

(2000) 03 SC CK 0142
In the Supreme Court Of India
Case No : C.A. No. 2646 of 1999

H.D. Sharma

APPELLANT

Vs

Northern India Textile Research Association and Another

RESPONDENT

Date of Decision : 28-03-2000

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K, 6E(2)

Citation : AIR 2000 SC 1750 : (2000) AIRSCW 4253 : (2000) AIRSCW 1789 : (2000) 85 FLR 456 : (2000) 3 JT 489 : (2000) 1 LLJ 1384 : (2000) 2 SCALE 582 : (2000) 3 SCC 567 : (2000) SCC(L&S) 360 : (2000) 7 Supreme 617 : (2000) 3 Supreme 100 : (2000) 1 UJ 760

Hon'ble Judges : Y. K. Sabharwal, J;S. Saghir Ahmad, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. The appellant was ordered to be dismissed from service in terms of the dismissal order dated 24th April, 1987 passed by the employer - respondent No. 1. The said order is said to have been passed considering the report of the Inquiry Officer in respect of the charges leveled against the appellant. Section 6-E(2)(b) of the UP Industrial Disputes Act, 1947 (For short, 'the Act'), inter alia stipulates that during the pendency of any proceedings in respect of an industrial dispute, the employer may, in accordance with the Standing Orders applicable to a workman concerned in such dispute, for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise that workman. The proviso to the said section, however, stipulates that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceedings are pending for approval of the action taken by the employer. On account of pendency of industrial disputes in Reference Proceedings in Adjudication Case No. 53 of 1986, respondent No. 1, as required by the aforesaid section, moved an application dated 27th April, 1987 before the Industrial Tribunal seeking approval of the order of dismissal. The said

application was registered as Miscellaneous Case No. 7 of 1988. It was resisted by the appellant. In reply the appellant inter alia disputed that he was paid one months wages as required by Section 6-E(2)(b) of the Act. An application was also moved by the appellant before the Industrial Tribunal stating the he has not been paid HRA as well as CCA which was payable to him and, therefore, the employer has not paid to him full month wages payable u/s 6-E(2)(b).

2. After the dismissal order was made, the appellant raised an industrial dispute challenging his dismissal and the State Government made a reference u/s 4-K of the Act for adjudication of the said dispute by the Industrial Tribunal. This was registered as Adjudication Case No. 31 of 1988. The dispute referred was as follows

Whether dismissal order dated 24th April, 1987 passed by the employer against workman Hari Dutt Sharma, son of Kishan Chand Sharma, General Clerk- cum- Duplicating Machine Operator is legal and/or justified? If not then to what benefit/ relief the workman is entitled for and with any other details?

3. Respondent No. 1 by its application dated 31st January, 1990, sought permission of the Industrial Tribunal to withdraw the approval application. The said application was dismissed by the Industrial Tribunal by order dated 29th June, 1990.

4. The order dated 29th June, 1990 was challenged by respondent No. 1 in a writ petition filed in the High Court. By impugned judgment dated 11th February, 1998, learned Single Judge of the High Court has set aside the order of the Tribunal dated 29th June, 1990 and has directed the Tribunal to allow the withdrawal of the application filed u/s 6-E(2)(b) of the Act.

5. The only reason given by the High Court for setting aside the order of the Tribunal is that two parallel Proceedings - one u/s 6-E(2)(b) and the other on reference u/s 4-K of the Act relating to same matter cannot be allowed to continue and that the point raised in the application u/s 6-E(2)(b) can be agitated and finally disposed of in a more effective manner if the proceedings are taken on the basis of application u/s 4-K of the Act.

6. We are unable to sustain the aforesaid reasons given by the High Court. The scope of proceedings under the two provisions is substantially different. Separate rights, remedies and protections have been provided u/s 6-E(2)(b) of the Act. The proceedings u/s 4-K of the Act would not come to an end of grant of approval to the employer u/s 6-E(2)(b) of the Act. It cannot be said that two proceedings ?one u/s 6-E(2)(b) and other on reference u/s 4-K of the Act cannot be continued at the same time. We do not have the benefit of the viewpoint of the High Court on various grounds stated by the tribunal in the order declining permission to respondent No. 1 to withdraw the approval application. Since we propose to remand the matter to High Court for fresh decision of the writ petition, we refrain from expressing any opinion on the reasons given in the order of the tribunal dated 29th June, 1990 which have not been dealt by the

High Court nor do we consider it appropriate to express opinion at this stage on the consequences of withdrawal of the approval application or prayer for such withdrawal can be declined or not. In short, we keep open all questions considered by the Industrial Tribunal.

7. In view of the aforesaid, we set aside the impugned judgment of the High Court and direct the High Court to decide the matter afresh. We would request the High Court to decide the writ petition preferably within a period of three months. The appeal is accordingly disposed of. Parties are, however, left to bear their own costs.