
(2009) 05 AHC CK 0682
In the Allahabad High Court

B.H.E.L.Contract Workers Union

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 14-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0682

Hon'ble Judges : Chandramauli Kumar Prasad, CJ and Dilip Gupta, J

Final Decision : Dismissed

Judgement

Dilip Gupta, J.

Respondent no.3appellant, aggrieved by judgment and order dated 10.04.2009 passed by a learned Judge in Civil Misc. Writ Petition No. 6381 of 2008, has preferred this special appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952.

It seems that a settlement was arrived at outside the conciliation proceedings between Bharat Heavy Electricals Ltd. Contract Workers" Union and Contractors operating in Bharat Heavy Electricals Ltd. Jhansi. The management of Bharat Heavy Electricals Ltd., hereinafter referred to as the ""Management", invited applications for filling up posts of different trades and the said advertisement was published in a newspaper in its issue dated 22nd September, 2007. The extract of advertisement is contained in Annexure8 to this appeal. Respondent no.3 appellant, hereinafter referred to as the ""appellant", approached the Deputy Labour Commissioner, Jhansi Region, Jhansi complaining the breach of settlement and further for absorption of contract workers by the Management. Workmen were employed by various Contractors. The Deputy Labour Commissioner by order dated 25th October, 2007 restrained the Management from filling up the posts advertised. Review application to recall that order was also rejected vide order dated 15th December, 2007. Being aggrieved, the Management preferred a writ petition, which has given rise to the impugned order, inter alia, contending that the Deputy Labour Commissioner had no power to restrain the Management from filling up the posts and to enforce the

settlement.

The aforesaid submissions found favour with the learned Judge and in this connection, he observed as follows:

"In the light of the aforesaid contentions raised by the parties, this Court is of the opinion that the impugned orders, passed by the Deputy Labour Commissioner, cannot be sustained. The Deputy Labour Commissioner has no power to enforce the settlement arrived at between the parties. The Deputy Labour Commissioner has no power to adjudicate upon the terms and conditions of the settlement, and above all, the Deputy Labour Commissioner has no power to restrain the petitioner from filling up the vacancies so advertised by them in various newspapers. The Deputy Labour Commissioner has exceeded its jurisdiction while passing the impugned orders. The Deputy Labour Commissioner functions as the Conciliation Officer under the U.P. Industrial Disputes Act, and if an application is filed by the contract workers' union, his jurisdiction and power is to bring the dispute to an end through a conciliation process and if there is a failure in the conciliation process, he can only submit a failure report, and thereafter it is open to the State Government or its delegated authority to refer a dispute for adjudication under Section 4K of the U.P. Industrial Disputes Act. If the Deputy Labour Commissioner finds that the settlement was being violated by one of the parties to the settlement, he could prosecute that party by filing an application for prosecution under Section 14A of the Act. By no stretch of imagination, the Deputy Labour Commissioner can enforce the settlement or restrain the petitioner from filling up the vacancies. The Court further finds that the question as to whether the settlement was a bilateral agreement or a tripartite agreement or whether the terms and conditions, mentioned in the settlement, was binding upon the petitioner, or whether the terms and conditions of the settlement was binding upon either of the parties, or not, and the question whether the settlement gave a right to the workers for absorption are disputed questions, which cannot be adjudicated upon in a writ jurisdiction. Such questions can only be referred for adjudication of the dispute raised before the Industrial Tribunal or a Labour Court."

Heard Shri K.P. Agrawal, Senior Advocate with Shri K.M. Asthana on behalf of the appellant and Shri Ashok Khare, Senior Advocate with Shri Sandeep Saxena for respondent no.2.

Mr. Agrawal, appearing on behalf of the appellant, has not been able to point out any statutory provision, which confers such power upon the Deputy Labour Commissioner. However, Mr. Agrawal submits that he has inherent power to enforce the settlement arrived at between the parties.

We do not find any substance in the submission of Mr. Agrawal. U.P. Industrial Disputes Act, 1947 provides for a complete mechanism for arriving at a settlement and for its enforcement. In the absence of any provision conferring power on the Deputy Labour Commissioner to enforce the settlement, it is

difficult to hold that the Deputy Labour Commissioner had inherent power to enforce the settlement.

Mr. Agrawal then submits that the contract workers, who have worked for more than 10 to 20 years, deserve to be regularized. In support of his submission, reliance has been placed on a decision of the Supreme Court in the case of Steel Authority of India Ltd. & Or. Vs. National Union Waterfront Workers & Ors., (2001) 7 SCC 1. This submission has only been noted to put the record straight. This was not the issue before the learned Judge and is not an issue in the present appeal. The only issue in the writ petition was as to whether the Deputy Labour Commissioner had power to enforce settlement and that has already been answered by us.

We do not find any merit in the appeal and it is dismissed accordingly.