
(2003) 05 AHC CK 0198
In the Allahabad High Court
Case No : C.M.W.P. No. 9 of 1985

D.C.M. Sri Ram Industries Limited

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-05-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : (2003) 6 AWC 4761

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Tarun Agarwal and Sudhir Chandra, for the Appellant; K.P. Agarwal and S.C., for the Respondent

Final Decision : Allowed

Judgement

Anjani Kumar, J.—The employer Petitioner, by means of this writ petition under Article 226 of the Constitution of India, has challenged the award of the labour court, Meerut passed in Adjudication Case No. 472 of 1978 pasted on the Notice Board on 26th September, 1984.

2. The following dispute was referred to the labour court for adjudication u/s 4K of the U.P. Industrial Disputes Act, 1947 :

other language

3. Labour court after exchange of the pleading has framed the following additional issues : (1) Has the workman concerned been victimised?

(2) Was the enquiry against the workman concerned held according to the principles of natural justice?

(3) Are the findings of the Enquiry Officer perverse?

(4) To what relief, if any, is the workman concerned entitled?

4. Additional issues No. 1, 2 and 3 were decided against the employer. With regard to additional issue No. 1, the labour court has found that the domestic enquiry conducted by the employer was not fair and proper and contrary to principles of natural justice and that the workman concerned was victimised. Learned Counsel for the Petitioner, Sri Tarun Agarwal has argued that even after coming to the conclusion as stated above, in view of the application filed by the employer before the labour court by which the employer has categorically prayed that in case labour court comes to the conclusion that domestic enquiry conducted by the employer is found to be vitiated, the employer may be afforded opportunity to prove the charges before the labour court. After referring the relevant documents, but labour court has not given any such opportunity even though specific prayer has been made by means of application, referred to above. Sri Tarun Agarwal then contended that in view of decision of Division Bench of this Court in *M/s. Hindustan Aluminium Corporation Limited, Renukoot, Mirzapur v. Sri Murari Singh and others*, 1979 (36) FLR 241, the award deserves to be set aside as the same is in fact an ex parte award and further in any case the labour court has not considered the case of the employer's that since the employers have lost confidence no reinstatement of workman who has been subjected to the charges like are in the present case should be allowed.

5. The Division Bench decision relied upon by Sri Agarwal itself the arguments advanced by Sri Agrawal :

Sri B. C. Dey then submitted that the labour court having once come to the conclusion that the workman was guilty of misconduct, it has not jurisdiction to set aside or interfere with the punishment awarded by the employers. No doubt, the labour court has observed that fairness of the domestic enquiry had not been challenged by the workman, but it examined the records of the domestic enquiry and held that the finding of the Enquiry Officer in the domestic enquiry that the charge of forgery had been made out against the workmen was perverse. The labour court further held that the report of the Enquiry Officer indicated that the charge of committing fraud with the employers business was held to be proved by the Enquiry Officer merely on the ground that the workman had failed to inform the employers that while he was on duty on 11th July, 1969, he had gone to attend to his wife. The labour court has further recorded a finding that there was no material on record in the domestic enquiry or before him that the workman's wife was not ill. On these considerations the labour court found that the charge of forgery and fraud was not made out against the workman. On a careful examination of the material placed before us by the employers we are of the opinion that the labour court committed no manifest error in holding that the charge of forgery or fraud had not been made out against the Respondent workman. The gravamen of the charge against the workman was that while he had been directed to attend his duty on 11th July, 1969, in "C" shift he did not report for duty and absented without prior permission. In substance the workman was charged for being absent without leave for one day and further that he had signed the attendance register later on. On these facts, the

employers alleged that the workman was guilty of forgery and fraud. After scrutinizing the facts and circumstances of the case, we are of the opinion that no reasonable person could have come to the conclusion on the allegations contained in the charge sheet that the workman was guilty of forgery or fraud. The labour court after considering the explanation given by the workman rightly held that in view of his explanation and other evidence produced on behalf of the employers before the domestic enquiry, no reasonable person could come to the conclusion that the charge of forgery or fraud had been made out against the workman. While it is true that labour court is not entitled to sit in appeal over the findings recorded in the domestic enquiry unless the domestic enquiry is held defective, but it has jurisdiction to interfere with the findings recorded in the domestic enquiry if those findings are perverse and if no reasonable person could have arrived at the conclusion on the material present on record. Since the labour court has held that findings of the Enquiry Officer at the domestic enquiry were perverse it acted within its jurisdiction.

6. Now considering the aspect of the matter, which has not been dealt with by Division Bench even if the arguments of Sri Agarwal are accepted, the present case as the facts emerged, since the services of the workman has been terminated in the year 1978, it would not be proper to remand the matter back to the labour court after a lapse of about 25 years.

7. In view of the facts that the matter is fairly old and if the matter is remanded back to the labour court, it will take further time, that considering the relevant facts and circumstances of the case, I find that in the interest of justice the award of the labour court impugned in the present writ petition be set aside on the condition that the employer shall pay rupees one lac fifty thousand only to the workman apart from what has been already paid till date pursuant to the award to the workman concerned and the interim order of this Court.

8. With the aforesaid direction writ petition is allowed. The award of the labour court is modified to the extent that the employer shall pay rupees one lac fifty thousand as compensation to the workman concerned instead of reinstatement and the award is accordingly modified. This payment of rupees one lac fifty thousand is apart from what has already been paid to the workman till date. The interim order, if any, stands vacated. There will be no order as to costs.