

(2009) 11 UK CK 0002
In the Uttarakhand High Court

Executive Engineer, Power Corporation Ltd., Electricity
Distribution Division

APPELLANT

Vs

Deputy Labour Commissioner and Others

RESPONDENT

Date of Decision : 19-11-2009

Acts Referred:

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

Citation : (2009) 2 UD 637

Hon'ble Judges : Tarun Agarwala, Acting C.J.

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, A.C.J.

1. Heard Shri B.D. Upadhyaya, the learned Counsel for the petitioner and Shri M.C. Pant, the learned Counsel for the opposite parties.

2. The present petition arises against an order passed by the Deputy Labour Commissioner u/s 6-H (1) of the U.P. Industrial Disputes Act, 1947 (hereinafter referred as Act, 1947) directing payment of difference of wages amounting to Rs. 5,42,850.38 for the period 23rd March, 1987 onwards.

3. The brief facts leading to the filing of the writ petition is that the workman was appointed on muster roll on daily rated basis in the year 1977 @ Rs. 11 per day. On account of a ban imposed by the State Government, his services were terminated by an order dated 27th August, 1978. The workman remained silent for almost 7 years and, thereafter, raised an industrial dispute which culminated into an award dated 24th December, 1985. The Labour Court held that the termination of the workman was illegal and in violation of the provisions of Section 6-N of the Act, 1947. The Labour Court found that the workman had worked for more than 240 days in a calendar year and that the retrenchment compensation had not been paid while dispensing the services of the workman. Consequently, the Labour Court directed the employer to reinstate the workman

on the original post with continuity of service and with full backwages.

4. It has come on record that during the pendency of the proceedings before the Labour Court, the workman was given a regular appointment as a Coolie, which is a class-IV post, w.e.f. 1st February, 1985. The petitioner, being aggrieved by the award, filed a writ petition before the Allahabad High Court in which an interim order dated 13th December, 1986 was passed directing the employer to deposit the entire amount. According to the petitioner, a sum of Rs. 29,762/- was deposited before the Labour Court. This interim order was subsequently modified by an order dated 23rd March, 1987 directing the employer to restore the name of the workman on the rolls of a routine grade clerk and, issue an appointment in favour of the workman as and when a vacancy arose. The Court further directed that, in the event, the petitioner fails to give an appointment, the workman would be entitled to draw the wages of a routine grade clerk.

5. Pursuant to the aforesaid interim order dated 23rd March, 1987, the petitioner issued an appointment letter dated 29th January, 1988 appointing the workman as a routine grade clerk in the pay-scale 490-750 w.e.f. 23rd March, 1987. It has come on record that the workman was duly paid the wages of a routine grade clerk in the pay-scale 490-750 w.e.f. 23rd March, 1987 onwards.

6. Upon the creation of the State of Uttarakhand on 9th November, 2000, the writ petition pending before the Allahabad High Court against the award of the Labour Court was consequently transferred to this Court. The writ petition was eventually dismissed by a judgment dated 25th July, 2005. The writ court, after noting the interim orders passed by the Court and the appointment letter issued by the employer, opined as under:

Thus in view of the order dated 23.3.85, the only dispute which remains to be adjudicated as to whether the workman is entitled for the salary of routine grade clerk. In case of regular appointment, he shall be entitled to draw the sum in accordance to his appointment. From the evidence on record it is evident that so far as the termination of the workman is concerned the same has set aside and he has been reinstated on his original post of routine grade clerk and thereafter he continued to enjoy on the said post as routine grade clerk. He will be entitled to draw his salary in pursuance of the order passed by the labour court till his regular appointment.

7. Against the said judgment, the petitioner filed a SLP before the Supreme Court of India, which was also dismissed.

8. The workman now filed an application u/s 6-H (1) of the Act, 1947 before the Deputy Labour Commissioner for computation of his wages in terms of the award for the period 27th July, 1978 till 30th April, 2007 amounting to Rs. 6,32,944.90. The workman enclosed a chart which disclosed the difference of wages for the period 23rd March, 1987 onwards. The Deputy Labour Commissioner, after considering the matter, passed the impugned order holding that the workman was entitled for a sum of Rs. 5,42,550.38 for the period 23rd March, 1987

onwards. The petitioner, being aggrieved by the said award, has filed the present writ petition.

9. Having heard the learned Counsel for the parties, the Court is of the opinion that the order of the Deputy Labour Commissioner cannot be sustained for the reasons mentioned hereunder:

In the first place, no reasons have been given by the Deputy Labour Commissioner as to how and why the amount of Rs. 5,42,850.38 became due and payable to the workman w.e.f. 27th March, 1987 onwards. No reasons have been given as to whether the wages paid by the employer to the workman of a routine grade clerk was incorrect and that the workman was entitled for a higher pay-scale. The Deputy Labour Commissioner exercises quasi judicial powers and is required to give brief reasons while issuing a direction for the recovery of the amount. In the absence of any reasons, the order impugned cannot be sustained.

10. At this juncture, the Court could have remitted the matter back to the Deputy Labour Commissioner to pass a fresh orders after giving reasons but the Court is of the opinion that the recovery of the amount for the period 23rd March, 1987 onwards is outside the jurisdiction of the Deputy Labour Commissioner u/s 6-H (1).

11. The proceedings u/s 6-H (1) is to recover dues pursuant to an award. Consequently, if any recovery is required to be made, the recovery can only be limited upto the date of the award. Post award wages cannot be recovered in proceedings u/s 6-H (1). In the present case, the Court finds that the Labour Court directed reinstatement of the workman on the original post in which he was working. According to the petitioner, the workman was appointed on muster roll on daily rated basis @ Rs. 11 per day. There is no finding in the award of the Labour Court as to whether the workman was working on a muster roll or he was working as daily rated clerk or he was working as regular routine grade clerk. The High Court while considering the impact of its interim order opined that since the workman has now been appointed as a routine grade clerk in a regular capacity, the workman would be entitled to the wages as per the award. The High Court opined as under:

He will be entitled to draw his salary in pursuance of the order passed by the Labour Court till his regular appointment.

12. The award is dated 24th December, 1985, the High Court extended the payment of back wages till the date of his regular appointment, i.e. till 23rd March, 1987. The recovery of wages as per the award of the Labour Court, as modified by the High Court, could only be recovered till 23rd March, 1987. Wages after 23rd March, 1987 cannot be recovered in proceedings u/s 6-H (1).

13. Further, the question as to whether the workman is entitled to the difference of wages from 23rd March, 1987 onwards is a disputed question of fact and is not a simple calculation which can be computed in proceedings u/s 6-H (1). It is

settled law that disputed questions cannot be adjudicated in execution proceedings, namely, in proceedings u/s 6-H (1). Such questions can only be adjudicated in proceedings u/s 6-H (2) before the appropriate Labour Court.

14. In the light of the aforesaid, the order of the Deputy Labour Commissioner cannot be sustained and is quashed. The writ petition is allowed. It would be open to the workman to take appropriate course for the redressal of his grievance, if any, in accordance with law.