
(2000) 08 AHC CK 0033
In the Allahabad High Court
Case No : C.M.W.P. No. 16795 of 2000

Executive Engineer, Electricity Distribution Division	APPELLANT
Vs	
Presiding Officer, Labour Court, Gorakhpur and another	RESPONDENT

Date of Decision : 28-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes (Central) Rules, 1957 — Rule 16(1)
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4A

Citation : (2000) 4 AWC 2908 : (2000) 3 UPLBEC 2314

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : Ranjit Saxena, for the Appellant; Shashi Nandan and S.C., for the Respondent

Judgement

O. P. Garg, J.—By means of this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the award dated 24.2.1999 published on 2.8.1999. Annexure-7 to the petition made in Adjudication Case No. 200 of 1997 by respondent No. 1 and it is prayed that the award in question be set aside and the subsequent order dated 15.2.2000, Annexure-12 to the petition passed by respondent No. 1 in Misc. Case No. 155 of 2000 be also quashed.

2. Heard. Sri Ranjit Saxena, learned counsel for the petitioner as well as Sri Shashi Nandan appearing on behalf of respondent No. 2 at considerable length. Since, both the parties have advanced the arguments touching the whole gamut of the case, it was agreed that the petition be decided on merits at this stage. Accordingly, I proceed to dispose of this writ petition on merits.

3. The respondent No. 2 Surendra Mishra was admittedly appointed as Apprentice in the erstwhile establishment of the petitioner on 1st July, 1977. His services were terminated on 30.10.1978, He raised a dispute with regard to the termination of his services. By order dated 19.1.1996 (Annexure-5 to the petition), the Deputy Labour Commissioner, Gorakhpur. In exercise of the powers

conferred on him by notification dated 29.8.1990 referred the dispute under the provisions of U. P. Industrial Disputes Act to the Labour Court, Gorakhpur for award. Notices were issued to the parties. The respondent No. 2 placed his point of view before the labour court but the petitioner employer in spite of service failed to submit the written statement. Ultimately on 24.2.1999, the respondent No. 1 declared the award which was published on 2.8.1999. The respondent No, 2 moved an application for the enforcement of the award on 16.8.1999, a copy of which is Annexure-8 to the writ petition. Thereafter, the petitioner sent an application by post on 27.9.1999 mentioning therein that the fact of the proceedings initiated before respondent No. 1 and the award came to the knowledge of the petitioner for the first time on 16.8.1999 when the respondent No. 2 moved an application for enforcement of the award. This application was registered as Miscellaneous Case No. 155 of 2000. After hearing the petitioner as well as respondent No. 2, it was dismissed on 15.2.2000 (Annexure-12) on the ground that the petitioner has not satisfactorily explained the delay of nine months in moving the application for setting aside the award. It appears when the respondent No. 2 insisted for payment of the arrears of salary for the period 1.11.1978 to 29.2.2000, amounting to Rs. 14.98.000 the present petition has been filed.

4. The learned counsel for the petitioner made various submissions touching the merits of the case and challenged the proceedings which culminated into an award in favour of the respondent No. 2. It was urged that the respondent No. 2 who was appointed only as an apprentice had no right to hold the post and therefore, he could not have challenged the order of termination dated 30.10.1978 and that since the petitioner had not worked even for 240 days in a calendar year, therefore, his termination was not legally wrong. Sri Ranjit Saxena pointed out that the reference to the labour court was made after more than 17 years and since dispute raised was highly belated the respondent No. 1 should have dismissed the same outright. It was further urged that the ex parts award came into being without effecting service on the petitioner-employer and, therefore, it is bad in law. Sri Shashi Nandan, learned counsel for the respondent No. 2 repelled all the above submissions. He pointed out that the petitioner had been duly served and had the full knowledge of the adjudication case in which after moving an application for time. It deliberately avoided to appear. It was further urged that the award has become final and, therefore, respondent No. 2 cannot be deprived to reap the fruits under the award.

5. To begin with, it may be mentioned that the merits of the case as to whether the respondent No. 2 was entitled to be reinstated in service in consequence of his alleged illegal termination cannot be gone into and decided by this Court in writ Jurisdiction. This controversy was the subject-matter of decision in the adjudication, which was dealt with by the respondent No. 1. Therefore, reference to various decisions to challenge the position that the respondent No. 2 was merely an apprentice and not a regular appointee and, therefore could not be reinstated, as laid down in 2000 (84) FLR 311 , Kripa Shankar Chatterji Vs.

Gurudas Chatterjee and others, , U.P. State Road Transport Corporation and another v. U.P. Parivahan Nigam Shishukhs Berozgar Sangh and others ; (1997)2 UPLBEC 1374, Manoj Kumar Mishra v. State of U.P. and others ; (1999) 2 UPLBEC 1357. Arvind Gautam v. State of U.P. and others (FB) JT 2000 (6) SC 227. as well as U.P. Rajya Vidyut Parishad Apprentice Welfare Association and another v. State of Uttar Pradesh and others, is otiose.

6. The sheet anchor of the case of the petitioner is that the reference was not maintainable as it came to be made after a lapse of more than 17 years and. therefore, in view of the settled law the determination of the dispute could not have been made by the respondent No. 1. In support of his contention, learned counsel for the petitioner placed reliance on the decision of this Court dated 17.12.1998 in Civil Misc. Writ Petition No. 33145 of 1998. U.P. State Electricity Board and another v. Presiding Officer. Labour Court, U.P., Haldwani. Nainital and others ; 1993 (67) FLR 70 (SC). Ratan Chandra Sammanta and others v. Union of India and others : JT 2000 II) SC 388, The Nedungadi Bank Ltd. v. K. P. Madhauankutty and others ; 2000 (84) FLR 304. U. P. State Electricity Board and another v. State of U. P. and others and 1998 (1) UPLBEC 152, U. P. Electricity Board, Kanpur and another v. Presiding Officer. Labour Court, U. P.. Kanpur and others. The gist of all these decisions is that a person cannot be allowed to raise a dispute after a very long time and delay in the matter would be fatal. The delay of 7 or 8 years in making reference has been held to be inordinate. There can be no dispute about the proposition of law laid down in the aforesaid decisions.

