

(2013) 04 AHC CK 0111
In the Allahabad High Court

Case No : C.M.W.P. No. 2415 of 2007 with C.M.W.P. No. 21649 of 2007

Ghayas Ahmad Khan

APPELLANT

Vs

Presiding Officer, Labour Court (3) and Another

RESPONDENT

Date of Decision : 22-04-2013

Acts Referred:

Citation : (2013) 4 AWC 4280 : (2013) 138 FLR 183 : (2013) 3 LLJ 326 :
(2013) LLR 870 : (2013) 2 UPLBEC 1389

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Advocate : R.K. Awasthi, for the Appellant; Kritika Singh and V.B. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—This writ petition has been filed by the employer and is directed against order dated 22.1.2007 passed by Presiding Officer, Labour Court (I), U.P. Kanpur in Misc. Case No. 120 of 2005, which was a case u/s 33-C(2) of U.P. Industrial Disputes Act. The case was instituted by the workman Ghayas Ahmad Khan, respondent No. 2, since deceased and survived by legal representatives (It appears that the said case was earlier numbered as Misc. Case No. 117 of 2003). The workman had demanded Rs. 4,29,113/- as the difference of wages which according to him were payable to him under the award given on 9.4.1981 in Adjudication Case No. 17/80 directing payment of higher wages w.e.f. 1.2.1980 on the principle of same pay for same work. Against the said award, petitioners had filed Writ Petition No. 10431 of 1981, which was decided on 16.12.1985. In the award, it had been directed that petitioner should be paid the wages at the rate of Rs. 500/- per month. However, the High Court held that he should be paid wages at the rate of Rs. 300/- per month and all increments and dearness allowance should be added thereto. Against the order of the High Court, SLP was filed in the Supreme Court, which was dismissed. The Supreme Court decided the matter on 8.9.1993. The case u/s 33-C(2) had been

instituted on 4.8.2003. The amount claimed was from 1.1.1991 to 22.4.2003. The Labour Court through impugned order held that the workman was entitled to the claimed amount of about Rs. 3,41,838/- along with 8% interest, total amount Rs. 5,47,730/-.

2. The workman had taken voluntary retirement on 31.3.2003 and under that he had received an amount of about Rs. 3 lacs. The Labour Court held that the said compromise was void as under the said compromise nothing was paid to the workman. The workman had contended that he was entitled to Rs. 7,68,851/-. Accordingly, he demanded Rs. 4,29,113/-, which was the difference of the earlier two figures. Earlier the workman had filed case under Payment of Wages Act. Against the order of the Prescribed Authority under Payment of Wages Act, workman filed Writ Petition No. 42790 of 2000. He got the said writ petition dismissed as withdrawn on 25.4.2003. Copy of the modified V.R.S. is Annexure-II to the writ petition. For determining the amount payable under M.V.R.S. wages were the basic criteria. The exact compromise which took place between the parties is part of Annexure-II, on pages 53-54. In that compromise/agreement, it is categorically mentioned that the workman agreed that under order of the Supreme Court dated 8.9.1993, it was held that the workman was entitled to Rs. 300/- per month wages and the amount payable under voluntary retirement scheme was being calculated on the said basis and no dispute regarding basic salary/wages was therein between the parties. It was also stated that two writ petitions between the parties were pending in the High Court and he would withdraw Writ Petition No. 42790 of 2000. Workman also agreed that against order passed by the Labour Court (IV), Kanpur dated 4.9.1995 passed in Case No. 88 of 1991, the employer had filed Writ Petition No. 37067 of 1995 and the workman would not contest that. Under Clause-2 it was specifically agreed by the workman that in respect of award dated 9.4.1981 given by Labour Court in Adjudication Case No. 17 of 1980 he would not institute any case in any Court for the benefit of the said award. Under the Scheme, it was provided that the employer Swadeshi Cotton Mill, a unit of N.T.C. was at the verge of closure.

3. In my opinion after categorically agreeing for not seeking any further benefit under the award of the Labour Court given in Adjudication Case No. 17 of 1980, it was not at all permissible for the workman to file the case giving rise to the instant writ petition. Moreover in the Writ Petition No. 42790 of 2000, payment under the award of the Labour Court dated 9.4.1981 was in dispute which the petitioner got dismissed as withdrawn.

4. The view of the Labour Court that under the V.R.S. workman did not get anything is utterly erroneous in law. Workman got the amount of Rs. 3 lacs under the award. Under no circumstances, he could afterwards claim further amount.

5. Reference to the National Textile Corporation U.P. (Ltd.) Vs. State of U.P. and Others, by the learned Counsel for workman is misplaced. In the said case, determination was done after the acceptance of V.R.S. In the instant case,

determination had already been done ten years before acceptance of the V.R.S. In the agreement in question through which workman accepted the V.R.S., the earlier litigation was specifically referred to.

6. Accordingly, writ petition is allowed. Impugned order is set aside. First Writ Petition:

7. This writ petition has been filed by the workman Ghayas Ahmad Khan since deceased and survived by legal representatives, who was respondent No. 2 in the first writ petition. It is directed against order dated 28.9.2006 passed by the Presiding Officer, Labour Court (III), U.P. Kanpur in Misc. Case No. 118 of 2003 u/s 33-C(2) of Industrial Disputes Act. The said case was instituted for payment of Rs. 4,70,181/-. The case of the workman was that under Voluntary Retirement Scheme, he was paid less amount. Almost similar grounds were taken as were taken in the case which was subject matter of the second writ petition. In the impugned order, it was mentioned that in respect of payment from 1.1.1986 to 31.12.1990, writ petition was pending in the High Court in the form of Writ Petition No. 37067 of 1995 hence until decision of the said writ petition, fresh application could not be filed. Accordingly, the case was dismissed as premature (Writ Petition No. 37067 of 1995 has been dismissed in default on 28.8.2010). In view of earlier part of this judgment through which second writ petition has been allowed and it has been held that after acceptance of V.R.S., workman is not entitled to any further amount, this writ petition is dismissed.