

(2002) 05 AHC CK 0114
In the Allahabad High Court
Case No : Special Appeal No. 501 of 2002

Hind Lamps Limited

APPELLANT

Vs

Deputy Labour Commissioner, Agra and Another

RESPONDENT

Date of Decision : 06-05-2002

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5
Constitution of India, 1950 — Article 226, 227

Citation : (2002) 3 AWC 1908 : (2002) 94 FLR 203 : (2002) 3 LLJ 472 : (2002) 2 UPLBEC 1672

Hon'ble Judges : Shyamal Kumar Sen, C.J.; R.K. Agrawal, J

Bench : Division Bench

Advocate : V.B. Singh and Vijay Sinha, for the Appellant; B.N. Singh, S.C., for the Respondent

Final Decision : Allowed

Judgement

Shyamal Kumar Sen, C.J.—We have heard Shri V. B. Singh, learned senior counsel assisted by Shri Vijay Sinha, learned counsel for the appellant and Shri B. N. Singh, learned counsel for the respondents.

2. Shri B. N. Singh, learned counsel submits that the present special appeal at the instance of the appellant is not maintainable. According to him, the order dated 27.3.2002, passed by the Deputy Labour Commissioner, Agra, granting permission to the appellant to lay off its workmen is an order of Tribunal. This Court had passed the impugned order in exercise of its power of general superintendence under Article 226 read with Article 227 of the Constitution of India and in view of the provisions of Rule 5 of Chapter VIII of the Allahabad High Court Rules, the special appeal is not maintainable. He relied upon the decision of Division Bench of this Court in the case of Ram Kripal Singh Vs. U.P. State Road Transport Corporation, Lucknow and others,

3. Shri V. B. Singh, learned senior counsel, however, submits that the impugned order passed by the learned single Judge has all the trappings of final order since

the order dated 27.3.2002, passed by the Deputy Labour Commissioner has been stayed and further direction has been issued that a fresh application be made complying with the rules, if any, and if such an application is made, the same shall be disposed of in accordance with law expeditiously. According to him in view of direction issued by the learned single Judge, there remains nothing to be decided in the writ petition and, therefore, the present special appeal is maintainable. He relied upon the decision of Division Bench in the case of State of U. P. and others v. Kumar Renu Tiwari and 29 Ors. (1993) 2 UPLBEC 1325 . He also relied upon another decision of Division Bench of this Court in the case of Y.C. Simhadri, Vice Chancellor, B.H.U. and Others Vs. Deen Bandhu Pathak,

4. In the case of State of U. P. and others v. Kumar Renu Tiwari, this Court has held that where the order under appeal affects the merit of the controversy directly involved in the writ petition itself, It has all the trappings of judgment and appeal is maintainable.

5. In the case of Prof. Y. C. "Simhadri, Vice-Chancellor Banaras Hindu University, Varanasi (supra), this Court following the decision of Hon"ble Supreme Court in the case of Shah Babulal Khimji v. Jayaben D. Kania and another, AIR 1981 SC 1786, after considering Clause 10 of the letters patent, has held that interlocutory order which decides matters of moment or affects vital and valuable rights of the parties and which works serious injustice to the party concerned, is a judgment and as such is appealable.

6. The direction given by the learned single Judge while staying the operation of the order dated 27.3.2002 that fresh application be made complying with the rules and if made, will be disposed of in accordance with law expeditiously in effect holds the earlier application to be not maintainable which affects the vital and valuable right of the appellant. Thus, the order under appeal has all the traits and trappings of a judgment and the present special appeal is maintainable.

7. So far as the decision of this Court in the Ram Kripal Singh (supra) relied by the learned counsel for the respondents is concerned, we find that the said case was concerned with the award passed by the labour court and therefore, under Chapter VIII, Rule 5 of the Allahabad High Court Rules, no appeal lies. The said decision is not applicable to the facts of the present case as in the present case, neither any award nor any order passed by the labour court or the Tribunal has been challenged in the writ petition.

8. Thus, the preliminary objection raised by the learned counsel for the respondent - writ petitioner is overruled.

9. In view of the fact that by staying the operation of the order dated 27.3.2002 and further directing that a fresh application be made, complying with the rules and if such application is made, the same shall be disposed of in accordance with law, expeditiously, the learned single Judge has allowed the writ petition at the initial stage without the counter-affidavit. It is well-settled that passing of Interlocutory order should be always on the consideration of balance of

convenience of the parties. The balance of convenience dictates that in the event, the writ petitioner succeeds, he can be compensated by payment of full amount of wages along with interest. On the other hand, by staying the operation of the order dated 27.3.2002, the appellant has been made to suffer as the permission to lay off has been stayed resulting in taking work from the workmen and paying full wages even when the work is not available.

10. Thus, we feel that the interim order staying the operation of the order dated 27.3.2002, should not have been passed. In any event, the respondent - writ petitioner cannot be allowed to be laid off for a period more than 45 days at a time and they can be compensated for the days when they are laid off by payment of full wages along with interest at the rate of 12% per annum in case they succeed in the writ petition.

11. The order passed by the learned single Judge is set aside. We, however, prepone the hearing of the writ petition. Counter-affidavit be filed in the writ petition by 30.5.2002. Rejoinder-affidavit be filed by 16.5.2002. The writ petition shall be listed before the learned single Judge dealing with such matter on 20.5.2002. It is expected that the writ petition shall be decided as early as possible subject to the convenience of the learned single Judge.

12. With the aforesaid directions, this special appeal is allowed.