case that was the proper remedy to be adopted. Before the Judicial Commission, both the parties would have led evidence and keeping in view the provisions of the Act, the matter would have been decided one way or the other. In the writ petition the only ground raised for not having recourse to the provisions of Section 142 of the Act was that before doing so a notice of two months as provided under Section 143 of the Act he had to be issued. This is no ground for not resorting to the statutory remedy under Section 142 of the Act. Here also, the writ petition was filed more than three weeks after the issue of the notification and more than two weeks of taking over of the management by the newly nominated members.

(8) The remedy under Section 142 of the Act is adequate enough. No factual data having been placed before us as to why it could not be considered adequate, we decline to interfere in writ jurisdiction and dismiss the same with costs.

R.N.R.

Before G. C. Mital and K. S. Bhalla, JJ.

TECHNOLOGICAL INSTITUTE OF TEXTILES, BHIWANI,
Petitioner.

versus

LABOUR COURT, ROHTAK AND ANOTHER,—*Respondents.*

C.W.P. No. 4314 *of* 1985.

September 27, 1988

Industrial Disputes Act (IV of 1947)—*Ss.* 2(*b*), 10, 20(3) *and* 17-*A* —*Industrial Tribunal* (*Central*) *Rules*, 1957—*Rls.* 22 *and* 24—*Dismissal of reference for non-prosecution—Labour Court—Whether has jurisdiction to dismiss a reference in default—Such dismissal—Whether amounts to an Award under S.* 2(*b*)—*Absence of party—Duty of Labour Court—Ex-parte Award—Power of Labour Court to set it aside.*

Held, that an *ex-parte* order dismissing the reference being simpliciter dismissal of reference for non-prosecution without going into the merits of the case, cannot be treated as interim or final

determination of the Industrial Dispute or any question relating thereto so as to constitute an award.

(Para 5).

Held, that Rule 22 of the Industrial Tribunal (Central) Rules, 1957 only enables the Labour Court to proceed as if a party has duly attended or has been represented, even if such party is absent and if sufficient cause is not shown for his absence. It does not enable the Labour Court either to do away with the enquiry or to straightaway pass an award without giving a finding on the merits of the dispute. The Labour Court cannot, by making a rule or otherwise, absolve itself of the duty to determine the Industrial Dispute referred to it on merits. The absence of a party does not entail the consequence that an award will straightaway be made against him. A reference made to the Labour Court is required to be answered and Labour Court is bound to proceed and decide the matter on merits even if the applicant absents himself. Reference under Section 10 of the Act sets in motion adjudication proceedings and they cannot stop except by the passing of an award. Once made it cannot be withdrawn or cancelled by the Government and the Tribunal cannot refuse to adjudicate on the dispute. Strictly speaking, it cannot even dismiss the dispute for non-prosecution and in any case any action so taken would not constitute an award to entail subsequent consequences recognised under the Act. The Labour Court/ Tribunal as of necessity is to make an award and forward the same to the Government. Only an award, once published, and after 30 days have expired from the date of publication is final and enforceable and not any other order made by the Presiding Officer, Labour Court. For the purpose of finality, Section 20(3) of the Act relates to an award alone as only award becomes enforceable under Section 17-A of the Act.

(Para 5).

Held, that when passing of *ex-parte* award has been made permissible, in exercise of the principles of natural justice, ancillary powers of setting aside of *ex-parte* decisions should also be presumed. Where a party is prevented from appearing at the hearing due to a sufficient cause, and is faced with an *ex-parte* award, it is as if the party is visited with an award without a notice of the proceedings. An award without notice to a party is nothing but a nullity. In such circumstances, the Tribunal has not only the power but also the duty to set aside the *ex-parte* award and to direct the matter to be heard afresh.

(Para 3).

Writ Petition Under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to:—

(a) *Issue a writ in the nature of certiorari or any other appropriate writ or order quashing the order dated August 2, 1985 passed by the respondent No. 1;*

(*b*) *Issue a writ in the nature of mandamus or any other appropriate writ or order staying the proceedings before the Labour Court in respect of Industrial Reference No.* 121 *of* 1981 *during the pendency of this writ petition;*

(*c*) *May pass such other orders or directions as it may deem fit and proper in the circumstances of the case to do so:*

(*d*) *Dispensed with the issuance of advance notice as contemplated under Article* 226(4) *of the Constitution of India;*

(*e*) *May dispensed with the filing of the certified copies of the Annexures P/1 to P/8 which have been appended alongwith the petition; and*

