2004 (2) GLR 1475

GUJARAT HIGH COURT

Hon'ble Judges:H.K.Rathod, J.

Mohitosh Dass Versus Mg Memon Or His Successor In Office, Presiding Officer

SPECIAL CIVIL APPLICATION No. 4112 of 2000 ; *J.Date :- NOVEMBER 18, 2003

- INDUSTRIAL DISPUTES ACT, 1947 Section - 10 , 2(b) , 17 , 18(3)
- INDUSTRIAL DISPUTES (GUJARAT) RULES, 1966 Rule - 26A , 26B , 22 , 26
- CONSTITUTION OF INDIA Article - 227

INDUSTRIAL DISPUTES ACT, 1947 - S. 2(b), 10 - INDUSTRIAL DISPUTES (GUJARAT) RULES, 1966 - R. 26, 26A, 26B - jurisdiction of Labour Court - whether Labour Court has power to dismiss reference for default - parties have not filed statements - application for setting aside ex parte award - said application was rejected on the ground that sufficient cause was not shown for absence of workman - Labour Court required sufficient cause to be proved for remaining absent on each and every occasion between period for all 13 years - held, Labour Court has no jurisdiction to pass such award in absence of workman without determination on merits - Labour Court should gather facts and merits of matter from file sent by conciliation officer - approach of Labour Court seems to be too technical and unreasonable which requires sufficient cause to be proved from petitioner for period of 13 years - impugned award is quashed and set aside - petition allowed.

Imp.Para: [12] [13] [14] [15]

Cases Relied on :

1. Divisional Railway Manager V/s. Secretary, 2002 1 CLR 957 : 2002 (2) GLR 1164 : 2001 (3) GLH 513 : 2002 (2) GCD 1219 : 2002 (94) FLR 498
2. Hindustan Motors Limited V. Janardan Singh And Others, 2001 3 CLR 538
3. Madhusudan Konar V. State Of West Bengal And Others, 2001 0 LABIC 3197
4. N.M.Naik V. The Presiding Officer, Labour Court Hubli, 1997 77 FLR 914

5. Divisional Railway Manager V. Secretary, 2001 3 GLH 513
(Note :-Overruled by Div.Bench HC - Cadila Health Care Limited Vs. Union Of India And Others 1998 (2) GLH 957) : 2002 (2) GLR 1164 : 2002 (2) GCD 1219 : 2002 (1) CLR 957 : 2002 (94) FLR 498

Equivalent Citation(s):

2004 (2) GLR 1475 : 2004 (3) CLR 169
JUDGMENT :-
H.K.Rathod, J.

1 . Heard learned advocate Mr.M.S.Mansuri on behalf of the applicant in civil application and for petitioner in main petition and learned advocate Mr.Krunal Nanavati for respondent - employer.

The present civil application is filed with prayer to fix the matter for final hearing. Both the learned advocates are ready to make their submissions finally in the main matter today and request is made by both the learned advocates accordingly. Therefore, this Court has accepted the request of both the learned advocates and main matter is taken up for final hearing today.

In above view of the matter, civil application No.8177 / 2003 stands disposed of accordingly.

Heard learned advocate Mr.M.S.Mansuri for petitioner and learned advocate Mr.Krunal Nanavati for respondent No.2 - employer, so also, learned AGP Mr.Siraj Gori for respondent No.1 in the main matter.

