

(2000) 08 AHC CK 0028

In the Allahabad High Court

Case No : C.M.W.P. No's. 3987 of 1984 and 32399 of 1990

Bharat Heavy Electricals Ltd.

APPELLANT

Vs

Industrial Tribunal (Labour Court) and Another
 Sayeed
Asghar Vs Labour Court and Another

RESPONDENT

Date of Decision : 01-08-2000

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 33B(2), 4K, 6E(2)

Citation : (2000) 86 FLR 965 : (2000) 3 LLJ 1001

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Seth, J.—One Sri Sagwa Singh had raised an industrial dispute which was pending adjudication. In Writ Petition No. 3987 of 1984 Sri Sayeed Ashgar, the respondent No. 2, was subjected to a disciplinary proceeding and certain order was passed affecting his service condition. In view of the pendency of the dispute by way of abundant precaution, the petitioner had filed an application u/s 33-B(2) read with Section 6-E(2)(b) of the U.P. I.D. Act. By an order dated November 29, 1983 passed in Misc. Case No. 1 of 1975, the application u/s 6-E(2)(b) was rejected. In the said judgment, the Labour Court had held that Sayed Ashgar was not a concerned workman in the dispute between the employer and Sri Sagwa Singh. Therefore, on that ground the application u/s 6-E(2) was not maintainable. Thereafter, the Labour Court had proceeded to decide the case on merit and has ultimately found that the dismissal of Sayeed Ashgar on the ground of theft was illegal and unjustified. Ultimately, on this finding the application u/s 6-E(2) was rejected. During the pendency of the said Misc. Case No. 1 of 1975 Sayeed Ashgar sought a reference u/s 2-A of the Industrial Disputes Act i.e. Section 4-K of the U.P. I.D. Act out of which a reference was made by the State Government. The said reference was registered as adjudication Case No. 125 of 1986. By an order dated February 1, 1989 passed in Adjudication Case No. 125 of 1986, the Presiding Officer, Labour Court at

Meerut had held that the reference u/s 4-K of the Industrial Disputes Act is not maintainable and that the workman is not entitled to any relief on the ground that since the termination of service of Sri Sayeed Ashgar was already decided on merit by the Labour Court in Misc. Case No. 1 of 1975 by an order dated November 29, 1983. The order dated November 29, 1983 has since been challenged by Mr. Tiwari, learned counsel for the petitioner in Writ Petition No. 3987 of 1984 whereas the order dated February 1, 1989 has been challenged by the workman through Mr. P.C. Jhingan in Writ Petition No. 32399 of 1990.

2. I have heard both the counsel at length.

3. The short question that arises for determination in this case is as to whether the Labour Court could proceed to determine the question of termination on merit in exercise of his jurisdiction u/s 33-B(2) of the Industrial Disputes Act and 6-E(2) of the U.P. I.D. Act. In fact, the scope of Section 6-E(2) is confined to the extent that the workman is concerned or not. If the workman is concerned in that event, the approval is necessary. In the present case, as soon it was found that the workman was not concerned, the Labour Court ceased to have jurisdiction. After having found that the workman was not concerned workman, the Labour Court cannot seem to have jurisdiction and proceed to decide the question on merit. The jurisdiction u/s 6-E(2) is altogether different from Section 4-K. While the jurisdiction u/s 4-K is wider and relates to the adjudication of the dispute, Section 6-E(2) is confined only to the question of grant of approval in respect of alteration of service condition of the workman concerned in a pending dispute. The jurisdiction can be assumed only when the workman is concerned in pending dispute. Unless the workman is concerned in the pending dispute, the jurisdiction u/s 6-E(2) cannot be exercised. Even if the application is made by way of abundant precaution that does not confer jurisdiction on the Labour Court to enter into the merit which can be gone into u/s 4-K.

4. Therefore, the finding with regard to the merit in order dated November 29, 1993 is wholly without jurisdiction and void and as such, cannot be sustained. Therefore, part of the order which follows after the finding that the workman is not a concerned workman, is hereby quashed and that part of the order by which it was held that the workman was not a concerned workman in a pending dispute shall, however, remain.

5. This writ petition is thus allowed.

6. The reference u/s 4-K was held not maintainable because of the finding given in the order dated November 29, 1983 in Misc. Case No. 1 of 1975 which is absolutely a misplaced decision. Since a dispute has been raised u/s 4-K of the U.P. I.D. Act the same has to be gone into on its merit. It cannot be refused on the ground that the question has been gone into in exercise of jurisdiction u/s 6-E(2). As soon as a regular reference is made, the Court has to adjudicate the same as a regular reference. Since Section 33-B(2)/6-E(2) cannot grant relief which is otherwise available u/s 4-K, therefore, the relief obtained by the

workman cannot be enforced as an award. Therefore, he was right in seeking the reference and proceed with the same.

7. In that view of the matter, the Writ Petition No. 32399 of 1990 is hereby allowed. The impugned order dated February 1, 1989 passed by the Presiding Officer in Adjudication Case No. 125 of 1986 is hereby quashed.

8. The Labour Court shall proceed with the reference in accordance with law from the stage at which the award was passed. They may rely on the materials and evidence on record and may take also additional evidence. The parties shall be free to adduce the evidence if they desire so. It will be open to the parties to file additional statement or additional written statement or pleadings as the case may be. It is expected that the Labour Court shall decide the case within a period of one year from the date of production of a certified copy of this order before the Courts below.

9. Let a certified copy of this order be given to the learned counsel for the parties on payment of usual charges.