
(1993) 05 AHC CK 0020

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 20631 of 1990

Executive Engineer, Electricity Distribution Division I, U.P.
State Electricity Board

APPELLANT

Vs

Hydro Electric Employees Union and Others

RESPONDENT

Date of Decision : 13-05-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 2, 4K

Citation : (1993) 3 AWC 1783

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : Sudhir Agarwal, for the Appellant;

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—By this petition under Article 226 of the Constitution of India, the prayer is that the award dated 28-10-89 passed by the Presiding Officer, Labour Court, may be quashed by issuing a writ of Certiorari.

2. The reference was whether to grant the pay scale of regular coolie to six workmen was justified, and even though an order to that effect was passed by the U.P. State Electricity Board on 13-11-85, if the same was not justified, to what relief the workmen were entitled?

3. The case of the petitioner, the employer, was that the workmen were not entitled to the pay scale of regular coolie, nor they were entitled to that post as they were working on daily wages and had not completed 240 days. Whereas, the case of workmen, the contesting Respondents, was that they have completed 240 days in the relevant year and were entitled to the pay scale of regular coolie and also entitled to the post, but they were denied the pay scale by the employer without any justification.

4. Evidence was led by both the parties. The oral evidence led by the contesting

Respondents has been relied upon in the award and it was held that the workmen have completed 240 days of continuous service, and in view of the provisions of "definition of continuous service" as given in Section 2(g) of the U.P. Industrial Disputes Act, 1947, (for short the Act), they were entitled to the pay scale and the post of regular coolie. The findings of fact have been recorded by the Labour Court and the workmen have been held to be entitled to the relief claimed.

5. Sri N.C. Rajvanshi learned Counsel appearing for the petitioner urged that the U.P. State Electricity Board was a necessary party and it was not made a party in the terms of reference. Reliance was placed on Shri Ranjeet Mal Vs. General Manager, Northern Railway, Baroda House, New Delhi and Another, , It was further urged that the findings recorded by the Presiding Officer of the Labour Court were perverse.

6. Sri A. K. Misra, Learned Counsel appearing for the Respondents, on the other hand, urged that the aforesaid case of Ranjit Mal v. General Manager, Northern Railway, (supra), was distinguishable, inasmuch as that was a case where matter pertaining to necessary parties in a writ petition under Article 226 of the Constitution of India was considered. Whereas the present was a case under the U.P. Industrial Disputes Act, and in the terms of reference itself it was indicated that the order was passed by the Executive Engineer, the petitioner. The U.P. State Electricity Board was not made a party even to the writ petition filed by the petitioner, and the petitioner being the appointing authority of the workmen, there was no defect, even though the U.P. State Electricity Board was not made a party in the reference. Any way, no such objection appears to have been taken before the Labour Court and the statement of workmen and other evidence has correctly been relied upon. The findings recorded are based on appraisal of evidence and they are not perverse, consequently there would be no justification for interference by this Court under Article 226 of the Constitution of India.

7. Having heard the learned Counsel for the parties the points for determination are as to whether the U.P. State Electricity Board was a necessary party. Suffice it to say that in the instant case, in the reference itself it was mentioned that the U.P. State Electricity Board has passed the order dated 13-11-87 regularizing the services of the workmen to the post of regular coolie and indicating that they were entitled to the pay scale of coolie. But no such objection was taken by the petitioner before the Labour Court. In industrial disputes what is material for decision is the term of reference and nothing can be said against the terms of reference.

8. Ranjit Mal v. The General Manager, Northern Railway (supra), was a case laying down the principle as to the shall be the necessary party in a writ petition, and it was observed in that case that the Union of India shall be a necessary party. Here in the present case, the dispute was under the Industrial Disputes Act, which was a social and beneficial legislation and different considerations arise about the necessary party. No such objection was taken before the Labour

Court, and the terms of reference was clear and the controversy has been decided with regard to the terms of reference. The petitioner was properly represented and being the appointing authority, was already a party to the award. Consequently with profound regards, it is stated that the case of Ranjit Mal (supra), is of no Assistance to the petitioner.

9. In the matter of joinder of parties, or who is the necessary party, the consideration to weith with the court is as to whether failure to implead that party, i.e. Uttar Pradesh State Electricity Board in the present case, was fatal to the writ petition or to the Labour Court, and whether to render an effective decision whether the presence of U.P. State Electricity Board was necessary. So far as rendering effective decision is concerned, reference u/s 4-K was made and the Executive Engineer, the present petitioner was shown to be the first party, whereas its workmen, the contesting Respondents were shown to be the second party, vide Annexure-14, copy of the award. The existence of industrial dispute was between the employer, the Executive Engineer and its workmen. Even though the order that was sought to be given effect to about the regularization of the services of coolie, the contesting Respondents (order dated 13-11-87) was passed by the U.P. State Electricity Board but that was not made a party to the award, nor any such objection was raised by the petitioner, the employer, there. To render effective decision by the Labour Court the presence of U.P. State Electricity Board was not necessary. , It was correctly not objected by the petitioner there. The Labour Court has passed the award and now by the present petition the same is sought to be challenged. Under these circumstances, neither the U.P. State Electricity Board is aggrieved, nor its presence was necessary to pass, an effective award, nor even the petitioner has taken care to implead it as a party to the writ petition. Under the circumstances, while the petitioner was questioning the validity of the award and seeking relief to quash the same by issuing a writ of Certiorari, the presence of U.P. State Electricity Board was not necessary. See State of Himachal Pradesh and another Vs. Kailash Chand Mahajan and others, . I am accordingly of the considered opinion that in the present petition U.P. State. Electricity Board was riot a necessary party. The findings recorded by the Labour Court are based on appraisal of evidence and cannot be said to be perverse. Substantial justice has been done by the impugned orders and there is no justification for interference by this Court.

10. In the result, the petition fails and it is accordingly dismissed.