2 The brief facts giving rise to the present petition are as under :-

The petitioner was working with the respondent No.2 with effect from 1/04/1983 and made permanent in service by written order dated 30th September, 1983. According to the petitioner, the respondent has served a false chargesheet in violation of principles of natural justice and accordingly, service of the petitioner came to be terminated without holding legal and proper inquiry with effect from 1/04/1984. The said order of termination was challenged by the petitioner by way of raising industrial dispute which came to be referred for adjudication in Reference No.631 / 1984. Before the labour court, statement of claim was filed by the petitioner on 10/04/1985. The petitioner has filed Special Civil Application No.1002 / 1990 challenging the award passed by the labour court in terms of the settlement. This Court, after hearing the parties, was pleased to quash and set aside the compromise award. Thereafter, one application is filed by the respondent to engage Advocate in the Reference proceedings on 12th February, 1993. The respondent

No.2 have filed Vakalatnama of the Advocate which is exhibited at Sr.No.25 on 22/02/1993. The respondent employer has submitted another application Exh.28 in which amendment to their original written statement was sought. The labour court vide Exh.29 passed the order upon Exh.28 and the application was not entertained. Thereafter, the petitioner has submitted application requesting the labour court to permit to lead evidence but the matter was kept for hearing before the labour court who was posted on deputation from Civil Court. The Union representative of the petitioner who was present and informed the Court that the petitioner workman could not remain present due to unavoidable circumstances and requested for adjournment but the labour court has dismissed the Reference in default and thereafter, application for restoration is made for restoring the Reference. The award has been published on 6th August, 1999. The application submitted by the petitioner under Sec. 26-A along with the affidavit, has been dismissed by the labour court and therefore, present petition is filed.

3 Learned advocate Mr.Mansuri submitted that before the labour court, hearing was taken place between 13th April, 1985 to 25/11/1998 and considering absence of the petitioner, the labour court has dismissed the matter in default by order dated 16/12/1998 and that award is published on 22/07/1999. Thereafter, the Misc. Application No.15 / 1999 was filed in Reference No.631 / 1984 by the petitioner. The labour court has also dismissed the said application on the ground that the petitioner is not able to satisfy to the labour court about sufficient reasons to remain absent and therefore, on 1/04/2000, misc. application is also dismissed, against that, present petition is filed. On behalf of the respondent No.2, detailed affidavit-in-reply is filed.

4 Learned advocate Mr.Mansuri also submitted that the labour court has committed gross error in passing the order in absence of the petitioner workman dismissing the reference in default. He also submitted that there is no provisions under the Industrial Disputes [Gujarat] Rules, 1966 to dismiss the matter in default. He also submitted that it is burden upon the labour court if the workman has remained absent and not proceeded with the Reference, then, the labour court should have to decide or adjudicate the Reference on the material which has been placed before him by the respective parties. But the labour court having no powers and jurisdiction to dismiss the matter in default. This view has been taken by this Court in case of DIVISIONAL RAILWAY MANAGER VS. SECRETARY reported in 2002 [1] CLR 957. This Court has specifically held that Reference must have to be decided on merits and should not have been dismissed in default. Therefore, according to him, the labour court has committed gross error in dismissing the Reference in default in absence of the petitioner workman. He also submitted that the labour court has also committed error in rejecting the miscellaneous application submitted by the petitioner on the ground that if the workman has remained absent on 13/12/1998 but the workman has not explained absence

prior to 25/11/1998 and therefore, when sufficient reason is not disclosed to the satisfaction of the labour court, the labour court has dismissed the miscellaneous application. He also submitted that there is no provision made in the Industrial Disputes [Gujarat] Rules to file such application for restoration the Reference. Unless the provision is available under Rule 26-A of the Gujarat Rules which relating to filing application for setting aside exparte award but there is no provisions made in Gujarat Rules which gives right to the workman to file application to restore the Reference. Therefore, the labour court has committed gross error in rejecting the miscellaneous application as well as dismissing the main Reference.

5 Learned advocate Mr.Krunal Nanavati for the respondent has submitted that the conduct of the workman itself is sufficient to dismiss the matter in default because he remained absent for the period from 1985 to 1998 without any justification. That after filing of the statement of claim, the workman remained inactive and not participated in the hearing and therefore, in such situation, the labour court having no other option except to dismiss the matter in default. He also submitted that once the workman who has raised industrial dispute has remained absent and inactive then, only course which is open for the labour court to dismiss the Reference in default. Therefore, the labour court has rightly passed the award. He also submitted that even in miscellaneous application, the workman has not satisfactorily explained his absence for a period of 13 years and therefore, the labour court has rightly dismissed the application and for that, the labour court has not committed any error which requires any interference by this Court while exercising the powers under Article 227 of the Constitution of India.