(*f*) *Award costs of the said petition.*

H. L. Sibal, Sr. Advocate with G. C. Garg, Advocate, *for the Petitioner.*

N. K. Khosla, Advocate, *for the Respondent.*

JUDGMENT

K. S. Bhalla, J.

An industrial dispute arose between Shri Hanuman Prasad Saini (hereinafter called the workman)—respondent No. 2 and the Technological Institute of Textiles, Bhiwani hereinafter called the management)—petitioner and at the instance of the workman question of termination of his services was referred to Labour Court, Rohtak, for adjudication under section 10(1) (c) of the Industrial Disputes Act, 1947 (hereinafter called the Act). The matter was fixed before the Labour Court on 8th April, 1983, camp at Bhiwani, for evidence of the management after the workman had already concluded his evidence. On 8th April, 1983, the workman failed to appear before the Labour Court. Although he informed the Labour Court through telegram that he was ill, the Labour Court decided the case on 8th April, 1983, *ex parte* and without going into the merits of the case the reference was ordered to be dismissed for non-prosecution on the part of the workman. Subsequently, the workman sent an application dated 1st July, 1983 for restoration of the proceedings in the reference in question contending that he suddenly fell ill on 7th April, 1983, that he informed the Labour Court through telegram with regard to that fact and also sent a medical certificate thereafter. To explain the delay in filing that application, he said that in the middle of month of April, 1983,

appointment of the Presiding Officer of the Labour Court was set aside by this Court as a result of which everything became fluid and he was informed that new Presiding Officer may be appointed after summer vacation. That application of the workman was allowed by the Presiding Officer, Labour Court, Rohtak and,—*vide* his order dated 2nd August, 1985 (Annexure P-8), he held that the workman had been able to establish sufficient cause for his absence on 8th April, 1983, that on account of this Court's judgment rendered on 13th April, 1983 by which appointment of the Presiding Officer, Industrial Tribunal, Faridabad, was quashed, there was a lot of confusion in the minds of the general public about the functioning of such Courts in Haryana for which reason a case for condonation of delay in filing the application for setting aside the *ex parte* order of the Labour Court was made out. Consequently, the reference was fixed for evidence of the management at which stage it was dismissed for non-prosecution, for its adjudication. on merits. Through present writ petition, the management has assailed said order dated 2nd August, 1985 of the Labour Court, Rohtak, and has sought its quashing.

(2) It has been held by the Labour Court that sufficient cause was shown for absence of the workman on 8th April, 1983. If the workman had suddenly fallen ill on 7th April, 1983, the said conclusion of the Labour Court cannot be treated to be incorrect. The Labour Court was intimated through a telegram and medical certificate supporting illness of the workman also followed.

(3) An *ex parte* decision is possible under Rule 22 of Industrial Tribunal (Central) Rules, 1957 which provides a fictional position that it may proceed as if the party had duly attended or had been represented. Rule 24 thereof also embraces applicability of the Code of Civil Procedure, 1908 in certain respects. Even otherwise when passing of *ex parte* evidence has been made permissible, in exercise of the principles of natural justice, ancillary powers of setting aside of *ex parte* decisions should also be presumed. Where a party is prevented from appearing at the hearing due to a sufficient cause. and is faced with an *ex parte* award. it is as if the party is visited with an award without a notice of the proceedings. An award without notice to a party is nothing but a nullity. In such circumstances, the Tribunal has not only the power but also the duty to set aside the *ex parte* award and to direct the matter to be heard afresh. This conclusion of ours finds support from *Grindlays Bank*

Ltd. v. *The Central Government Industrial Tribunal* (1), wherein it was held as under :—

> "It is true that there is no express provision in the Act or the Rules framed thereunder giving the Tribunal jurisdiction to do so. 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. The words 'shall follow such procedure as the arbitrator or other authority may think fit' occurring in Section 11(1) are of the widest amplitude and confer ample power upon the Tribunal and other authorities to devise such procedure as the case so demands.
>
> The language of R.22 of the Industrial Disputes (Central) Rules (1957) unequivocally makes the jurisdiction of the Tribunal to render an *ex parte* award and carries with it the power to enquire whether or not there was sufficient cause for the absence of a party at the hearing. And in view of R.24 when an *ex parte* award is passed, provisions of Order 9, Rule 13, Civil Procedure Code are attracted".

