
(2007) 02 AHC CK 0244

In the Allahabad High Court

Case No : C.M.W.P. No. 18637 of 1998 and C.M.W.P. No. 46639 of 2000

Hindalco Industries Ltd.

APPELLANT

Vs

Amrit Lal Gupta and Others

RESPONDENT

Date of Decision : 01-02-2007

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 17B, 6E

Citation : (2007) 2 ADJ 672 : (2007) 7 AWC 7510

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : V.K. Upadhya, for the Appellant; P.C. Jhingan, K.S. Bora and Ashwani Mishra and S.C., for the Respondent

Final Decision : Disposed Of

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. Amrit Lal Gupta was an employee of Hindalco Industries. His services were terminated on 30.1.1990 by the employer Hindalco. In respect of the said termination, industrial dispute was raised and State Government referred the matter to the labour court, U. P., Varanasi where matter was registered as Adjudication Case No. 1 of 1991 connected with Misc. Case No. 1 of 1990. Presiding Officer of the labour court gave the award on 13.8.1997 (Misc. Case No. 1 of 1990 was in respect of permission sought by the employer u/s 6 (E) of U. P. Industrial Disputes Act for terminating the services of Amrit Lal Gupta the workman). In the very second paragraph of the award, labour court has mentioned that on 30.7.1997, it had already given decision holding that departmental proceedings were fair and proper. Thereafter, it was mentioned in the said paragraph that after the said decision parties were heard on the question of quantum of punishment.

3. The allegation against the Petitioner was that he had encroached upon some land of the employer and had placed a hut thereupon. The workman raised the

contention that in any case the alleged piece of land belonged to P.W.D. and not to Hindalco Industries. Labour court also found that even after repeated request by the workman no measurements were taken. In the end, the labour court found that termination was illegal. Ultimately the labour court directed reinstatement with full back wages. The first writ petition is directed against the said award.

4. In the first writ petition, on 25.5.1998, an interim order was passed staying the operation of the impugned award provided the workman was reinstated and paid current wages. It was left open to the employer not to take work from the workman. The said interim order was passed in accordance with Section 17B of Industrial Disputes Act.

5. It is not denied that thereafter some payment was made to the workman by the employer but work was not taken from him. On 21.11.2006, a supplementary-affidavit was filed in this writ petition stating therein that from May, 1998 to April, 1999, the workman was paid Rs. 22,477. It has further been stated that thereafter the workman did not come to collect the wages hence salary from May, 1999 to March, 2000 was remitted to the Labour Welfare Commissioner, Kanpur (total Rs. 4,4471).

6. The admitted date of birth of Amrit Lal Gupta is 2.1.1939 as such he attained the age of 58 years on 31.12.1996. According to the employer Hindalco, age of superannuation for its employees is 58 years. An application was filed in the first writ petition on 21.5.1999 seeking modification of interim order dated 25.5.1998 on the ground that the workman had already attained the age of superannuation, i.e., 58 years. On the said application a detailed order was passed on 16.3.2000. Through the said order, Deputy Labour Commissioner, Mirzapur Region, Pipri Sonbhadra was directed to consider and dispose of the objection of employer in that regard in case it was filed within the period of three weeks from the said date.

7. Before passing the order dated 16.3.2000, Deputy Labour Commissioner, Mirzapur Region, Pipri Sonbhadra had issued a recovery certificate on 26.2.2000. In the said order, it was observed that the issue of retirement of workman had been raised by the employer however in view of the award of labour court and interim order of the High Court dated 25.5.1998, the employer was duty bound to pay the wages to the workman. Accordingly order for recovery of Rs. 4,43,660.92 was passed. After order of the High Court dated 16.3.2000 in the first writ petition, the matter was again considered by the Deputy Labour Commissioner by a detailed order dated 31.7.2000 passed in Case No. RD-2 of 1998, Amrit Lal Gupta v. Hindalco Industries and Labour Court Case No. RD-2 of 1998 held that in Hindalco valid age of retirement was 58 years hence after attaining the age of 58 years, i.e., on 31.12.1996 the workman Amrit Lal Gupta was not entitled to any wages. The order dated 31.7.2000 has been challenged by the workman through second writ petition. The Deputy Labour Commissioner in its order dated 31.7.2000 has discussed several authorities on the general

principle of age of retirement including the following:

1. A Rahman v. N.T.C. 1989 (58) FLR 462.

2. M. E. L. Samagri, Allahabad v. S. Ali, 1994 LIC 1279.

8. Labour Court also took into consideration the various orders passed in respect of other employees of Hindalco holding that age of retirement of employees in Hindalco was 58 years. I have discussed in detail the question of retirement of employees in case there is no standing order prescribing the age of retirement in Writ Petition No. 21441 of 1998 decided on 24.11.2006. In the said authority, I have discussed Abdul Rahman v. National Textile Corporation, 1989 (58) FLR 462 , also which was heavily relied upon by the workman before the Deputy Labour Commissioner. Placing reliance upon the Supreme Court authority of Guest, Keen, Williams Private Ltd. Vs. P.J. Sterling and Others, I have held that it is reasonable to hold that in the absence of any standing order, 58 years is the age of retirement. Normally in all the concerns 58 years is the age of retirement. However, in the instant case the workman has been paid wages even after 31.12.1996 (i.e., till March, 2000) when he attained the age of superannuation, i.e., 58 years.

9. Deputy Labour Commissioner rightly repelled the contention of the workman that as certain workmen were permitted to work even after the age of 60 years by Hindalco hence it must be presumed that there was no age of retirement in Hindalco. Deputy Labour Commissioner rightly held that if some workmen are permitted to work even after reaching the age of superannuation it does not mean that the age of superannuation stands extended. I do not find any error in the finding that 58 years is the age of retirement in Hindalco.

10. Nothing was brought on record by the workman before labour court to the effect that he was not doing any thing for gain after his termination of service. In view of this, it was not necessary to award full back wages.

11. Moreover the labour court categorically held that departmental proceedings were quite fair and valid. It only heard the matter on the question of quantum of punishment however instead of awarding any punishment labour court completely exonerated the workman. While hearing on quantum of punishment total exoneration is not permissible. Now the workman has crossed the age of 68 years.

12. Accordingly impugned award dated 13.8.1997 is modified and it is directed that instead of reinstatement with full back wages the workman is entitled to consolidated damages/ compensation of Rs. 70,000. The amount of Rs. 22,000 and odd deposited by the employer before Labour Welfare Commissioner, Kanpur shall at once be paid to the workman. Rs. 22,477 have already been paid by the employer to the workman. The remaining amount of Rs. 25,029 shall be paid by the employer to the workman within three months from today failing which 1% per month interest shall be payable thereupon till actual payment.

13. Both the writ petitions are accordingly disposed of.