

(1999) 03 AHC CK 0033
In the Allahabad High Court
Case No : Writ Petition No. 2270 of 1985

Bhagwan Industries Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 10-03-1999

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N, 6R

Citation : (2001) 3 LLJ 474

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.H. Zaidi, J.—Heard learned counsel for the petitioner, learned standing counsel and also perused the record.

2. By means of this petition petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the award dated January 11, 1985 given by the respondent No. 1 in favour of respondent No. 2 whereby an amount of Rs. 10,000/- was awarded as compensation in lieu of reinstatement of the said respondent.

3. It appears that respondent No. 2 was in service of the petitioner. His services were terminated vide order dated January 15, 1980. Challenging the validity of the order of termination the respondent No. 1 raised industrial dispute, which was referred for adjudication to the respondent No. 1, by the State Government. In brief it was pleaded that order of termination was passed in violation of provision of 6-N of U.P. Industrial Disputes Act, therefore, the contesting respondent No. 2 was entitled for retrenchment compensation and to reinstatement on the post held by him (Chowkidar). Petitioner filed written statement before the respondent No. 1 claiming the services of the respondent No. 2 were terminated in exercise of power under Clause 17(a) of the Standing Order of the Company, which provide as under;-

"17(a) - The employment of any "permanent" watch and ward may be terminated by the Manager by giving 14 days" notice or by payment of 12 days "wages" in lieu of notice."

4. It was pleaded that in view of the provisions of Clause 17-A of the Standing Orders referred to above it was not necessary to follow the procedure prescribed u/s 6-N of U.P. Industrial Disputes Act, 1947, for short "the Act" and the order of termination was quite legal, therefore, the contesting respondent was not entitled to any compensation or for the order of reinstatement.

5. The Tribunal after hearing the parties recorded finding that there was nothing on the record to show that the contesting respondent was guilty of dereliction of duty. It was also held that provisions of Section 6-N were not followed, therefore, the order of termination was illegal and unenforceable in law. However looking to the facts and circumstances of the present case Tribunal has preferred to award only an amount of Rs. 10,000/- by way of, compensation in lieu of reinstatement by the impugned order.

6. Learned counsel for the petitioner vehemently urged that the order of termination was passed by the petitioner in exercise of: power under Clause 17-A of Standing Orders applicable to the establishment, was quite legal and the Tribunal acted illegally in awarding compensation in favour of the contesting respondent No. 2.

7. I have considered the submissions made by the learned counsel for the petitioner.

8. The similar arguments as have been made here, were made before the Tribunal. The; Tribunal relying upon the provisions of Section 6-R came to the conclusion that provisions of Section 6-N were applicable in the present case notwithstanding the provisions of Clause 17-A of the Standing Order. The view taken by the Tribunal in my opinion is perfectly valid and legal. Section 6-N of U.P. Industrial Disputes Act provides as under:-

"6-N Conditions precedent to retrenchment of workmen - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of notice:

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service:

(b) the workman has been paid, at the time of retrenchment, compensation, which shall be equivalent to fifteen days" average pay for every completed year of service or any part thereof in excess of six months, and

(c) notice in the prescribed manner is served on the State Government."

9. According to the findings recorded by the Courts below the aforesaid provisions were not followed while terminating the services of the respondent No. 2. The respondent No. 2 was neither given notice in writing nor was paid wages in lieu of notice nor retrenchment compensation was paid to him. No notice was also given to the State Government as provided under the aforesaid provision. Section 6-R of the Act provides as under:-

"6-R. Effect of laws inconsistent with Sections 6-J to 6-Q - (1) The provision from Sections 6-J to 6-Q shall have effect notwithstanding anything inconsistent therewith contained in any other law (including Standing Orders) made under the Industrial Employment (Standing Orders) Act, 1946:

Provided that nothing contained in this Act shall have effect to derogate from any right which a workman has under the Minimum Wages Act, 1948, or any notification or order issued thereunder or any award for the time being in operation or any contract with the employer.

(2) For the removal of doubts, it is hereby declared that nothing contained in Sections 6-J or 6-R shall be deemed to affect the provision of any other law for the time being in force so far as the law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in accordance with the provisions of Section 6-J to 6-R."

10. In view of the provisions of Section 6-R Clause 17-A of the Standing Order had no application in the present case. It was obligatory upon the petitioners to comply with the provisions of Section 6-N of the Act, which has not been complied with, therefore, compensation was rightly awarded by the Tribunal.

11. In view of the aforesaid discussion and the findings recorded by the Tribunal no case for interference under Article 226 of the Constitution of India is made out. The interim order dated December 31, 1987 is also discharged.