6 I have considered submissions made by both the learned advocates. The contention which has been raised by the learned advocate Mr.Mansuri that the labour court has no jurisdiction to dismiss the matter in default once the Reference is made by the appropriate Government under Sec. 10 of the Industrial Disputes Act, 1947 . He also relied upon one decision of this Court as referred to above [Coram : Justice P.B.Majmudar, J.]. His submission is that appropriate Government has referred the matter for adjudication to the labour court, then, the labour court should not have dismissed the matter in default of the workman if the workman has remained absent during the course of pendency of the Reference. Similarly, in facts of this case also, Reference was referred by the appropriate Government on 1st December, 1984 and Reference was adjourned on various occasions between the period from 1 3/03/1985 to 20th November, 1998 but during the hearing, the workman had remained absent and therefore, the labour court has come to the conclusion that the workman is not interested in prosecuting with the Reference and therefore, in his absence, Reference has been dismissed in default.

7 The law on this point, at least, almost settled based upon the decisions of the various High Courts. The Karnataka High in case of N.M.NAIK V. THE

PRESIDING OFFICER, LABOUR COURT, HUBLI reported in 1997 [77] FLR 914, wherein the Karnataka High Court has also examined the same issue. The Karnataka High Court has come to the conclusion that Reference which referred for adjudication under Sec. 10 of the Industrial Disputes Act, 1947, the labour court cannot dismiss the Reference for default but shall go into merits of the Reference and adjudicate upon the dispute and to finally determine the dispute or the question relating thereto as to make the concerned order an award within the meaning of Sec. 2[b] of the Act. The Karnataka High Court has considered various decisions of the High Court on this issue. The relevant observations made by the Karnataka High Court at page.915 and 918 are referred to as under :

> "The only question that arises in this case is whether the award passed earlier in Reference No.173 of 1987 could be called an "award" within the meaning of Sec. 2[b] of the Act. If it could be called an award, then, Section 17 requires that the same should be published. The said award becomes enforceable under Sec. 17-A on expiry of 30 days, from its publication under Section 17. Under Section 18[3] of the Act, such an award would be binding on both the parties to the dispute, and the petitioner workman cannot subsequently be heard to say that he is not bound by the said award and that the dispute that he had earlier raised should again be adjudicated upon.
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> In my opinion, the rejection of reference for default of the workman cannot be called an "award" within the meaning of Sec. 2[b] of the Act. This is the view taken in other decisions also, to be presently referred to.
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> Section 2[b] inter alia defines award as meaning an interim or a final determination of any industrial dispute or any question relating thereto by any Labour Court. Such determination of an industrial dispute or question relating thereto is undertaken by the Labour Court on reference being made under Sec. 10 of the Act, or by an application under Sec. 10[4A] of the Act, where the said Section is applicable. In both the events, what is pre-requisite is that there was a dispute that needed to be adjudicated upon. Where a dispute is felt so important as to necessarily need an adjudication by the concerned forum, and no a frivolous one in respect of which reference could be refused by the appropriate Government, it is expected that such a dispute has to be determined on merits. The labour court / industrial tribunal, therefore, cannot treat such reference as just a dispute between two individuals in a civil proceeding so that it could be dismissed for default of the workman who would be in the position of plaintiff in a suit. The essence of the entire scheme of reference of the dispute for adjudication to a Labour Court / Industrial Tribunal under the Act being one of determination of the dispute on merits, just because the Labour Court / Industrial Tribunal disposes of the reference for the absence of the

