

**(2013) 03 AHC CK 0052**

**In the Allahabad High Court**

**Case No :** Civil Misc. Writ Petition No"s. 55478 of 2007, 52524 of 2002, 10259 of 2003, 55481, 55480, 55479 of 2007, 22903, 44626, 44623 of 2011

Agricultural Institute and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 07-03-2013

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 17(B), 17B, 33(C)(2), 6H(1)

**Citation :** (2013) 5 ADJ 61 : (2013) 4 ALJ 255 : (2013) 138 FLR 796 : (2013) 4 LLN 489 : (2013) LLR 1094 : (2013) 2 UPLBEC 1264

**Hon'ble Judges :** Tarun Agarwala, J

**Bench :** Single Bench

**Advocate :** Yashwant Varma, S.N. Verma and Prateek J. Nagar, for the Appellant; Ram Kaushik, Kaushlendra Singh, D.S. Srivastava and B.D. Pandey, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Tarun Agarwala, J.—The workman was appointed from 2.1.1992 as a worker in the Workshop of Allahabad Agricultural Institute. It is alleged that the appointment was for a fixed term, but the record reveals that his appointment was extended from time to time. Eventually, at some stage, the workman was placed under suspension and thereafter the services of the workman was terminated by an order dated 12.3.1994. The workman, being aggrieved, raised an industrial dispute which was referred for adjudication. The Industrial Tribunal passed an ex-parte award dated 14.12.1995 setting aside the order of termination and directing reinstatement of the workman with continuity of service and with full back wages. It transpires that the employer filed a Restoration Application which was also rejected by the Tribunal. The employer thereafter filed WP No. 5371 of 1997 which was dismissed by a judgment dated 23.4.1999. It transpires that a second writ petition was filed in the year 2000 challenging the same award, which was again dismissed as not maintainable by a judgment dated 10.9.2003. The Court while dismissing the writ petition imposed

a cost of Rs. 10,000/- upon the employer. As the result of the dismissal of the writ petition, the award of the Tribunal became final since the same was not challenged by the employer before a superior Court. The workman filed a Misc. Application No. 20 of 2001 claiming wages for the period 15.12.1993 to 28.2.2001. The Labour Court allowed the claim application granting Rs. 95,932/- towards wages. The employer, being aggrieved by this order, has filed WP No. 52524 of 2002.

2. The workman filed another Misc. Application No. 46 of 2002 claiming wages u/s 33(C)(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) claiming wages for the period 1.3.2001 to 31.3.2002. This application was allowed by the Labour Court by its order dated 10.1.2003 granting the workman a sum of Rs. 21,502/-. The employer, being aggrieved by the said order, filed WP No. 10259 of 2003. Thereafter the workman filed an application u/s 6-H-1 of the Act for recovery of the balance amount of the wages for the aforesaid period. The Deputy Labour Commissioner by an order dated 30.1.2004 directed the workman to file an appropriate application before the appropriate Court for its computation. Based on the said order, the workman filed Misc. Case No. 19 of 2006 u/s 33(C)(2) of the Act before the Labour Court for payment of the balance amount for the period 1993-2001. It was contended that for the aforesaid period, the workman was only paid last drawn wages u/s 17-B of the Act and that after the dismissal of the writ petition, the workman became entitled to full wages. In these proceedings, after the exchange of the affidavits and upon the filing of the documentary evidence, the workman moved an application 10-D praying therein that, he does not want to lead any further evidence and that his miscellaneous case may be decided on the evidence that has already been brought on record.

3. This application came up for consideration before the Labour Court on various dates and eventually, the Labour Court, by an order dated 8.1.2007, allowed the application as well as the claim directing the employer to pay a sum of Rs. 1,49,177.60/-. The employer, being aggrieved by this order, filed WP No. 55478 of 2007. In these proceedings, the employer filed a Review Application which was rejected by an order dated 30.6.2007.

4. The workman also filed Misc. Case No. 26 of 2003 for recovery of wages u/s 33(C)(2) of the Act for computation of wages for the period March to May, 2003 amounting to Rs. 64,445/-. This claim was allowed by the Labour Court by an order dated 8.1.2007 against which the employer filed WP No. 55479 of 2007.

5. Similarly, the workman filed Misc. Application No. 132 of 2003 for recovery of wages amounting to Rs. 29,445/- for the period 2.2.2003 to November, 2003. This application was allowed by the Labour Court by order dated 8.1.2007, against which, the employer filed WP No. 55480 of 2007.

6. Similarly, the workman filed Misc. Application No. 41 of 2004 claiming wages for the period December, 2003 to May, 2004 amounting to Rs. 30230/- which

claim application was allowed by the Labour Court by an order dated 8.1.2007, against which the employer filed WP No. 55480 of 2007.

7. Subsequently, the workman filed an application u/s 6-H-(1) of the Act for execution of the order passed by the Labour Court u/s 33(C)(2) of the Act. In these proceedings, the employer filed an application dated 24.9.2007 alleging that the workman had reached the age of superannuation in the year 1998 and thereafter no amount was payable to the workman subsequent to the date of his retirement. This application was rejected by the Dy. Labour Commissioner by an order dated 8.4.2008 holding that such dispute relates to the age of the workman which cannot be decided in a proceeding u/s 6-H-(1) of the Act. This order of the Dy. Labour Commissioner dated 8.4.2008 has been challenged by the employer in WP No. 44626 of 2011.

8. The Dy. Labour Commissioner, subsequently, issued a recovery certificate dated 6.10.2010 for the recovery of the amount pursuant to the order of the Labour Court dated 8.1.2007. This recovery certificate has been challenged by the employer in WP No. 22903 of 2011 alongwith citation dated 16.3.2011. Against the recovery order dated 6.8.2010, the employer filed a Review Application which was rejected by an order dated 14.9.2010 against which the employer filed WP No. 44626 of 2011.

