
(2016) 02 AHC CK 0052

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 44414 of 2013

General Manager and Anr.

APPELLANT

Vs

State of U.P. and Ors.

RESPONDENT

Date of Decision : 19-02-2016

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 25-F

Citation : (2016) 4 ADJ 49

Hon'ble Judges : Pankaj Mithal, J.

Bench : Single Bench

Advocate : C.S.C. and M.P. Singh Gaur, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Pankaj Mithal, J. - The petitioners are employers. They have impugned the award of the Labour Court dated 5.11.2012 which has been passed in favour of the workman, respondent No. 4.

2. A reference was made to the labour court as to whether the oral termination of services of respondent No. 4 w.e.f. 31.1.2006 is legal and justified and, if not, to what relief he is entitle to.

3. The labour court answering the reference held that the petitioners illegally terminated the services of respondent No. 4 w.e.f. 31.1.2006 and he is entitle to be reinstated with 50% back wages w.e.f. the date of reference i.e. 23.3.2007 and Rs. 500/- as costs.

4. The main plank of attacking the impugned award is that the reference itself was bad. The respondent No. 4 was not an employee of the petitioners. He was never appointed as a class - IV employee in the establishment of the petitioner. He was a contract labour as such, there was no privity of contract between the petitioners and the respondent No. 4.

5. The defence of respondent No. 4 is that he was appointed as a class - IV

employee in January, 1987 and was drawing wages of Rs. 1200/- p.m.. He was assigned duties on the pumping station and had put in about 19 years of continuous service before termination of his services with 240 days of continuous service in the calender year. His services could not have been terminated without following the procedure of retrenchment.

6. The labour court on consideration of the evidence adduced by the parties, specially the logbooks and the statement of E.W. 1 Ram Swarup Yadav held that the aforesaid logbooks some of whom bear signatures of the Junior Engineer, establish that respondent No. 4 was directed to work and was assigned duties by the petitioners. The petitioners have not produced any evidence to establish that the logbooks were not signed by the Junior Engineer or that said logbooks were fake documents. Therefore, respondent No. 4 worked as a class - IV employee with the petitioners.

7. A further finding is that respondent No. 4 has worked with the establishment of the petitioners from 1987 to 30th January, 2006 and that no procedure whatsoever was followed before retrenching him from the service.

8. The petitioners failed to produce any evidence to contradict that respondent No. 4 had not worked for 240 days in a calender year. Thus, the labour court inferred that respondent No. 4 who has worked for about 19 years was entitle to a notice, a month's salary in lieu thereof and retrenchment compensation before termination of his services.

9. It is settled legal position that provisions of Section 6 N of U.P. Industrial Disputes Act, 1947 which are analogous to Section 25 F of the Industrial Disputes Act are mandatory and that termination of service of a workman without giving a month's notice or pay in lieu thereof and retrenchment compensation would be null and void and illegal, AIR 2011 SC 2532 Devinder Singh v. Municipal Council, Sanaur.

10. The argument of learned counsel for the petitioners that respondent No. 4 was a contract labour and there was no privity of contract between the petitioners and respondent No. 4 is without force as the petitioners adduced no evidence to prove that respondent No. 4 was employed through a contractor or to controvert the statement of respondent No. 4 in this regard. The contractor was not produced and no material was brought on record to prove that the establishment of the petitioners was registered under The Contract Labour (Regulation and Abolition) Act, 1970. Not even any license of the contractor was produced to prove that respondent No. 4 had worked in the establishment of the petitioners through any contractor and was never employed by the petitioners.

11. In these circumstances, the submission that there was no privity of contract between the petitioners and respondent No. 4 to make the reference bad is without substance and fails.

12. The Apex Court in the case of Devinder Singh v. Municipal Council, Sanaur

AIR 2011 SC 2532 considered the scope of jurisdiction of the High Court under Article 226 of the Constitution in dealing with the challenge to the award of the Labour Court. Their Lordships of the Supreme Court placing reliance upon earlier judgments in the cases of Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 SC 477, Swaran Singh v. State of Punjab, (1976) 2 SCC 868, Post Graduate Institute of Medical Education and Research, Chandigarh v. Raj Kumar, (2001) 2 SCC 54, Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675 and Shalini Shyam v. Rajendra Shankar Path, (2010) 8 SCC 329 held that the High Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India is only supposed to look into the jurisdictional infirmity, if any, in the award or if the conclusion of the Labour Court is vitiated by any apparent error of law.

13. The findings returned by the Labour Court are basically findings of the fact which are beyond the purview of judicial interference in exercise of discretionary jurisdiction unless the finding stands vitiated by any error of law apparent on the face of record.

14. In view of the above, the impugned award of the Labour Court is beyond the realm of judicial review by this Court under Article 226 of the Constitution of India. Accordingly, the petition is found to be devoid of any merit and is dismissed with no order as to costs.