workman, such an order cannot be called an "award" within the meaning of Sec. 2[b] of the Act, since, as required under the said Section 2[b], there would be no determination of any industrial dispute at all but would merely be a disposal of reference. The inevitable conclusion to be reached, therefore, is that, though, in view of Rule 22 of the Rules as earlier referred to, even where the workman remains absent, the Labour Court / Tribunal can proceed to deal with reference, such dealing with the reference shall have to be for the purpose of determination of reference on merits so that the order that it eventually passes could be termed as "award" within the meaning of Sec. 2[b] of the Act. The labour court / Industrial Tribunal cannot and shall not dispose of the proceedings for default of either of the parties. Where such rejection of reference is made without consideration of merits and without adjudicating upon the dispute referred, in my opinion, such an order cannot be called an "award" within the meaning of Section 2[b] of the Act. If it is not an "award" within the meaning of Sec. 2[b], then merely because it is published under Sec. 17, it does not become an award enforceable under Section 17-A and binding on the parties under Sec. 18[3]. The order in the earlier reference dated 17.3.1987, therefore, was not an "award" within the meaning of Sec. 2[b] of the Act. The application under Section 10[4A] of the Act having been filed by the petitioner workman in exercise of the right given to him by the Amendment Act referred to above within the time prescribed therein, petitioner workman had a right to have the dispute concerned adjudicated upon. The labour Court, therefore, acted arbitrarily in disposing of the said application as not maintainable."

"In the result, it must be repeated that the Labour Court / Industrial Tribunal cannot dismiss the reference for default, but shall go into the merits and adjudicate upon the dispute and to finally determine the dispute or the question relating thereto, as to make the concerned order an "award" within the meaning of Sec. 2[b] of the Act."

8 Similar aspect has been examined by the Division Bench of the Calcutta High Court in case of HINDUSTAN MOTORS LIMITED V. JANARDAN SINGH AND OTHERS reported in 2001 [3] CLR 538. Before the Division Bench of the Calcutta High Court, the question was that workman who was dismissed from service and he raised industrial dispute which referred for adjudication to the Industrial Tribunal but as the parties did not appear, Industrial Tribunal making "NO DISPUTE" award, Government making a second reference afresh on identical issues, the question is whether the second reference is maintainable. In this decision, it is held by the the High Cout of Calcutta that a "No Dispute" award passed for non appearance of the parties cannot be said to be an award within the meaning of Sec. 2[b] or Sec. 17-AA of the Act, as there has been no award within the meaning of Section 2[b] of the Act, the dispute still subsists and awaits adjudication, notwithstanding the "No Dispute" award,

therefore, the State Government's second reference of the self same dispute to the Industrial Tribunal for adjudication cannot be said to be bad.

9 Again, the Calcutta High Court has considered the same issue that no dispute award in case of MADHUSUDAN KONAR V. STATE OF WEST BENGAL AND OTHERS reported in 2001 LAB.I.C. 3197. The view taken by the Calcutta High Court that award passed owing to absence of both parties without interim or final industrial dispute is "no dispute award", cannot have existence in eye of law.

10 Recently also, our High Court has also considered this question in case of DIVISIONAL RAILWAY MANAGER V. SECRETARY reported in 2001 [3] GLH 513, this Court has come to the conclusion that Reference of the workman dismissed for default - as there is no determination of the industrial dispute, the Tribunal does not become functus officio, in absence of any intimation of hearing the court ought to restore such Award, dismissal for non prosecution is not akin to deciding a Reference ex-parte. In dismissing the Reference for default the Tribunal does not decide the dispute at all, which it cannot do, tribunal has no power to dismiss the Reference for default. The relevant observations made by this Court in para-16 are quoted as under :

