

A

M/S. SANGHAM TAPE COMPANY

v.

HANS RAJ

SEPTEMBER 27, 2004

B

[N. SANTOSH HEGDE AND S.B. SINHA, JJ.]

*Labour Law:*

C

*Industrial Disputes Act, 1947—Section 17A—Industrial Court—Jurisdiction of—To set aside ex-parte award—Held: Industrial Tribunals and Labour Courts have limited jurisdiction unlike an ordinary civil Court—Such jurisdiction can be exercised within 31 days from the date of publication of the award—After expiry of 30 days Labour Court becomes functus officio.*

D

*Code of Civil Procedure, 1908—Order IX Rule 13—Applicability of the provision to industrial adjudication—Held: The provision would be applicable provided Rules framed under Industrial Disputes Act provide for its applicability.*

E

*Constitution of India, 1950—Article 141:*  
*Precedent—A fact situation in one case cannot be said to be a precedent for another case.*

F

**Respondent-employee despite having arrived at full and final settlement with appellant-employer regarding his employment, filed a reference petition before labour Court claiming reinstatement with other benefits. Ex-parte award was passed by labour Court. Appellant having come to know about the award, moved application for setting aside the same; and the same was set aside after a lapse of 30 days from the date of publication of the award. Respondent filed Writ Petition which was allowed by High Court setting aside the order of labour Court.**

G

**In appeal to this Court, appellant contended that provisions of Order IX Rule 13 CPC are applicable to industrial adjudication and hence labour Court had jurisdiction to set aside ex-parte award if sufficient cause was shown and that such jurisdiction cannot be limited to a period of 30 days from the date of publication of the award.**

H

**Dismissing the appeal, the Court**

**HELD: 1.1** An industrial adjudication is governed by the provisions of the Industrial Disputes Act, 1947 and the rules framed thereunder. The rules framed under the Act may provide for applicability of the provisions of the Code of Civil Procedure. Once the provisions of the Code of Civil Procedure are made application to the industrial adjudication, indisputably the provisions of Order IX Rule 13 thereof would be attracted. But unlike an ordinary Civil Court the Industrial Tribunals and the Labour Courts have limited jurisdiction in that behalf. An award made by an Industrial Court becomes enforceable under Section 17A of the Act on the expiry of 30 days from the date of its publication. Once the award becomes enforceable the Industrial Tribunal and or Labour Court becomes *functus officio*. [731-D-E]

**1.2.** In the instant case, the High Court found that the application for setting aside the award was filed before the Labour Court after one month of the publication of the award. Such jurisdiction could be exercised by the Labour Court within a limited time frame, namely, within thirty days from the date of publication of the award. Once an award becomes enforceable in terms of Section 17A of the Act, the Labour Court or the Tribunal, as the case may be does not retain any jurisdiction in relation to setting aside of an award passed by it. [732-F-G]

*Grindlays Bank Ltd. v. Central Government Industrial Tribunal and Ors.*, [1980] Supp. SCC 420; *Satnam Verma v. Union of India*, [1984] Supp. SCC 712 and *J.K. Synthetics Ltd. v. Collector of Central Excise*, [1996] 6 SCC 92, relied on.

*Anil Sood v. Presiding Officer, Labour Court II*, (2001) 2 SCALE 193, distinguished.

**2.** A fact situation obtaining in one case cannot be said to be a precedent for another. [733-B]

*Mehboob Dawood Shaikh v. State of Maharashtra*, [2004] 2 SCC 362, relied on.

A From the Judgment and Order dated 30.4.2001 of the Punjab and Haryana High Court in C.W.P. No. 8231 of 2000.

Neeraj Kumar Jain and Ugra Shankar Prasad for the Appellant.

B The Judgment of the Court was delivered by

C **S.B. SINHA, J. :** This appeal is directed against an order dated 30.4.2001 passed by a Division Bench of the Punjab & Haryana High Court in Civil Writ Petition No. 8231 of 2000 whereby and whereunder the writ petition filed by the Respondent herein questioning the order of the Labour Court dated 11.5.2000 setting aside an *ex parte* award in favour of the Respondent herein, was allowed.

FACTS :

D The Respondent was appointed as a Machineman by the Appellant in 1980. The Appellant contended that the Respondent had been absenting from duties off and on but he had been allowed to join his duties in different periods. On or about 09.11.1991, a complaint petition was filed by him through the trade union before the Labour Inspector Circle III Jalandhar on an allegation that the management had not provided him and other similarly situated persons duties since 8.11.1991. The said complaint was registered as Ref. No. 87/91 wherein a settlement was arrived at, pursuant whereto or in furtherance whereof the Respondent is said to have received a sum of Rs. 2675.70 in full and final settlement of his dues. Despite the said settlement, on or about 17.11.1992, he allegedly filed a reference petition before the Labour Court, Jalandhar which was marked as Reference No. 87 of 1991, claiming his reinstatement with full back-wages, continuity of service and all consequential service benefits.

An *ex parte* award was passed by the said Labour Court on 5.2.1996.

