Tribunal as the case may be, considered it necessary, may extend the time limit for the filling of rejoinder by any party.

(3) The Labour Court or Tribunal, as the case may be, shall ordinarily fix the date for the first hearing of the dispute within six weeks of the date on which it was referred for adjudication:

Provided that the Labour Court or Tribunal, as the case may be, may, for reasons to be recorded in writing, fix a later date for the first hearing of the dispute.

(4) The hearing shall ordinarily be continued from day to day and arguments shall follow immediately after the closing of evidence.

(5) The Labour Court or Tribunal, as the case may be, shall not ordinarily grant an adjournment for a period exceeding a week at a time, not more than three adjournments in all at the instance of any one of the parties to the dispute:

Provided that the Labour Court or Tribunal, as the case may be, may, for reasons to be recorded in writing, grant an adjournment exceeding a week of more than three adjournments at the instance of any one of the parties to the dispute."

12. From a perusal of the said Rule, it transpires that when the State Government refers any case for adjudication to the Labour Court/Tribunal, it shall send to the Labour Court/Tribunal concerned and to the opposite party concerned in the industrial dispute, a copy of every such order of reference together with a copy of the statement received by that Government under sub-rule (4) of Rule 11. Sub-Rule (2) of Rule 12 of the Assam Industrial Disputes Rules 1958 stipulates that 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 or the Tribunal, as the case may be, and simultaneously forward a copy thereof to the other party. It has been further mentioned that the Labour Court or Tribunal as the case may be, considers it necessary, may extend the time limit for the filling of rejoinder by any party. In terms with Sub-Rule (3) of Rule 12, the Labour Court or Tribunal, as the case may be, shall ordinarily fix the date for the first hearing of the dispute within six weeks of the date on which it was referred for adjudication. However, a discretion has been given to the Labour Court or Tribunal, as the case may be, may, for reasons to be recorded in writing to fix a later date for the first hearing of the dispute. As per Sub-Rule (4) of Rule 12, the hearing shall ordinarily be continued from day to day and arguments shall follow immediately after the closing of evidence. Sub-Rule (5) stipulates under what circumstances and for what period adjournment can be granted.

13. A conjoint reading of Section 11 of the Industrial Disputes Act, 1947 as well as Rule 12 of the Assam Industrial Disputes Rules 1958 would show that save and except what has been provided in Rule 12 of the Assam Industrial Disputes Rules 1958, the learned Labour Court/the Tribunal shall follow such procedure as may think fit.

14. Now coming to the facts involved in the instant case it would be seen from a perusal of the order sheets of Reference Case No.12/2008 that pursuant to the notice received by the respondent No.1, i.e. the Management appeared on 12.09.2008 before the learned Labour Court and sought for an adjournment for filing the written statement. Thereupon, on 29.09.2008, the Management, i.e. the respondent No.1 filed the written statement with the copy to the workman. Thereafter, the Management/respondent No.1 did not care to appear before the learned Labour Court although the learned Labour Court did not pass

any order exempting the Management/respondent No.1 not to appear before the learned Labour Court till the appearance of the workman.

15. It is further seen that the workman appeared on 07.11.2008 upon receipt of the notice and thereupon filed his written statement on 21.11.2008. A further perusal of the order sheets does not show that the learned Labour Court, at any point of time thereafter, also had exempted the Management not to appear.

16. In the backdrop of the above, let this Court, therefore, test the reason assigned for non-appearance before the learned Labour Court in the application for vacating the ex-parte award dated 30.07.2009. The reason so assigned is that the Management, i.e. the respondent No.1 was under the bonafide belief that after filing of the written statement by them, the Court will pass necessary order under Section 36 (4) of the Industrial Disputes Act, 1947 thereby calling upon them to take steps in the case.