> "16. I am of the opinion, therefore, that once the dispute is referred to the Competent Court by the appropriate Government, the Court has to adjudicate upon the same. However, if the parties do not assist the Court by leading evidence and by remaining present, then, naturally, the Court can pass appropriate order either by rejecting the reference on the ground that no sufficient material is placed on record, by which the Court can accept the demand of the workman. Under these circumstances, it will be a decision on the merits of the case, which cannot be treated at par with dismissing the reference for non prosecution. Therefore, considering the scheme of the Act, it seems that such powers are no available to the Court, and the Court has to adjudicate the Reference on the basis of the reference made to it by the appropriate Government and once the reference is made, it has to be answered on its own merits, instead of dismissing the same for non prosecution. It is always open, therefore, for the appropriate Court to pass appropriate order, as stated earlier, if no sufficient evidence is placed by the party prosecuting his case. Even in that view of the matter, the original reference could not have been dismissed for default by the Court. In any case, subsequently, having found that there was sufficient ground for restoring the matter on record, ultimately, the Court restored the same. Under these circumstances, therefore, it cannot be said that the Tribunal has committed any error of law or of jurisdiction while restoring the aforesaid reference on file. As stated earlier, deciding the Reference ex parte in absence of other side stands on an entirely difference footing than to dismiss the Reference for default. There are

powers available with the Tribunal under Rule 22 to decide the matter ex parte in absence of other side, but, nonetheless, it will be an adjudication of the dispute on merits. Such is not the case when the Reference is dismissed for non prosecution and therefore, though the Tribunal or the Court is competent to decide ex parte such Reference, it has no power to dismiss it for default as it would amount to not deciding the reference at all in any manner."

11 This Court has come to the conclusion and held that the labour court or the industrial tribunal has no powers to dismiss the Reference in default as it would amount to not deciding the Reference at all in any manner.

12 Therefore, in view of above decisions, the order passed by the labour court, Surat dismissing the Reference in default by order dated 16/12/1998 is not award within the meaning of Section 2[b] of the I.D.Act, 1947 and for that, the labour court having no jurisdiction to pass such award in absence of the workman without determination on merits. Therefore, the award passed by the labour court, Surat on 16/12/1998 in Reference No.631 / 1984 is required to be quashed and set aside.

13 The workman present petitioner had filed misc. application No.15 / 1999 under Rule 26-A of the Industrial Disputes [Gujarat] Rules, 1966. The petitioner has filed miscellaneous application along with exparte award and affidavit of the petitioner. It has come on record that no reply was filed by the respondent but it was only mentioned by the respondent at the time of argument that application is required to be rejected as no proper and sufficient cause has been shown by the petitioner to set aside the order dated 16th December, 1998. The labour court has considered the application for setting aside the exparte award and in the said application, the petitioner has given sufficient reason that on 1 6/12/1998, he was not able to remain personally present but he remained personally present on various occasions during the period from 13/03/1985 to 23rd November, 1998 but the matter got adjourned for one or the another reasons. The labour court has come to the conclusion that the petitioner had not shown sufficient cause to remain absent for the entire period and therefore, application has been rejected. I have perused the order passed by the labour court. When no reply was filed by the respondent company against application under Rule 26-A filed by the petitioner with a prayer to set aside exparte order, then, the labour court should have believed averments made in the application by the petitioner. Therefore, the stand which has been taken by the labour court is too technical which requires a sufficient cause to be proved for remaining for absent on each and every occasion between the period for all thirteen years. Obviously, it is very difficult task for the workman to recollect memory of all thirteen years and to explain circumstances of such absent on various dates of hearing. Therefore, the approach of the labour court seems to be too technical and unreasonable which requires sufficient cause to be proved from the petitioner for period of 13

years which is not possible to give justification of various absence on date of hearing during 13 years period. Therefore, when the respondent had not seriously opposed the application by filing reply, then the labour court should not have passed such order of rejecting the application submitted by the petitioner. Therefore, according to my opinion, the view taken by the labour court is totally unreasonable and attitude of the labour court to reject the application of the petitioner for setting aside the exparte award is contrary to the law. It is not the case before the labour court that during this 13 years period, the workman had not remained present on a single occasion. But on some occasions, the workman had remained absent and that cannot be presumed that the workman is not having any interest to prosecute with the Reference. Therefore, whole approach of the labour court is contrary to the law and also contrary to the principles of natural justice and equity. Therefore, the order passed by the labour court in miscellaneous application No.15 / 1999 dated 1/04/2000 is also required to be quashed and set aside.