G The Appellant purportedly upon coming to know about the pronouncement of the said *ex parte* award, moved an application for setting aside the same. By reason of an order dated 11.5.2000, the *ex parte* award was set aside. Contending that the Labour Court had no jurisdiction to set aside the *ex parte* award after a lapse of 30 days from the date of publication of the award, the respondent herein filed a writ petition before the Punjab

and Haryana High Court which was marked as Civil Writ Petition No. 8231 of 2000. By reason of the impugned judgment, the High Court set aside order of the Labour Court. Being aggrieved by and dissatisfied therewith, the appellant is in appeal before us.

Mr. Neeraj Kumar Jain, learned counsel appearing on behalf of the Appellant, would submit that having regard to the fact that the provisions of Order IX Rule 13 of the Code of Civil Procedure are applicable to an industrial adjudication, the Labour Court must be held to have ample jurisdiction to set aside an *ex parte* award, if sufficient cause therefor is shown. The learned counsel would further submit that such exercise of jurisdiction by the Labour Court cannot be limited to a period of 30 days from the date of publication of the award. Reliance, in its connection, has been placed on *Anil Sood v. Presiding Officer, Labour Court II*, (2001) 2 SCALE 193.

An industrial adjudication is governed by the provisions of the Industrial Dispute Act, 1947 (hereinafter referred to as 'the Act') and the rules framed thereunder. The rules framed under the Act may provide for applicability of the provisions of the Code of Civil Procedure. Once the provisions of the Code of Civil Procedure are made applicable to the industrial adjudication, indisputably the provisions of Order IX Rule 13 thereof would be attracted. But unlike an ordinary Civil Court, the Industrial Tribunals and the Labour Courts have limited jurisdiction in that behalf. An award made by the industrial court becomes enforceable under Section 17A of the Act on the expiry of 30 days from the date of its publication. Once the award becomes enforceable, the Industrial Tribunal and/or Labour Court becomes *functus officio*.

This Court in *Grindlays Bank Ltd. v. Central Government Industrial Tribunal and Others*, [1980] Supp. SCC 420, held that the Tribunal does not become *functus officio* provided an application for setting aside the award is filed within thirty days of publication of award having regard to the provisions contained in Section 11 of the Act and Rules 22 and 24 of the Industrial Disputes (Central) Rules, 1957 stating :

“The contention that the Tribunal had become *functus officio* and, therefore, had no jurisdiction to set aside the *ex parte* award and that the Central Government alone could set it aside, does not commend

A to us. Sub-section (3) of Section 20 of the Act provides that the proceedings before the Tribunal would be deemed to continue *till the date on which the award becomes enforceable under Section 17-A*. Under Section 17-A of the Act, an award becomes enforceable on the expiry of 30 days from the date of its publication under Section 17. The proceedings with regard to a reference under Section 10 of the Act are, therefore, not deemed to be concluded until the expiry of 30 days from the publication of the award. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication and up to that date it has the power to entertain an application in connection with such dispute. That stage is not reached till the award becomes enforceable under Section 17-A. In the instant case, the Tribunal made the *ex parte* award on December 9, 1976. That award was published by the Central Government in the Gazette of India dated December 25, 1976. The application for setting aside the *ex parte* award was filed on January 19, 1977 i.e., before the expiry of 30 days of its publication and was, therefore, rightly entertained by the Tribunal.....”

The said decision is, therefore, an authority for the proposition that while an Industrial Court will have jurisdiction to set aside an *ex parte* award but having regard to the provision contained in Section 17A of the Act, an application therefor must be filed before the expiry of 30 days from the publication thereof. Till then Tribunal retains jurisdiction over the dispute referred to it for adjudication and only upto that date, it has the power to entertain an application in connection with such dispute.

F It is not in dispute that in the instant case, the High Court found as of fact that the application for setting aside the award was filed before the Labour Court after one month of the publication of the award.

G In view of this Court’s decision in *Grindlays Bank* (supra) such jurisdiction could be exercised by the Labour Court within a limited time frame, namely, within thirty days from the date of publication of the award. Once an award becomes enforceable in terms of Section 17A of the Act, the Labour Court or the Tribunal, as the case may be, does not retain any jurisdiction in relation to setting aside of an award passed by it. In other words, upon the expiry of 30 days from the date of publication of the award in the gazette, the same having become enforceable, the Labour Court would become *functus officio*.

*Grindlays Bank* (supra) has been followed in *Satnam Verma v. Union of India*, [1984] Supp. SCC 712 and *J.K. Synthetics Ltd. v. Collector of Central Excise*, [1996] 6 SCC 92. A

This Court in *Anil Sood* (supra) did not lay down any law to the contrary. The contention raised on the part of Mr. Jain to the effect that in fact in that case an application for setting aside an award was made long after 30 days cannot be accepted for more than one reason. Firstly a fact situation obtaining in one case cannot be said to be precedent for another. [See *Mehboob Dawood Shaikh v. State of Maharashtra*, [2004] 2 SCC 362. B  
Secondly, from a perusal of the said decision, it does not appear that any date of publication of the said decision, it does not appear that any date of publication the application was made 30 days after the expiry of publication of the award. Furthermore, the said decision appears to have been rendered on concession. C

For the foregoing reasons, there is no merit in this appeal which is accordingly dismissed. No costs. D

K.K.T.

Appeal dismissed.