

(2011) 08 AHC CK 0281

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 48197 of 2011

Dinesh Chand Gupta

APPELLANT

Vs

Collector, Kushinagar and Others

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Constitution of India, 1950 — Article 21

Payment of Wages Act, 1936 — Section 15

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6H, 6H(1), 6N

Citation : (2011) 9 ADJ 462

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Shyam Narain, Gopal Narain and Sudhanshu Narain, for the Appellant; R.K. Srivastava, C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned counsel for the parties and perused the record. This writ petition has been filed for a writ of mandamus directing respondent No. 1, Collector, Kushinagar to recover the amount of Rs. 95,718.00 as wages in pursuance of the recovery certificate dated 4.10.2010 issued u/s 6H(1) of the U.P. Industrial Disputes Act, 1947 by the Deputy Labour Commissioner, Gorakhpur in R.D. Case No. 31 of 2008 for the period of May, 2007 to June, 2008.

2. Brief facts of the case are that the petitioner was orally directed to work as apprentice on 5.3.84 on fixed pay @ Rs. 350/- per month as a Clerk by respondent No. 3, the then General Manager, U.P. State Sugar & Cane Development Corporation Ltd. Laxmi Ganj Unit, District Kushinagar; that he worked on the post up to 4.4.85 and his services were terminated thereafter w.e.f. 4.4.85 by respondent No. 3 allegedly without complying with the provisions of Section 6N of the U.P. Industrial Disputes Act, 1947. Aggrieved by the aforesaid order dated 29.2.1984, the petitioner raised an industrial dispute, which was referred to the Labour Court, Gorakhpur where it was registered as

Adjudication Case No. 87 of 1986. After hearing the parties, the Labour Court by its award dated 4.11.1989, appended as Annexure-1 to the writ petition, reinstated the workman petitioner in service with back wages for the intervening period which he was drawing at the time of his termination.

3. The respondent-Corporation challenged the award of the Labour Court by filing Civil Misc. Writ Petition No. 11279 of 1990, U.P. State Sugar Corporation Ltd. v. Labour Court, Gorakhpur and others in which following interim order was passed on 2.5.1990.

Issue notice.

Meanwhile operation of the impugned order dated 4.11.1989 of the respondent No. 1 shall remain stayed.

The aforesaid interim order dated 2.5.1990 was modified on an application moved by the learned counsel for the applicants-respondent vide order dated 14.12.1990 which reads thus:

Pursuant thereto the workman was reinstated in service but he was paid wages @ Rs. 350/- per month. The aforesaid writ petition was dismissed in default on 9.1.2003 vacating the interim order for non-prosecution by the petitioners counsel being on strike. Thereafter, the respondent-Sugar Corporation filed a restoration application which was dismissed on merit vide order dated 2.3.2005 by the following order.

Heard counsel for the petitioner and perused the record.

This is an application for restoration of the writ petition, which was dismissed by me for want of prosecution on 9.1.2003. The order dated 9.1.2003 is as under:-

The lawyers have gone on lighting strike disturbing the Court proceedings. List has been revised. Since none appears to press this writ petition the same is dismissed for non-prosecution. Interim order, if any, stands vacated.

The counsel for the petitioner submits that he could not appear due to strike of lawyers on 9.1.2003 and he had no knowledge about the order dated 9.1.2003 till 3.1.2005 when he came to Allahabad with regard to different cases of the unit and made enquiry from the Computer Section about the present case and came to know that the writ petition was dismissed for want of prosecution on 9.1.2003. He further submits that the delay was not intentional and there was no knowledge about the order and restoration application has been moved on 6.1.2005 without further delay when he acquired knowledge that the writ petition was dismissed on 9.1.2003.

On 4.12.2002 the case was passed over on the request of the counsel for the petitioner and was ordered to be listed in the next cause list. Thereafter the case came up on the list on 9.1.2003 when the writ petition was dismissed for want of prosecution. Thus, the restoration application has been moved after a lapse of two years.