14 But while considering the decision of this Court, Karnataka High Court and the High Court of Calcutta, an important question which arises for consideration of this Court that once reference has been made by the appropriate Government under Sec. 10 of the Industrial Disputes Act, 1947 for adjudication, then, the labour court or industrial tribunal should have to adjudicate the dispute on merits. The question is that after Reference has been made according to the procedure, the labour court received the Reference and issued notice to the workman and the employer mentioning the date of filing of the statement of claim as well as written statement and also indicating the date of hearing but in case if the workman has not remained present on the date of hearing though notice has been received by the workman and as such, no statement of claim is filed by the workman upto the date of hearing, and though notice has been received by the employer and no written statement is filed by the employer and not remained present before the labour court on the date of hearing, then, according to the procedure and to follow the principles of natural justice, the labour court will issue another two or three notices to the concerned party with direction to remain personally present before the concerned labour court or industrial tribunal and to prosecute their remedy under the Law. But inspite of such two or three notices served on the employer and the workman and if none of the parties practically not remains present before the labour court or the industrial tribunal and even no statement of claim is filed by the workman for any reason that the dispute is raised by the Union merely taking signature on paper by Union, or the workman may not be aware as to the proceedings or some time the workman left the Union or left place of working or go to native place, or some time the workman die or change the place of residence, under any of these circumstances in which though notices served on the workman, the reference is pending before the concerned labour court and industrial tribunal. Similarly, in respect of the employer also, some time the employer has lost interest in such reference because the company is closed or company may be under B.I.F.R. proceedings or employer

has changed or for some other reason like death of the employer or some unavoidable and inevitable circumstances, meaning thereby, non appearance of the workman and the employer before the labour court though notice is served by the labour court received by both respective parties then, in such circumstances, how the labour court can deal with the matter and decide the reference on merits when there is no material before the labour court as none of the parties has produced any material before the labour court or the industrial tribunal. This is the real difficulty being faced by the labour court now-a-days and some time the labour court is helpless in passing the award on merits when there is no material placed before the labour court by either party. In such cases, the view which is already taken that once the Reference has been referred to the labour court for adjudication then the labour court have no powers to pass order or award in absence of the workman but the labour court should have to decide the Reference on its merits but in above circumstances, in absence of the material, on what basis, the labour court can examine the merits of the Reference when nothing on record except the order of Reference. Therefore, in such helpless situation, how can it be expected from the labour court to decide the matter on merits. Such situation creates difficulty when no material is placed before him by either of the party. If such order is passed, this Court has taken the view that labour court having no jurisdiction to dismiss the matter in default but he should have to decide the Reference on merits. This situation has not been visualized that after referring the matter to the labour court, none of the party represents their case inspite of receiving the notice/s then the labour court having only the order of Reference except no other record. Therefore, relevant provisions of the Rules 26, 26-A and 26-B of the Rules require to be referred and it is discussed as under :

> Rule 26 of the Industrial Disputes Gujarat Rules, 1966 provides that if without sufficient cause being shown, any party to a proceeding before a Board, Court, Labour Court, Tribunal or any Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal or Arbitrator may proceed ex-parte.
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> Rule 26-A provides that on an application made within thirty days from the date of knowledge of an ex-parte order, award or report by the party concerned, the Board, Court, Labour Court, Tribunal or Arbitrator may, for sufficient cause, set aside, after notice to the opposite party, such order, award, or report as the case may be. The labour court can extend the period of limitation and such application must have to be filed with an affidavit and the labour court having power to stay operation of an award, conditionally or otherwise in appropriate cases, until the application for setting aside ex parte orders is disposed off finally as provided under Rule 26-B of the Rules.

