

(2003) 09 AHC CK 0094

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16086 of 1996

Gulab Singh

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 19-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2003) 3 UPLBEC 2822

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Anil Bhushan, for the Appellant; B.D. Mandhyan and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—The petitioner-workman by means of present writ petition under Article 226 of the Constitution of India, approached this Court with the prayer to quash the impugned award of the Labour Court, Varanasi dated 25th August, 1995, passed in Adjudication Case No. 5 of 1991, copy whereof is annexed as Annexure -"8" to the writ petition.

2. The following dispute was refereed to the Labour Court for adjudication:-

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3. Heard learned Counsel appearing on behalf of the parties.

4. After receiving notices by the Labour Court, the parties have exchanged their pleadings and adduced evidence. In short, the workman has set up the case that he was appointed on 21st November, 1983 at Mandi Samiti, Rath in the district of Hamirpur. Subsequently, the said Mandi Samiti has stopped taken work from

him, but he was not relieved from his services in writing. The workman made representation to the higher authorities and on the application dated 30th May, 1986 moved by him, he was appointed as Assistant in the Mandi Samiti of Varanasi where he worked till 13th November, 1986 continuously. Since the workman has protested against his appointment at Varanasi and requested that he may be appointed on his original post and also made demand for the same, which annoyed the employers. As a result thereof, though the work and conduct of the workman concerned was satisfactory, but his services were terminated with effect from 14th November, 1986. While terminating the services of the workman concerned, the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 (here-in-after referred to as the "Act") have not been complied with and no retrenchment compensation was paid to the workman by the employers.

5. As against the case set up by the workman concerned, the employers have set up the case that the workman concerned has never been employed at Mandi Samiti, Paharia in the district of Varanasi, as alleged. He was appointed in the Mandi Samiti, Rath in the district of Hamirpur, therefore, his claim is untenable. The statement of the workman that he was transferred from district Hamirpur to Varanasi is not supported by any material on record, thus, the workman concerned is not entitled for any relief. The employers as well as the employee have filed their documentary evidence. On 26th April, 1995 both the parties were present. The employers have stated that they have not to file any further documents, therefore, 3rd July, 1995 was fixed as the date of filing evidence on behalf of the workman. On that date i.e., on 3rd July, 1995 nobody appeared on behalf of the employers, therefore, the case was proceeded ex-parte against the employers.

6. Coming to the merits of the case, the Labour Court has recorded a finding that the burden was on the workman concerned that he has worked for more than 240 days in previous 12 calendar months in Mandi Samiti, Paharia, Varanasi. The workman has filed in all 36 documents, most of those documents relate to the application or request made by the workman concerned for his re-appointment, which according to the Labour Court are irrelevant in order to arrive at the conclusion that the workman concerned has completed 240 days continuous service in previous 12 calendar months.

7. The workman has also filed the Certificate dated 2nd November, 1985, issued by Secretary, Krishi Utpadan Mandi Samiti, Rath, Hamirpur, which clearly demonstrates that the workman has worked between the period 21st November, 1983 till 27th October, 1985 for a short period at Mandi Samiti, Rath in the district of Hamirpur. The Labour Court has further arrived at the conclusion that the workman concerned cannot get benefit of work done at Mandi Samiti, Rath in the district of Hamirpur because his services, according to his own case, have been terminated from Mandi Samiti, Paharia in the district at Varanasi. This certificate filed by the workman concerned issued by the Secretary, Krishi Utpadan Mandi Samiti, Paharia, Varanasi demonstrates that he has worked from

29th January, 1986 till 13th November, 1986 as daily wage. The Labour Court goes on to say that even if it is assumed to be correct, it comes to this that the workman concerned has not worked for 240 days in the previous 12 calendar months, therefore, he is not covered by the definition of "Workman" and since the workman concerned is not covered by the definition of "Workman", he cannot get any relief from the Labour Court.

8. The workman representative argued before the Labour Court that there is a direction by the Director, Mandi Samiti, U.P. that on the application filed by the workman, if his work and conduct has been satisfactory, then his service should not be terminated. This order is dated 20th June, 1987 and this order is addressed to the Chairman, Mandi Samiti, Varanasi and if the Chairman in spite of that direction have terminated the services of the workman, the workman cannot claim any benefit, as claimed by the workman that Mandi Samiti had no right to terminate his services. At the most, the workman can get the right of making representation to the Director, Mandi Samiti, U.P., but so far as the Labour Court and the reference are concerned, since, the workman concerned is not covered by the definition "Workman", therefore, termination of his services by the employers do not warrant any interference by this Court and the reference is answered against the workman concerned.

9. Before this Court, learned Counsel appearing on behalf of the petitioner-workman has repeated the same arguments as were advanced before the Labour Court. The Labour Court considering the material evidence on record has recorded finding, as already stated above that the workman concerned has not worked with Mandi Samiti, Paharia in the district of Varanasi continuously for 240 days in the previous 12 calendar months, therefore, he is not covered "by the definition of workman and thus, he is not entitled for any relief. Thus, learned Counsel has not, assailed the findings recorded by the Labour Court and in my opinion could not be assailed, as these findings are supported by cogent reasons and material evidences on record. This being the factual position that the workman concerned is not covered by the definition of the "Workman" as given under the Act, the view taken by the Labour Court that the workman concerned is not entitled for any relief do not warrant any interference by this Court in exercise of power under Article 226 of the Constitution of India.

10. In view of what has been stated above, this writ petition has no force and is accordingly dismissed. The interim order, if any, stands vacated. However, on the facts and circumstances of the case, the parties shall bear their own costs.