

(2011) 08 AHC CK 0218
In the Allahabad High Court
Case No : Writ C. No. 2955 of 2001

Dainik Jagaran

APPELLANT

Vs

Presiding Officer/Labour Court and Another

RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

Citation : (2011) 08 AHC CK 0218

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sibghat Ullah Khan, J.—Heard learned Counsel for the parties.

2. This writ petition is directed against award dated 24.3.2000 given by Presiding Officer, Labour Court U.P. Gorakhpur in adjudication case No. 179 of 1988. The matter which was referred to the labour court was as to whether the action of Petitioner employer terminating the services of its workman Respondent No. 2, Babu Lal, who was a compositor w.e.f. 1.6.1987 was just and valid or not. Respondent No. 2 was working since 1.2.1983. The case of the employer was that Respondent No. 2 was appointed as an apprentice trainee and in the year 1986 a decision was taken that composing should be done through computer, that Respondent No. 2 was doing composing by hand and could not learn computer composing and that he was paid retrenchment compensation on 2.6.1987 which was accepted by him without any protest. It was also asserted by the Petitioners that all those employees who were trained in composing by hand were removed as composing by computer was started in their establishment which is running a newspaper.

3. The labour court held that appointment of Respondent No. 2 was not under Apprentice Act, provisions of Apprentice Act were not complied with and that after six months training Respondent No. 2 automatically became permanent.

4. The labour court ultimately held that as retrenchment compensation was paid

one day after termination hence retrenchment was illegal. However, it has not been mentioned that if retrenchment is considered to be of 2.6.1987 then compensation paid was complete or not.

5. Supreme Court in U.P. State Electricity Board Vs. Shri Shiv Mohan Singh and Another, has held that even if the formalities under Apprentice Act are not completed still Apprentice trainee does not become a workman.

6. Supreme Court in the following authorities has held that if the only defect in the termination order is non payment of retrenchment compensation then it is not necessary to direct reinstatement in every case and in some appropriate cases payment of consolidated damages may be the appropriate relief:

Nagar Mahapalika (Now Municipal Corpn.) Vs. State of U.P. and Others, Haryana State Electronics Development Corporation Ltd. Vs. Mamni, Sita Ram and Others Vs. Moti Lal Nehru Farmers Training Institute, Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another,

7. In the instant case the retrenchment compensation paid with only one day's delay and the workman willingly accepted the same without any protest.

8. Learned Counsel for the Petitioner employer further stated that on 14.5.2002 a registered letter was sent to the workman to report on duty but he did not come. Copy of the said order is Annexure RA 2 to the rejoinder affidavit. Through interim order dated 25.1.2001 it was directed that the employee shall be permitted to join his duties on submitting the joint report. Even though learned Counsel for the Respondent has stated that the workman did not receive the letter dated 14.5.2002, however, it has not been stated that on what date the workman tried to join and gave joining report or sent any letter to the management complaining that he was not being permitted to join. Supreme Court in State of Uttaranchal and Another Vs. Sunil Kumar Singh Negi, has held that if after award of reinstatement the workman defaults in joining then award can not be enforced.

9. It has further been stated by learned Counsel for the Petitioner that under interim order Petitioner deposited Rs. 51,000/- as backwages 50% of which has been withdrawn by the workman.

10. Accordingly, writ petition is allowed. Impugned award directing reinstatement with full back wages is set aside and substituted by a direction to the management to pay Rs. 25000/- as damages to the workman which have already been paid as stated above by learned Counsel for the Petitioner. The remaining amount of deposited amount of Rs. 51000/- shall be returned back to the Petitioner.