
(2013) 02 AHC CK 0232

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 20576 of 2009

Ganga Ram

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 06-02-2013

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2013) 3 ADJ 729 : (2013) 4 AWC 4085 : (2013) 137 FLR 261 :
(2013) 2 LLJ 812 : (2014) 2 LLN 71

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Rajesh Kumar Singh, for the Appellant; Pramod Kumar Srivastava,
for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—List has been revised. The learned counsel for the respondent is not present. Heard Sri Rajesh Kumar Singh, the learned counsel for the petitioner.

2. The petitioner is a workman, appointed as an electrician, in the Nagar Panchayat, Handia and his services were arbitrarily dispensed with on 1.7.2001. Accordingly, the petitioner raised an Industrial Dispute, which was referred to the Labour Court, Allahabad for adjudication. The terms of the reference order was whether the employers were justified in terminating the services of the workman w.e.f. 1.7.2001 If not, to what relief the workman was entitled to.

3. Before the Labour Court the petitioner contended that he was appointed on 27.1.1998 and had worked continuously without any break in service till he was removed on 1.7.2001. The petitioner categorically stated that he had completed 240 days of continuous service in a calendar year and that while dispensing his services, the provisions of Section 6-N of the U.P. Industrial Disputes Act had not been complied with. Further, juniors to the petitioner, who were similarly

situated, were continuing in service and that the principle enunciated u/s 6-P, namely, "last come first to go" had also not been adhered to. The petitioner contended that the services of the petitioner has been dispensed with in violation of the U.P. Industrial Disputes Act and therefore, he should be reinstated with continuity of service and with back wages.

4. The respondents filed a written statement and contended that the petitioner was never appointed in a permanent capacity nor in a regular capacity but admitted that the petitioner was appointed for a limited part of time on exigencies of work on a daily rate basis. The respondents denied the fact that the petitioner had worked for more than 240 days in a calendar year.

5. In support of his case, the petitioner filed various documents, namely, resolutions of the Nagar Panchayat to indicate, that a decision was taken to appoint the petitioner as an electrician. There is another resolution of the Nagar Panchayat indicating that the petitioner's services on daily wage basis be regularized. The Court finds, that the petitioner had filed an application praying that the original resolution of the Nagar Panchayat should be placed by the respondents and that the attendance and payment register for the year 1999, 2000 and 2001 be also placed for perusal of the Labour Court to verify as to whether the petitioner had worked and had been paid for the period in question.

6. In spite of the application being filed and in spite of the direction being issued by the Labour Court to the respondent Nagar Panchayat, to produce the record, the same was not done. The Labour Court also debarred the employer from cross-examining the workman.

7. The Labour Court, after hearing the parties, rejected the claim of the petitioner, on the ground, that no cogent proof of his working as an electrician, nor proof of the fact that he had worked for 240 days in a calendar year, was filed and accordingly dismissed the claim of the petitioner.

8. Having heard the learned counsel for the petitioner at some length, the Court finds, that the Labour Court committed a manifest error in rejecting the claim of the petitioner and in placing the burden entirely upon the workman. No doubt, it is a settled principle of law, that the burden to prove the case is upon the plaintiff, namely, the workman in the instant case who has filed the claim before the Labour Court. In the instant case, the petitioner has filed a copy of the resolution of the Nagar Panchayat and has also proved this resolution in his evidence-in-chief indicating that the Nagar Panchayat had passed a resolution for appointing the petitioner as an electrician on daily wage basis. To this extent the petitioner has proved his case that he was appointed as an electrician. However, the petitioner had contended that he had worked continuously for more than 240 days in a calendar year. This fact has been stated in his written statement and has also been stated in his evidence, which has not been rebutted in his cross-examination.

9. In support of his stand, the petitioner had also filed an application seeking a

direction that the Nagar Panchayat be directed to produce the original record, namely, the original resolutions, as well as the attendance and payment register to prove the fact that the petitioner had worked continuously without break in service for the period 1999, 2000 and 2001. In spite of a direction being given by the Labour Court, no record was produced.

10. In the light of the aforesaid, the Court finds, that the initial burden to prove a fact, was upon the petitioner, which had been done substantially and thereafter the onus shifted upon the employer, which, in the instance case, an opportunity was given and which the employers failed to discharge. Consequently, the finding of the Labour Court, that the burden to prove the fact was not discharged by the petitioner was patently erroneous. The best evidence, namely, the resolutions of the Nagar Panchayat and the Payment and Attendance Register was with the employers. The petitioner had no access to it. If the employer failed to produce the documents, which are in their custody, adverse inference had to be drawn against the employers. In the light of the aforesaid, the Court is of the opinion that the impugned award cannot be sustained and is quashed. The writ petition is allowed and the matter is remitted to the Labour Court again to re-decide the matter from the stage where it had left within four months from the date of the production of a certified copy of this order. Even though the employers were debarred from cross-examining the petitioner, it would be open to the parties to file fresh evidence in support of their case.