(4) Once it is accepted that powers for setting aside *ex parte* orders or awards exist, the Labour Court is well in its justification to extend time for filing an application for setting aside of the award on sufficient cause shown. *Ex parte* decision in this case was made on 8th April, 1983 and on April 13, 1983. through Full Bench judgment of this Court in *Tul-Par Machine & Tool Company, Faridabad* v. *Joginder Pal Workman and others* (2), position with regard to appointment of Presiding Officers of Labour Court and Industrial Tribunals in the State of Haryana became fluid. As a result thereof there was a confusion to be found in the minds of general public of that State including the workman in question and he could very well think that since after that decision the Presiding Officer of Labour Court Rohtak was not competent to transact business. Uutimately, submitting to that decision,—*vide* notification of the State Government of Haryana (annexure P-6), the Governor

(1) A.I.R. 1981 S.C. 606.

(2) I.L.R. (1983)2 Punjab and Haryana 357.

of Haryana dispensed with the services of Presiding Officer Industrial Tribunal Faridabad and Presiding Officers of Labour Courts Faridabad and Rohtak with effect from the afternoon of 30th June, 1983. Immediately thereafter i.e. on 1st July, 1983, the workman, sent an application for setting aside of the *ex parte* decision against him. Thus, the impugned order of the Labour Court is neither assailable with regard to findings in favour of the workman on sufficient cause shown for extension of time.

(5) The contention of the learned counsel for the petitioner that the Labour Court had become *functus officio* under Section 20(3) read with section 17-A of the Act on the expiry of 30 days after the publication of its order dated 8th April, 1983, (annexure P-4), the same having been published in the Haryana Government Gazette on May 24, 1983 (annexure P-5) too, does not cut ice with us. According to Section 2(b) of the Act "award" means an interim or a final determination of any Industrial Dispute or any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10-A. Order dated 8th April, 1983 annexure P-4 being simpliciter dismissal of reference for non-prosecution without going into the merits of the case, cannot be treated as interim or final determination of the Industrial Dispute or any question relating thereto so as to constitute an award. Evidence of the workman had already concluded and the case was fixed for evidence of the management on 8th April, 1983. If the Labour Court wanted to pass an *ex parte* award in the absence of the workman, it was required to record evidence of the management and pass an order on merits. Had it done so, it would have amounted to determination of the Industrial Dispute or an *ex parte* award. In that case, the contention of the management could possibly prevail. But the position in the present case is completely different. Rule 22 of the Industrial Tribunal (Central) Rules 1957 only enables the Labour Court to proceed as if a party had duly attended or has been represented, even if such party is absent and if sufficient cause is not shown for his absence. It does not enable the Labour Court either to do away with the enquiry or to straightway pass an award without giving a finding on the merits of the dispute. The Labour Court cannot, by making a rule or otherwise, absolve itself of the duty to determine the Industrial Dispute referred to it on merits. The absence of a party does not entail the consequence that on award will straightaway be made against him. A reference made to the Labour Court is required to be answered and Labour

Court is bound to proceed and decide the matter on merits even if the applicant absents himself. Reference under Section 10 of the Act sets in motion adjudication proceedings and they cannot stop except by the passing of an award. Once made it cannot be withdrawn or cancelled by the Government and the Tribunal cannot refuse to adjudicate on the dispute. Strictly speaking, it cannot even dismiss the dispute for non-prosecution and in any case any action so taken would not constitute an award to entail subsequent consequences recognised under the Act. The Labour Court/ Tribunal as of necessity is to make an award and forward the same to the Government. Only an award, once published, and after 30 days have expired from the date of publication is final and enforceable and not any other order made by the Presiding Officer Labour Court. For the purpose of finality, Section 20(3) of the Act relates to an award alone as only award becomes enforceable under Section 17-A of the Act. Because order annexure P-4 is not an award, the argument advanced on behalf of the petitioner to make the Labour Court *functus officio* is not open to the learned counsel for the petitioner. *The Waring Co-operative Agriculture Services Society Limited P. O. Barriwal, Tehsil Muktsar* v. *The State of Punjab and others* (3), relied upon by the learned counsel for the petitioner in this respect is distinguishable on facts as in that case it was an *ex parte* award and not an *ex parte* order of dismissal simplicitor without determination of the industrial dispute or any question relating thereto.

(6) For the foregoing reasons, we find no merit in this writ petition and the same is dismissed with costs.

R.N.R.

Before G. C. Mital, J.

SUKHBIR KAUR,—*Appellant.*

versus

MAHABIR SINGH AND OTHERS,—*Respondents.*

Regular Second Appeal No. 805 *of* 1979.

October 26, 1988.

Hindu Succession Act (XXX of 1956)—S. 14(1)—Estate settled on wife in lieu of maintenance—Such settlement before Hindu Succession Act—Wife continuing in possession of such property—Commencement of Hindu Succession Act—Whether wife becomes full owner.

(3) 1986 (2) P.L.R. 238.