17. Let this Court, therefore, take note of what is Section 36 of the Industrial Disputes Act, 1947. Section 36 (1) stipulates that a workman who is a party to a dispute shall be entitled to be represented in any proceeding under the Industrial Disputes Act, 1947 by any member of the executive or other Office Bearer of a registered Trade Union of which he is a member; or by any member of the executive or other Office Bearer of a Federation Of Trade Union to which the Trade Union referred to in clause (a) of Section 36 (1) is affiliated; or where the worker is not a member of any Trade Union, by any member of the Executive or other Office Bearer of any Trade Union connected with, or by any other workman employed in the industry in which the worker is employed and authorized in such manner as may be prescribed. In the similar vein, Section 36 (2) of the Industrial Disputes Act, 1947 stipulates that an employer who is a party to a dispute shall be entitled to be represented in any proceedings under

Industrial Disputes Act, 1947 by an Officer of an Association of the employers of which he is a member; or by an Officer of a Federation of Associations of employers to which the association referred to in Clause (a) is affiliated; or where the employer is not a member of any Association of employers, by an Officer of any Association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorized in such manner as may be prescribed. Therefore, a perusal of Section 36 (1) and Section 36 (2) of the Industrial Disputes Act, 1947 stipulate who can appear on behalf of the workman and the employer respectively.

18. Section 36 (3) stipulates that no party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under the Industrial Disputes Act, 1947 or in any proceedings before a Court. At this stage, it may be relevant to take note of the word 'court' which has been defined in Section 2 (f) to mean a Court of Inquiry constituted under the Industrial Disputes Act, 1947.

19. Now coming to Section 36 (4) of the Industrial Disputes Act, 1947, it is mentioned that in any proceedings before a Labour Court, Tribunal or National Tribunal, a party to a dispute may be represented by a legal practitioner with the consent of the other party to the proceedings and with the leave of the Labour Court, Tribunal, or National Tribunal as the case may be.

20. Now coming to the facts involved herein, it would be seen that the Management, i.e. the respondent No.1 stopped appearing before the learned Labour Court in Reference Case No.12/2008 after filing of the written statement even before the appearance of the workman.

21. This Court has also perused the Industrial Disputes Act, 1947 as well as

the Assam Industrial Disputes Rules, 1958 and there is no provision which stipulates issuance of notice after filing of the written statement. This Court, upon perusal of Section 36 (4) of the Industrial Disputes Act, 1947, also does not find that notices is required to be issued for obtaining consent from the other party, if the other party is not appearing before the Court. Under such circumstances, this Court, therefore, is of the opinion that the findings arrived at by the learned Labour Court to the effect that after filing of the written statement, the Court would pass necessary order under Section 36 (4) of the Industrial Disputes Act, 1947 and again call upon them to take steps in the case is completely contrary to the provisions of the Industrial Disputes Act, 1947 as well as the Assam Industrial Disputes Rules, 1958 and also Section 36 (4) of the Industrial Disputes Act, 1947.

22. This Court further finds it relevant to note that the Section 36 or any other provisions of the Industrial Disputes Act, 1947 or the Rules framed therein under do not grant exemption to a party to a dispute not to appear after filing the written statement. The respondent No.1 in the instant proceedings, knew it very well that the proceedings were pending before the learned Labour Court and at their own volition did not take any steps. This aspect of the matter is apparent from the order sheet of the learned Labour Court in the Reference Proceedings. It is thus the opinion of this Court that the ground stated in the Application did not constitute a ground for invoking the powers of procedural review, and as such, the learned Labour Court committed grave error in law as well as on the facts to vacate the ex-parte award dated 30.07.2009.

23. Consequently for the aforesaid reasons, the order dated 28.03.2011 so passed by learned Labour Court being erroneous and contrary to the provisions of law, the said order dated 28.03.2011 passed by the learned Labour Court,



Guwahati in Misc. Case No.1/2010 arising out of the Reference Case No.12/2008 stands set aside and quashed. The award dated 30.07.2009 in Reference Case No.12/2008 is restored. The respondent No.1 shall take appropriate steps for compliance with the terms of the award in terms of the Industrial Disputes Act, 1947 and failure to do so shall entail the consequences as provided therein.

24. With the above observation and direction, the instant writ petition stands allowed. No costs.

JUDGE

Comparing Assistant