

(2002) 04 AHC CK 0141

In the Allahabad High Court

Case No : C.M.W.P. No's. 5696 and 14403 of 1998

Executive Engineer and Another

APPELLANT

Vs

Prescribed Authority, Labour Court and Another

RESPONDENT

Date of Decision : 10-04-2002

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2002) 3 AWC 2033 : (2002) 2 UPLBEC 1389

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Nimai Dass, for the Appellant; Bhagwati Prasad Singh, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.

This writ petition being Writ Petition No. 5696 of 1998 filed by the employer-petitioners against the award of the Labour Court, IV, Kanpur Nagar dated 13.1.1997, Annexure-2 to the writ petition, passed in Adjudication Case No. 75 of 1994, arising out of the following reference made by the State Government vide its order dated 7.10-1994 for adjudication before the labour court.

"Whether the termination of workman Sri Dinesh Singh, son of Sri Ram Autar Singh, watchman by the employer w.e.f. 20.9.1992 was legal and valid? If not, what relief the concerned workman is entitled and from which date etc."

2. Notices were issued to the parties concerned and the parties have filed their written statements and adduced their evidence. Before the labour court after the exchange of the pleadings of the parties, the stand of the respondent-workman was that he was appointed with the employer on 1.3.1990 on the post of watchman and he has worked continuously from the date of appointment till 19.9.1992. On 20.9.1992, his services were terminated by an oral order without complying with the provisions of Section 6N of the U. P. Industrial Disputes Act,

1947, which is illegal. The employer, apart from raising some technical objections with regard to the reference, they have basically taken a ground that the workman since has not given the proper name of the officer who has terminated his services and that the workman was not employed with the employer. The another objection that has been taken by the employer was that the dispute has been raised after two years of the alleged termination. It has also been stated by the employer that under the different housing scheme during the construction, the workman was employed in connection with different housing scheme, therefore, he is not entitled for the protection u/s 6N of the U. P. Industrial Disputes Act, 1947. As against this, in the rejoinder-affidavit, the workman concerned has stated that he has been working under the Junior Engineer, Hanspur as watchman and respondent Nos. 1 and 2 were the officers of the same department. The workman has also filed documentary evidence in the form of four documents, whereas the employer have not filed any documentary evidence. The workman has examined himself and on behalf of the employer on Ashok Shukla, junior engineer was examined. The labour court after considering the written as well as oral evidence has arrived at the conclusion that the workman concerned had worked with the employer for more than 240 days in preceding twelve calendar months and the place where he was working was not a project but actually was a regular establishment of the petitioners-employer. On the basis of the aforesaid oral and documentary evidences, the labour court has recorded finding that the workman concerned has worked for more than 240 days in the preceding calendar year and his services were terminated without complying with the provisions of Section 6N of the U. P. Industrial Disputes Act, 1947. The labour court has also recorded finding that the establishment where the workman concerned was working, was of a permanent nature. With these findings, the labour court has answered the reference that termination of the services of the workman concerned were illegal and without compliance of the statutory provisions of Section 6N of the Act, therefore, labour court directed that the workman concerned is entitled for re-instatement with continuity of service. During the period when the workman was not allowed to work, the labour court awarded the wages at the rate of Rs. 750 per month. It is this part of the award, which is under challenge.

3. The law on the point is settled that this Court in exercise of powers under Article 226 of the Constitution of India will not sit in appeal over the findings recorded by the labour court, unless the findings are demonstrated to be suffering from the perversity. No such ground was argued except what has already been stated, which are squarely covered by the findings of fact recorded by the labour court.

4. Since the Writ Petition No. 14403 of 1998 filed by the workman concerned challenging the same award, which has been challenged by the employer in Writ Petition No. 5696 of 1998, hence both these writ petitions are taken up together and after hearing learned counsel for the parties, they are being decided by this common judgment.

5. The Writ Petition No. 14403 of 1998 filed by the workman concerned challenging the same award dated "13.1.1997, Annexure-2 to the writ petition, passed by Labour Court IV, U. P., Kanpur in Adjudication Case No. 75 of 1994, on the ground that the labour court while awarding the said award has not applied its mind and has erred in granting Rs. 750 per month instead of full back wages during the period of workman was not allowed to work.

6. It is admitted fact that the workman concerned has not worked from 20.9.1992 till the date of the award. In this view of the matter, the award of Rs. 750 awarded by the labour court instead of full back wages cannot be said to be arbitrary and illegal and this writ petition by the workman to the extent, referred to above, deserves to be dismissed and is hereby dismissed.

7. That for the reasons stated above, the writ petitions filed by employer-petitioners deserve to be dismissed.

8. In the result, both the writ petitions are dismissed. The interim order, if any, stand vacated in both the writ petitions. There will, however, be no order as to costs.