It has been repeatedly held by the Apex Court that the lawyers' strike are illegal and that effective steps should be taken to stop the growing tendency to go on strikes as they have no right to go on strike. If a lawyer, holding a Vakalatnama of a client, abstains from attending Court due to strike call, he puts himself to personal risk and liability for any action that may be taken by his client.

In Pandurang Dattatraya Khandekar Vs. Bar Council of Maharashtra, Bombay and Others, ; Tahsil Ram Issar Das Sadarangam v. Ramchand Issardas Sadarangam, (1993) (3) SCC 256; Common Clause A Registered Society v. Union of India, (1995) 3 SCC 19; In Re: Sanjiv Datta and Others, ; Indian Council of Legal Aid and Advice, etc. etc. Vs. Bar Council of India and another, ; K. John Koshy and Others Vs. Dr Tarakeshwar Prasad Shaw, ; Mahabir Prasad Singh Vs. M/s. Jacks Aviation Private Ltd., and Ex-Capt. Harish Uppal Vs. Union of India (UOI) and Another, it was held by the Supreme Court that the advocates have no right to go on strike and the Courts are under no obligation to adjourn the cases on the board because lawyers are on strike. The Courts are not to be privy to such strikes which amounts to denial of justice to the litigants.

The judiciary is accountable to the public and the dispensation of justice cannot be stopped for any reason including strike by lawyers. The Apex Court has held that right to speedy justice is included in Article 21 of the Constitution of India. In Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., and Raj Deo Sharma Vs. The State of Bihar, it was held that the litigant has a right to speedy justice.

Similarly in Manoj Kumar v. Civil Judge, Deoria (Writ Petition No. 33778 of 1997 decided on 10.10.1997) the Division Bench of this Court has held that:

Before parting with this case, we would like to mention that it is deeply regrettable and highly objectionable that there are strikes in District Courts in U.P. in flimsy and frivolous pretexts and some District Courts function only for about 60 or 70 days in a year. This is a shocking state of affairs and will no longer be tolerated by this Court. The judiciary and bar are both accountable to the public and they must behave in a reasonable manner so that cases are decided quickly and thus the faith of the public in the judiciary is maintained. Surely, the public has a right to expect this from us.

The same view is followed in M/s Suresh Chandra Varshney & Co. v. State of U.P. (Writ Petition No. 15342 of 2000 decided on 30.3.2000) and Siddhartha Kumar and others Vs. Upper Civil Judge, Senior Division, Ghazipur and others, .

The contention of the counsel for the petitioner that the delay in moving the restoration application was not intentional has no force as the clerk of his office ought to have noted the orders passed during the strike period. He could have inspected the file even after the strike was over. No sufficient cause and cogent reasons have been given for restoration of the writ petition. The application for restoration has been moved on 6.1.2005. It suffers from laches due to callous attitude of the petitioner.

The facts of this case are covered by the decision rendered by me while deciding Civil Misc. Restoration Application No. 164294 of 2004 in Civil Misc. Writ Petition No. 13271 of 1986 (Smt. Beena Rani Garg and others v. Deputy Director of Education, Region I, Meerut and others).

For the reasons stated above, the restoration application is rejected.

4. Special Leave to Appeal (Civil Case No. 12336 of 2005) was filed before the Supreme Court against the order dated 2.3.2005 rejecting the recall application aforesaid in Civil Misc. Writ Petition No. 11279 of 1990, which was also dismissed vide order dated 13.7.2005 by their Lordships at the Apex Court. Respondent No. 3 then moved a modification application before the Apex Court for modification of the order dated 13.7.2005 which was also dismissed by it vide order dated 3.7.2006.