15 Therefore, bare reading of Rule 26, 26-A and 26-B, the labour court having powers to proceed exparte if any party fails to attend or to be represented before the labour court. Exparte order, award or report can be set aside by the labour court after issuing notice to the opposite party and meanwhile, that order can be stayed by the labour court. But before the labour court, except the order of Reference, when there is no material is placed by either party and inspite of various notices issued by the labour court and received by the respective parties, even though, they are not appearing or attending or representing, then, how the labour court can deal with such situation. If some material is placed by the employer, then the labour court can certainly examine such material and pass order on merits either way. Similarly, if the workman places some material and the employer remains absent, the labour court can definitely pass exparte award relying upon the material placed by the workman. But when both the parties remain silent and not attending the proceedings and represented by any one, in such circumstances, how the labour court can deal with such references when the labour court having no jurisdiction to dismiss the matter in default. With a view to deal with such situation, which is really a need for disposal of such long pending references before the labour court and industrial tribunals, this Court has given thoughtful consideration on this issue. Moreover, the view taken by this Court and the various High Courts, such references are piling and pending before the labour court where neither of the parties remains present and attending the Reference. There are number of References are pending where notices have been served on the workman as well as employer but none of the parties filed their appearance and remained present before the labour court. In such pending cases, if the labor court passes any order dismissing the matter in default, the view taken already settled by various High Court would come in their way and ultimately the matter must have to be decided on merits. Therefore, according to my opinion, this being present position and various references of such nature, which are pending before the various labour court in State of Gujarat but because of lack of any guidelines and no proper understanding and clarification on this issue, the labour courts are not passing any order and matters are kept in cupboard since five to eight years and some matters are very old pending for more than ten years. That is how, according to my opinion, if in such circumstances, when the labour court merely having order of reference and no material received from either party, then the labour court should have to consider the file which has been sent by the Conciliation Officer along with the order of Reference where all the details of the workman are given that how long service he has put with the employer by the workman, what was his designation, what was the last salary, how many workmen are working, what is the date of termination and what was the salary and on what ground his service came to be terminated or dismissed by the employer. Taking said details from the prescribed form which is annexed to the order of Reference being B-file of Conciliation Officer, the labour court can deal with the matter in a manner that after the order of Reference has been referred to and the same has been received by the labour court, the labour court has issued

this many number of notices to both the parties and necessary acknowledgment of each notices on record and inspite of this much time, no efforts have been made by either of the party to attend the proceedings or to represent their case before the labour court. Therefore, considering this fact, the labour court should observed that there is no material with the labour court to decide the merits of either side and ultimately challenge is from the workman on the ground that the order of termination / dismissal or discharge is bad in law. But the labour court shall have to consider that looking to the facts on record and in absence of the material, workman has failed to satisfy the labour court that dismissal or discharge or termination is illegal in any manner, meaning thereby, that order of termination / discharge and / or dismissal is passed by the employer, is legal and valid and on that term, the labour court can dispose of the reference on merits coming to the conclusion that the order of dismissal / termination is legal and valid passed by the employer. According to my opinion, such finding that the workman has not sufficiently and satisfactorily justified the order of dismissal, discharge or termination is illegal and result thereto, the labour court can hold that the order of dismissal, discharge and termination is found to be legal and valid. This being positive finding of the labour court on the Reference which can be considered to be an award within the meaning of Section 2[b] of the Industrial Disputes Act, 1947. Therefore, in such references which are not represented or attended to by either party and remained as it is, the labour court can adopt such course and record finding to the effect that and ultimately their positive finding would satisfy the meaning of the award under Sec. 2[b] of the Industrial Disputes Act, 1947. While disposing such pending references, where no party is being attended to by either party, would not violate and / or against the view taken by this Court and various High Courts. Therefore, instead of passing the order of dismissal for default, the labour court should pass detail order with positive finding that dismissal, discharge and / or termination is held to be legal and valid by the labour court. This can be a practical solution, according to my opinion, to dispose of number of references which are lying in cupboard of the labour court for pretty long time and the labour court is not disposing of because of the view taken by this Court and other High Courts. It is also necessary to note that if either party places on record the material then, it is very reasonable to rely such material and to pass appropriate orders on merits which naturally an Award within the meaning of Sec. 2[b] of the Industrial Disputes Act, 1947 . It is very clear from Rule 26 of Industrial Disputes Gujarat Rules, 1966 that the labour court may proceed exparte against any party to a proceeding which includes the workman and the employer also. Similarly, Rule -26A of the Rules also provides the same situation that application may be filed by party concerned for setting aside the exparte order, award or report, means, exparte order. In other words, it cannot be understood in the spirit of the provisions of the Code of Civil Procedure. Here the exparte award means it can be passed even against the workman also who has raised the industrial dispute. Under the Code of Civil Procedure, "exparte" means proceedings against the opposite party in absence, but in the Industrial Dispute Gujarat