7. Now the question is whether there were any laches or delay on the part of respondent No. 2 in raising the dispute. The services of the respondent No. 2 were terminated in October, 1978. He made a number of representations to the officers of the petitioner department but when he remained unsuccessful in his attempts, he approached the Conciliation Officer. C.P. Case No. 40 of 1988 was registered before him. This case was not disposed of by the Conciliation Officer for a considerable long time with the result the petitioner had approached this Court by filing a Writ Petition No. 33281 of 1995. The said petition was finally disposed of by this Court on 22.11.1995 with the direction to the Conciliation Officer to dispose of the case within a period of two months. Thereafter, the case was disposed of and reference to the labour court was made on 19.1.1996 which gave rise to Adjudication Case No. 200 of 1997. Even this case remained pending for about two years. The respondent No. 2 again filed a Writ Petition No, 7590 of 1999 in which a direction was issued on 20.2.1999 to respondent No. 1 to decide the adjudication case with all expedition preferably within a period of three months. In view of the above facts, it would be apparent that respondent No. 2 has been frantically striving to enforce his rights and did not allow the matters to become stale. He has been diligently pursuing his remedy, but the proceedings remained stuck up with the Conciliation Officer for a long period. The blame for making the reference after about 17 years of the termination of the services of the respondent No. 2 cannot put at his door. The delay in making the reference of the dispute to the labour court though highly inordinate stands satisfactorily

explained. Moreover, the petitioner failed to take this plea before the respondent No. 1. The proper course to be adopted by the petitioner was to have entered into a contest in the adjudication case and if it was done. Its plea that the reference was highly belated could be sifted by the respondent No. 1.

8. The well established facts of the case tell an entirely different story. While passing orders In Misc. Case No. 155 of 2000, the respondent No. 1 had recorded the findings that the summons of the Adjudication Case No. 200 of 1997 had been served on the Executive Engineer concerned of the petitioner department and that the summons bearing the signature and seal of the Executive Engineer concerned is available on record of the adjudication case. The fact that the service on the petitioner had been effected is clearly evident from the application dated 29.1.1999. (Annexure-6 to the writ petition) moved by Executive Engineer himself before respondent No. 1. Through, this application time to file written statement was sought on the ground that the Personnel Officer-D.L.W., Varanasi, who is required to file written statement will take about one month's time as his functional area was quite large. On the application of the petitioner, the case was to be adjourned for hearing to 24.2.1999. On that date none appeared on behalf of the petitioner nor any application for adjournment was filed and consequently, an ex parte award was made. It is, therefore, not a case in which service of summons was not effected on the petitioner. As a matter of fact, the assertion of the Executive Engineer of the petitioner department in the application dated 27.9.1999 that he came to know of the adjudication case and the award only through the application of the respondent No. 2 on 16.8.1999 is nothing, but an attempt to cover up the negligence and remissness on the part of erring officer who had failed to contest the case and had adopted a casual attitude by passing the buck on the Personnel Officer-D.L.W. Respondent. No. 1 had no option, but to make an award as the petitioner failed to appear and contest the Adjudication Case No. 200 of 1997.

9. Under Rule 16 (1) of the U.P. Industrial Disputes Rules. 1947, an application for setting aside the ex parte award could be moved within a period of 10 days of the date of the order sought to be set aside after showing sufficient cause for the absence. In the instant case no such application was moved. The law with reference to Rule 16 (1) had been interpreted in the celebrated decision of this Court (1997)2 UPLBEC 1274. State of U.P. and another v. Bachai Lal and another. It has been laid down that the expression "order" appearing in Rule 16(1) also includes ex parts "award" and the labour court has power to set aside an ex parte award passed against a party in its absence, if within 10 days of such award, the party applies in writing for setting aside such award and shows sufficient cause for its absence. In the instant case the award aforesaid was made on 24.2.1999. The application for setting aside the award was received by respondent No. 1 on 29.11.1999 i.e., after expiry of a period of nine months. The application was hopelessly barred by time. The petitioner has not been able to show sufficient cause for its absence on the date fixed. On the other hand, as stated above Executive Engineer on behalf of the petitioner had taken an

absolutely false case that it came to know of the proceedings and the award only on 16.8.1999 from the contents of the application moved by respondent No. 2. This assertion is clearly in conflict with the earlier application moved on behalf of the petitioner on 29.1.1999 during the pendency of the Adjudication Case No. 200 of 1997. The respondent No. 1 was justified in rejecting the application, which was registered as Miscellaneous Case No. 155 of 2000 for setting aside the award dated 24.2.1999.

10. The award dated 24.2.1999 published on 2.8.1999 has become final. Its validity cannot be challenged on any ground whatsoever. The respondent. I cannot be said to have misdirected itself to any factor relevant to exercise of its discretion in the matter in rejecting the application for setting aside the award and consequently the order dated 15.2.2000 refusing to set aside the ex parte award warrants no interference under Article 226 of the Constitution of India.

11. In the conspectus of all the above facts, the petition turns out to be without any merit and substance and is accordingly dismissed.

No order as to cost is made.