5. Thereafter, the petitioner filed an application u/s 6H of the U.P. Industrial Disputes Act, 1947 before the Deputy Labour Commissioner Gorakhpur for recovery of his wages from the employer. It was allowed vide order dated 29.12.2005 by the Deputy Labour Commissioner directing respondent No. 3 to pay wages of the petitioner as per the Sugar Wage Board. Civil Misc. Writ Petition No. 18218 of 2006, U.P. State Sugar & Cane Development Corporation v. The Collector, Kushinagar and others was preferred by respondent No. 3 against order dated 29.12.2005 before the High Court, which was disposed of vide order dated 5.4.2006 directing the U.P. State Sugar & Cane Development Corporation Ltd. (hereinafter referred to as the Corporation) to deposit a sum of Rs. 5,00,000/- before the Deputy Labour Commissioner within period of one month. The petitioner again filed a review application for review of the order dated 5.4.2006 which was modified vide order dated 6.7.2006 directing respondent No. 3 to comply with the order dated 5.4.2006 and deposit a sum of Rs. 5,00,000/- within a period of 3 weeks. Special Appeal No. 584 of 2006 was then preferred by the Corporation challenging the validity and correctness of the order dated 5.4.2006 passed in Civil Misc. Writ Petition No. 18218 of 2006 which was also dismissed vide order dated 24.8.2006; that Civil Misc. Writ Petition No. 18218 of 2006 was then filed by the Corporation challenging the order dated 6.7.2006 in review application and Special Appeal No. 912 of 2006 which was also dismissed vide order dated 24.8.2006.

6. It is stated that the petitioner served all the orders passed in Writ Petitions aforesaid and in Special Appeal alongwith applications dated 30.8.2006 and 6.11.2006 upon respondent No. 3 but when no action was taken by the respondents, he filed Contempt Petition No. 5201 of 2006, Dinesh Chand Gupta v. Shahi Bhushan Lal Shusil and others in which notices were issued to respondent Nos. 1 and 2 vide order dated 15.12.2006. Thereupon, respondent No. 1 the Collector, Kushinagar recovered a sum of Rs. 5,53,000/- from respondent No. 3 and paid it to the petitioner. It is further stated that respondent No. 3 again filed fresh Writ Petition No. 4217 of 2007 challenging the order of the Labour Court which was confirmed by the Apex Court as well as the order of the

Deputy Labour Commissioner which was also confirmed by the Division Bench and the order of seizure of the sugar godown and the seizure of his bank account. The Court vide its order dated 29.1.2007 released the godown and the bank account.

7. It is submitted that respondent No. 3 has not paid the regular wages as per Wage Board to the petitioner and has only paid @ Rs. 350/- per month. The petitioner then, filed an application u/s 6H(1) of the Act alongwith salary chart as per Wage Board on 1.5.2007 for recovery of wages pursuant to the award aforesaid. It was registered as R.D. Case No. 26 of 2007 in which a notice was issued by the Deputy Labour Commissioner concerned to the Corporation on 10.9.2007 directing its General Manager to appear before him on 24.9.2007 as to why the amount in question may not be recovered as arrears of land revenue from him. Objection in the R.D. case was filed by respondent No. 3 but without any explanation as to how the salary chart filed by the workman was incorrect or why he was not entitled for computation of wages as given in the chart.

8. After hearing the parties, the Deputy Labour Commissioner, Gorakhpur vide his order dated 28.6.2008 allowed the claim of the petitioner directing respondent No. 3 to pay a sum of Rs. 1,63,186.00.

9. It is also stated that thereafter the Deputy Labour Commissioner, Gorakhpur sent recovery certificate to Collector, Kushinagar on 28.7.2008 for recovery of a sum of Rs. 1,63,186,00/- from respondent No. 3 but till date the Collector, Kushinagar has not recovered the said amount; that the petitioner moved representation/letter to the Collector, Kushinagar and Tehsildar Hata for recovery of the said amount but to no avail. Then petitioner filed writ petition No. 61387 of 2008, Dinesh Chand Gupta v. Collector, Kushinagar and respondent No. 3 in which an interim mandamus was issued directing the Collector, Kushinagar for recovery of the said amount. Pursuant thereto the Collector, Kushinagar recovered the said amount which was deposited before the Deputy Labour Commissioner.