Rules, 1966, the provisions is otherwise, and exparte proceedings could be against both the parties, even against the employer and workman also. Therefore, there is difference and the labour court can pass exparte order against either party and party concerned can file appropriate application for setting aside the award. Therefore, right has been given to both the parties in case if exparte order is passed against any of the parties. Therefore, if the labour court passes an award having positive finding in absence of the material and ultimately the workman having any grievance due to some circumstances not able to attend or to be represented the case before the labour court, then he is entitled to file such application under Rule 26-A of the I.D.Act, 1947 and therefore in such situation, the workman is not remained without any remedy and can file appropriate proceedings before the very court with a prayer to set aside the exparte award. Therefore, considering the difficulty being faced by the labour court and the industrial tribunal where number of references of such nature are pending and the labour court is not passing any order because of the decision of this Court on the ground that the labour court having no jurisdiction to pass order of dismissal for default but this Court has discussed this issue and in such circumstances, where the workman and the employer both remain absent inspite of service of notice on both the parties and when no material is placed on record by either of the party, the labour court can adopt such course and can come to the conclusion that the order of termination / discharge or dismissal is found to be legal and valid as the workman is not able to satisfy and establish the order of termination, discharge or dismissal bad in the eye of law. Therefore, considering all these practical difficulties being faced by the labour courts and the tribunals, this Court has discussed this issue and visualized the situation to find out the way out in absence of specific remedy under the Act and the Rules to enable the labour courts and the tribunal to dispose of such pending references, which are not attended to and represented by none of the parties.

16 In view of above observations, according to my opinion, view taken by the labour court in dismissing the reference for default by order dated 16/12/1998 is contrary to the law and without jurisdiction. Similarly, the order passed by the labour court, Surat in misc. application No.15 / 1999 dated 1/04/2000 is also illegal, arbitrary and contrary to the law and therefore, both the orders are required to be quashed and set aside.

17 In the result, present petition is fully allowed. The award passed by the labour court, Surat in Reference No.631 / 1984 dated 16/12/1998 is hereby quashed and set aside. Similarly, the order passed by the Labour Court, Surat in Misc. Application No.15 / 1999 dated 1st April, 2000 is hereby quashed and set aside. As a consequence thereof, the main Reference No.631 / 1984 which was pending at Labour Court, Surat is restored to the original file and the same shall have to be proceeded further from the stage on which said Reference was pending on 16/12/1998. It is directed to the Labour Court, Surat to decide the Reference in question being old reference of the year 1984 viz. Reference [LCS]

No.631 / 1984 as early as possible preferably within nine months from the date of receiving the copy of this order and it is hoped that both the parties will co-operate with hearing before the labour court. Rule is made absolute accordingly with no order as to costs.