9. All the aforesaid cases have been connected together and WP No. 55478 of 2007 has been made the leading case and all the writ petitions are being decided together by a common order.

10. Heard Sri SN Verma, the learned senior counsel assisted by Sri Prateek J Nagar for the petitioners and Sri Ram Kaushik and Sri Kaushlendra Singh for the respondent-workmen.

11. The learned senior counsel for the petitioner raised three grounds of attack, namely, that the second application for computation of wages for the period 1993-2001 was not maintainable in as much as, for the same period, the amount had already been computed and paid to the workman. It was urged that the second application was liable to be quashed. It was also contended that the workman had reached the age of superannuation in 1998 and, consequently, was not entitled for payment of any kind of wages for the period after the date of retirement. It was urged that the calculation of the wages for the period subsequent to the date of retirement was illegal and was liable to be quashed. In the end, it was contended that the amount claimed by the workman was not correct and was excessive and therefore the recovery certificate issued was illegal. In view of the aforesaid submission, the learned counsel contended that the recovery certificate and all the orders passed by the Labour Court was liable to be quashed.

12. Having heard the counsel for the parties at some length, the Court finds that the petitioners were not inclined to implement the award which has now been affirmed. There is an award directing reinstatement with continuity of service and

with full back wages. This award is liable to implemented. The workman is liable to be reinstated in service which the employer is deliberately avoiding. The award also directed payment of back wages which the petitioner was obligated to pay.

13. The denial of reinstatement can be computed in terms of money which the Labour Court has rightly done in a proceeding u/s 33(C)(2) of the Act. The entitlement of the benefit pursuant to the award has not been disputed by the employer at any stage nor does the Court finds that such entitlement was disputed before this Court. If the right is not disputed, then nothing more is required to be done and, the Labour Court, can proceed to compute the value of the benefit in terms of money. This view of the Court is fortified by the decision of the Supreme Court in *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.,* .

14. The contention of the petitioner that the second application filed by the workman for the same period was not maintainable, cannot be accepted. The Court finds from the perusal of the orders passed in the earlier round u/s 33(C)(2) was allowing the claim of the workman for the same period in terms of Section 17(B) of the Act, namely, payment of last drawn wages to the workman during the pendency of the writ petition. After the dismissal of the writ petition, the workman became entitled for full payment of wages. Since the employer had failed to implement the award as affirmed by the High Court, the workman rightly filed an application u/s 33(C)(2) of the Act for computation of his correct wages and for calculation of the arrears. The Labour Court, after considering the material evidence on record, calculated the wages that was payable to the workman per month and accordingly calculated the arrears. Based on the said order, the workman filed an application u/s 6-H-(1) for execution of the order of the Labour Court which was duly considered and the Dy. Labour Commissioner, after considering all aspects of the matter, issued a recovery certificate. The Revenue Authority, in response to the recovery certificate, issued the citation.

15. The Court finds that the second application for calculation of the balance amount towards wages was maintainable and the procedure adopted by the workman was perfectly correct. This Court does not find any error in the order passed by the Labour Court. The contention of the learned counsel for the petitioner is misconceived and cannot be accepted.

16. This Court further cannot accept the contention of the petitioner that the amount awarded by the Labour Court was excessive and incorrect. Merely by making an assertion before this Court is not sufficient. There is nothing on record to indicate that the calculation of wages made by the Labour Court was excessive or against the rate of wages payable to the workman in question. No details have been brought forward. The contention of the learned counsel for the petitioner on this aspect cannot be accepted.

17. The third contention, namely, that the workman had reached the age of

superannuation in the year 1998 and therefore wages post 1998 cannot be granted to the workmen, appears to be attractive in the first flush but on closer scrutiny, the Court finds that this submission cannot be accepted. The petitioner had never taken this plea at any stage of the proceedings either before the Tribunal nor had raised this plea in any proceedings raised by the workman u/s 33(C)(2) of the Act. Consequently, the Labour Court was justified in calculating the wages for the period in question by various orders. It is only when the workman filed an application u/s 6-H-(1) of the Act for issuance of the recovery certificate pursuant to the order of the Labour Court that a plea was taken by the petitioner raising a plea that the workman had retired in the year 1998. This plea was made on the basis of the age mentioned in the voters list.

18. The Court is of the opinion that the Dy. Labour Commissioner was justified in rejecting the application of the petitioner by order dated 8.4.2008. The Labour Court was justified in holding that such disputed question cannot be considered in execution proceedings u/s 6-H-(1) of the Act.

19. This question could not have been raised nor decided in execution proceedings before the Dy. Labour Commissioner and, at best, it should have been raised before the Labour Court which had not been done by the petitioner. Even otherwise, the Court finds that the best evidence which the petitioner had was not filed, namely, the service record of the workman which was with the petitioner. It is a well-settled principle of service jurisprudence that when an employee is appointed in an organization, the date of birth of the employee is recorded in the registers of the organization which eventually becomes part of the service record of that employee, but such date of birth was not brought forward at any stage. The age recorded in the voters list is not the gospel truth and cannot be relied upon. Consequently, the Court is unable to accept the third contention of the petitioner. The Court further finds that pursuant to the orders of the Labour Court, the review application of the petitioner was rightly rejected. The recovery certificate was issued by the Dy. Labour Commissioner in consonance with the orders of the Labour Court and the citation was issued in accordance with the provisions of law. The Court does not find any error in the recovery certificate or in the citation. For the reasons stated aforesaid, the Court does not find any error in the impugned orders. All the writ petitions fail and are dismissed.