
(2004) 04 AHC CK 0161
In the Allahabad High Court
Case No : C.M.W.P. No. 12536 of 1989

D.C.M. Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 20-04-2004

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 10, 4K

Citation : (2004) 4 AWC 3341 : (2004) 102 FLR 1143

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : S.C. Agrawal and Bharati Sapru, for the Appellant; N.C. Rajvanshi and V.S. Shukla, C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Miss Bharati Sapru, learned counsel for the petitioner and Sri V. S. Shukla learned standing counsel for the State-respondent. Nobody is present on behalf of the contesting respondent even in the revised reading of the cause list.

2. This writ petition is directed against an interlocutory order passed by the Labour Court, Meerut dated 12th April, 1989 in a pending adjudication case. This petition is an example of how a powerful employer can stall the proceedings of an industrial dispute pending before the labour court for more than 18 years with the help of legal technicalities and niceties.

3. The petitioner is a Company, registered under the provisions of the Companies Act, 1956 and owns various units located in different parts of the country.

4. The services of the workman, respondent No. 2, were terminated on 11th September, 1985. Against the said action of the respondent No. 2, the workman raised an industrial dispute. The State Government referred the said dispute u/s 4K of the Industrial Disputes Act, 1947, to the Labour Court, Meerut. The said dispute was registered as Adjudication Case No. 198 of 1986. The labour court

framed following issues, reads as follows :

"Issue No. I;

Whether the workman"s services were terminated on 11.8.1985 or 11.9.1985?

Issue No. II:

Whether the workman concerned had been engaged in specific time-bound nature of jobs and the total period of service did not exceed 240 days from the last date of his service?

Issue No. III:

Whether the workman concerned was covered by the provisions of Section 6N of the U. P. Industrial Disputes Act, 1947 and the employer had been flouting these provisions and if so, to what effect? Issue No. IV :

Whether workman junior to Chanderveer Singh had been retained in service while terminating his services and even fresh hands were engaged after ignoring Chandraveer Singh"s rightful claims?

issue No. V:

To what relief/ compensation is the workman entitled?"

5. On behalf of the workman, an application was moved whereby he prayed for summoning certain records from the petitioner-company including attendance registers, payment of wages registers service record also wage slips of all the Kamdars from the year 1983 to the year 1987, a copy of this application was marked as 27D, The petitioner-company filed objections before the labour court, which was marked as 28D. In the said objections the petitioner raised objections to the effect that the application of the workman was not supported by any affidavit indicating the relevance of the documents summoned and, therefore, deserves to be rejected ex facie on that ground alone. It was further objected that the matter of dispute referred to the labour court related to the termination of the services of the workman w.e.f. 11.8.1985, and therefore, the prayer of the workman to summon the documents relating to the period subsequent to 11 .8.1985 did not deserve any consideration. Thereafter, the petitioner-company also moved an application before the labour court which was marked as 29D.

6. The labour court decided the two applications ; one filed by respondent No. 2, workman, and the other filed by the petitioner vide order dated 12th April, 1989. By means of the said order, the application of the workman was allowed and the application of the petitioner, employer was rejected.

7. According to the workman, the said documents, which were attendance register etc., were required for establishing that persons junior to the petitioner are being retained in service, while the petitioner has been removed.

8. It is contended on behalf of the employers that the said documents were

irrelevant for the purpose of ascertaining as to whether the services of the workman have been rightly dispensed with or not: The documents subsequent to the date of termination of the services of the workman, are totally irrelevant. Consequently, the application filed by the workman, was liable to be rejected.

9. It is contended on behalf of the petitioner that in view of the law laid down by the Hon''ble Supreme Court in the judgment in Pottery Mazdoor Panchayat v. Perfect Pottery Col Ltd. and Anr. AIR 1979 SC 1356, the jurisdiction of the labour court is confined to the scope of the reference made by the State Government. In any case, the labour court cannot travel beyond the scope of the reference nor can it enlarge the same.

10. The contention raised on behalf of the petitioner is well-settled. There is no dispute in respect of the proposition of law. However, the labour court has recorded a finding of fact that the documents asked for by the workman were necessary, for the purpose of establishing, that the termination of the service of the workman was an outcome of unfair labour practice as persons junior to the workman, have been retained, while services of the petitioner have been dispensed with (issue No. 4).

11. It is well-settled that the employers cannot be permitted to remove senior person at the same time to retain a person, who is junior to him, without there being sufficient cause. In the circumstances, the records, which have been asked for by the respondent-workman pertaining to the year 1986-87, are relevant for deciding the dispute, as has been referred under the notification of the State Government dated 11th July, 1996.

12. Learned counsel for the petitioner has placed reliance upon the judgment of this Court in Shree Baidyanath Ayurved Bhawan Ltd., Jhansi v. R. K. Gupta and Ors. 1983 (47) FLR 175, in support of contention that the workmen cannot ask for the documents subsequent to his date of termination as they are not relevant for deciding the validity or legality of the order or termination.

13. The judgment referred to by the petitioner is clearly distinguishable in the facts of this case. This Court has already come to the conclusion that for deciding the dispute as to whether the services of the workman were legally terminated by the employer after adopting unfair labour practice, the subsequent records asked for by the workman are relevant and material.

14. The labour court can always look into the facts with regards to retention of junior persons and come to the conclusion in a given case that the employers had adopted unfair labour practice.

15. The order of the labour court dated 12th April, 1987, calls for no interference under Article 226 of the Constitution of India.

16. Because of the interim order of this Court, the dispute could not be adjudicated upon by the labour court finally and is still pending even after 18 years of its reference. In the circumstances, it is provided that the labour court

shall proceed to decide the said dispute, being Adjudication Case No. 198 of 1986, at the earliest possible, preferably within four months from the date a certified copy. of this order is filed before it.

17. With the observations referred to above, this petition is dismissed with cost.