
(2004) 11 AHC CK 0099

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12874 of 1993

Fizz Drinks Limited

APPELLANT

Vs

The Labour Court (2) and Another

RESPONDENT

Date of Decision : 17-11-2004

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : (2005) 104 FLR 1196 : (2005) 1 UPLBEC 595

Hon'ble Judges : V.C. Misra, J

Bench : Single Bench

Advocate : Bhagwati Pd. Srivastava and Ravi Agrawal, for the Appellant; K.P. Agarwal, Siddharth and Suman Sirohi and S.C., for the Respondent

Judgement

V.C. Misra, J.—Heard" Sri Ravi Agarwal learned Counsel for the petitioner and Sri K.P. Agarwal, learned Senior Advocate assisted by Sri Siddharth, learned Counsel for respondent No. 2-workman.

2. This writ petition has been filed challenging the award-dated 14th May, 1992 (Annexure No. 8 to the writ petition) given by the Labour Court-respondent No. f on the grounds, inter alia, that respondent No. 1 had no jurisdiction to entertain the reference made by the State. Government u/s 4-K of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") and since no part of cause of action arose within the territory of the State of U.P. the impugned award is non-est, illegal and without jurisdiction.

3. Facts of the case in brief are that respondent No. 2-workman was appointed on the post of Accountant on salary of Rs. 1,000/- per month on temporary basis at petitioner's Company, namely, M/s. Fizz Drinks Ltd., Faridabad and was deputed to work at Meerut in the Sales Department of the Company. The salary of the workman was paid from Faridabad. The provident fund and the Insurance of the workman were also deducted and deposited at Faridabad office. The leave of the workman was also sanctioned at the Faridabad office. The workman was asked by the petitioner's Company to come and join duty at Faridabad office of

the petitioner's Company in the last week of August, 1986. The respondent No. 2-workman appeared at the office of the petitioner's Company at Faridabad on 15.9.1986. The respondent No. 2 workman approached the petitioner's Company through letter under registered post with acknowledgement due dated 2.9.1986 and 11.9.1986 in respect of nonpayment of wages. It is the case of the petitioner's Company that since the workman did not turn up to resume his duty and voluntarily abandoned his appointment the petitioner's Company terminated the services of the respondent No. 2 workman on 15.9.1986. The workman raised industrial disputes before the State Government, which in turn referred the matter to the Labour Court (2), U.P., Meerut u/s 4-K of the U.P. Industrial Disputes Act for adjudication of the following issue:

"Whether termination of the services or deprivation thereof of their workman Hari Om Agarwal (Accountant-cum-Shipping Sales Office, Meerut) with effect from 15th September, 1986, is proper and/or legal? If no, to which benefits/reliefs is the concerned employee entitled to and with what particulars?

4. The employer petitioner contested the case before the Labour Court and raised issue of jurisdiction and also made an offer to the workman to join work at its Faridabad office. The respondent No. 2-Workman, in his oral statement filed before the Labour Court on 18.2.1992 in Adjudication Case No, 27 of 1990 at para 15 stated, that he was ready to accept offer of the employment to work at Faridabad office even on that date, provided his entire back wages were paid. Copy of the said oral statement has been filed as Annexure No. 7 to the writ petition. The workman-respondent No. 2 has also stated in para 9 that he did not go to the Faridabad office due to his financial hardship and had also signed on the attendance register till 13th September, 1986. He has also stated at para 5 in his written statement (Annexure No. 3 to the writ petition) filed before the Labour Court, that the petitioner employer terminated the services of the respondent No. 2 on 15.9.1986 without adverting to the conditions precedent for terminating the services as well as without affording an opportunity to defend.

5. The Labour Court-respondent No. 1 after hearing learned Counsel for the parties passed the impugned award in favour of the respondent No. 2-workman holding that the termination of the respondent No. 2-workman from service w.e.f. 15.9.1986 was illegal and the workman shall be entitled for reinstatement with continuity in service with entire back wages and other consequential reliefs.

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

7. During the arguments learned Counsel for the petitioner submitted that the Labour Court had no jurisdiction to decide the matter since no cause of action arose in the State of U.P. Learned Counsel for the petitioner has submitted that the respondent No. 2-workman willfully did not join the duty at Faridabad which had been offered by the employer and he himself abandoned his services. Learned Counsel for the petitioner further submitted that the workman was not

entitled to any back wages or any other relief, as passed by the respondent No. 1-Labour Court in its impugned award dated 14.5.1992 (Annexure No. 8 to the writ petition). The learned Counsel for the petitioner has relied upon the decisions in the cases of Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another, , Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, ; P.G.I. of M.E. and Research, Chandigarh Vs. Raj Kumar, and M.P. State Electricity Board Vs. Smt. Jarina Bee,

8. I have looked in to the record and find that since admittedly, the petitioner had posted the respondent No. 2-workman at Meerut and were taking work from him at Meerut, and since his services stood dispensed with while he was working at Meerut, part of the cause of action arose at Meerut and, therefore, the respondent No. 1 Labour Court had full jurisdiction to decide the reference made to it by the State Government, which admittedly was not challenged by the petitioner at the time of the proceedings, initiated before the Labour Court, though it had been challenged at the time of conciliation proceedings stage that the reference was not maintainable but it was not subsequently challenged at the higher forum.

9. Looking into the facts and circumstances of the case, I am of the view that the employer-petitioner was duty bound to have sent a notice to the workman-respondent No. 2 in writing for joining his duty and in case he did not turn up thereafter his services could be dispensed with, that too in writing, which, admittedly, has not been so done in the present case, as is apparent from the record, The petitioner has also partly failed to comply with the interim direction of this Court wherein it was provided that the operation of the award of the Labour Court shall remain stayed subject to the condition that the petitioner deposits a sum of Rs. 40,000/- before the Deputy Labour Commissioner, Meerut within period of one month from that date, and, it was also provided that the petitioner would offer an alternative suitable employment to the workman-respondent No. 2 within one month. The petitioner Company in compliance of the later part of the interim order issued three letters one after another to the workman offering him job at Faridabad, which admittedly, had not been accepted by the workman at that stage. However, since the workman was not ready to work at Faridabad office or any other place, the workman was not entitled to any back wages, in view of the settled law as laid down by the Apex Court.

10. Under the facts and circumstances of the case and observations made herein before,, the writ petition is disposed off with the direction that the petitioner shall take back the respondent No. 2-workman in the employment provided the workman approaches the petitioner for joining his services through a written request made within one month, and pay him the regular wages, in accordance with law. However, the workman-respondent No. 2 shall not be entitled to any back wages as awarded by the Labour Court-respondent No. 1 for the period he has not worked and the impugned, award stands modified accordingly. There will be no order as to costs.