10. Thereafter, the petitioner moved another application before the Deputy Labour Commissioner for recovery of a sum of Rs. 95,718.00 for the period June, 2007 to August, 2008, which was allowed vide order dated 29.3.2010 in R.D. Case No. 31 of 2008 directing respondent No. 3 to pay the same to him in which a review application was preferred by respondent No. 3 before the Deputy Labour Commissioner, Gorakhpur, for review of the order dated 29.3.2010 which was also dismissed vide order dated 27.7.2010 by the authority. The Deputy Labour Commissioner vide orders dated 4.10.2010, 23.9.2010 and 27.7.201 in R.D. Case No. 31 of 2008, issued recovery certificates for recovery of a sum of Rs. 95,718.00 to the Collector, Kushinagar Respondent No. 3 filed Civil Misc. Writ Petition No. 58575 of 2010, U.P. State Sugar & Cane Development Corporation Ltd. v. Collector, Kushinagar challenging the review order passed by the Deputy Labour Commissioner in R.D. Case No. 31 of 2008 dated 27.7.2010 which was also dismissed vide order dated 23.9.2010 by the Court. Special Appeal No. 1748

of 2010 was then preferred by respondent No. 3 challenging the validity and correctness of the judgment and order dated 23.9.2010 in Writ Petition No. 58575 of 2010, which too was dismissed vide order dated 27.10.2010. After dismissal of the writ petition and the special appeal the petitioner filed an application before the Collector, Kushinagar on 24.11.2010 for recovery of the said amount but to no avail, hence he filed another application under the RTI Act, 2005 alongwith recovery certificate as well as the orders of this Court in writ petition and special appeal before the Collector, Kushinagar alleging that till date no action has been taken by the Collector in the aforesaid backdrop for recovery of the amount.

11. Learned Standing counsel has raised a preliminary objection that instead of filing writ petition before this Court, the petitioner may raise his grievance before the Prescribed Authority under the Payment of Wages Act, 1936 as the award having been got implemented, exhausted itself and thereafter recovery proceedings in subsequent R.D. proceedings in R.D. case u/s 6H(1) of the Act are beyond jurisdiction.

12. Learned counsel for the petitioner submits that inspite of filing several applications for recovery of wages before the Deputy Labour Commissioner, the petitioner has not been paid wages as per the recovery certificate dated 4.10.2010 issued by the said authorities; that Collector, Kushinagar is bound to recover the amount of wages as arrears of land revenue u/s 6H(1) of the U.P. Industrial Disputes Act; that the action of the Collector, Kushinagar is illegal and arbitrary which has forced the family members of the petitioner to the verge of starvation.

13. It is also submitted in rebuttal that an ad-interim mandamus may be issued directing the Collector, Kushinagar to recover the amount of recovery certificate dated 4.10.2010 from respondent No. 3 and pay the same to the petitioner as per the award of the Labour Court dated 4.11.1989 in Adjudication Case No. 87 of 1986, which was dismissed by the High Court vide its judgment and order dated 2.3.2005 in Writ Petition No. 11279 of 1990, U.P. State Sugar Corporation Ltd. v. Labour Court, Gorakhpur and two others, which was affirmed by the Apex Court in Special Leave to Appeal (Civil) No. 12363 of 2005 vide judgment and order dated 13.7.2005 and against that order review application was filed which was also dismissed vide order dated 13.7.2006.

14. It appears from record that the award in A.D.J. Case No. 87 of 1986 has been implemented and the wages computed in R.D. case after recovery have been paid to him. Thereafter the award stood exhausted but the petitioner instead of filing application u/s 15 of the Payment of Wages Act for delayed/deducted wages, has filed this writ petition. It is apparent that petitioner is moving this Court in writ petition again and again for direction of payment of wages for subsequent periods for which remedy lies else where. This Court is not inclined to exercise the jurisdiction exercisable by Payment of Wages Authority or by Labour Court or by Deputy Labour Commissioner and issue direction for

payment of wages pursuant to the award which has already been exhausted. This is misuse of process of the Court. The petitioner may raise his grievance before the Prescribed Authority under the Payment of Wages Act. For the reasons stated above, the writ petition is accordingly, dismissed. No order as to costs.