

(1991) 12 AHC CK 0043
In the Allahabad High Court
Case No : C.M.W.P. No. 659 of 1979

Hindustan Aluminium Corporation Ltd.	APPELLANT
Vs	
Industrial Tribunal	RESPONDENT

Date of Decision : 20-12-1991

Acts Referred:

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

Citation : (1992) 65 FLR 296 : (1993) 2 LLJ 74

Hon'ble Judges : R.R. Mishra, J

Bench : Single Bench

Advocate : Chand Kishore, for the Appellant;

Final Decision : Dismissed

Judgement

R.R. Mishra, J.—By means of the present writ petition the petitioner has challenged the award dated August 28, 1978 passed by the Industrial Tribunal. The petitioner is a Company and has its aluminium factory situated at Renukoot in the district of Mirzapur. It had in its employment one Sri Deo Narain Singh, the respondent No. 2, who had joined the service of the company on December 13, 1967. Since the year 1974 he was working in the Rolling Mill Section of the Company. It appears that he was an accused in a murder case and was on April 16, 1975 arrested by the police and sent to Jail. The said workman, Shri Deo Narain Singh, the respondent No. 2 (hereinafter referred to as the workman) continued to be in Jail till August 25, 1976 when he was released on bail. In so far as the criminal case is concerned, the workman was ultimately acquitted. Meanwhile in so far as the petitioner's company (hereinafter referred to as the employers) are concerned, they found that the workman was absent from duty since April 16, 1975. Therefore, a registered letter dated July 12, 1975 was sent at the address of the workman and it was stated in that letter that the workman was continuously absent from duty without any intimation and that he was required to report for duty on or before July 22, 1975 and that if he did not

report for duty by the said date it would be understood that he was no more interested in the job and his name would be struck off from the muster roll of the company, since nothing was heard from the workman, therefore, on July 24, 1975 the Personnel and Industrial Relations Manager, who was the competent officer, passed the following order:

"Dy. P.M.

His name be struck off since he has failed to report. Sd/- L.M. Shandlay,
July 24, 1975."

2. In compliance of the said order on the same date service termination slip was prepared, signed by the aforesaid Personnel and Industrial Relations Manager and sent to the workman by registered cover. Thereafter, the workman moved an application u/s 6-F of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the Act). It has been averred in the writ petition that before the Tribunal two grounds were urged by the workman. Firstly, that the order was invalid since the employers had not obtained the permission or approval of the Tribunal u/s 6-E (2) of the Act because of the fact that the dispute concerning the workman was already pending before the Tribunal on the said date. Secondly the order of termination passed by the employers was invalid because in the eyes of law it amounted to dismissal, namely, for being absent from duty without leave. According to the workman, this could not be done without an enquiry being held.

3. The Industrial Tribunal after hearing the parties has in the impugned order recorded the following findings:

"(a) The order of the employers dated July 24, 1975 terminating the services of the workman Deo Narain Singh was arbitrary and illegal since it was a punishment for misconduct for absence from duty imposed without recourse to disciplinary proceedings;

(b) The employers were under obligation to secure approval of the Tribunal since an adjudication Case No. 75/71 in which the workman was a party was pending adjudication before the Tribunal on the date on which the employers proceeded to pass order of termination....."

In view of the said findings the Tribunal has in the said impugned order quashed the order of termination dated July 24, 1975 passed by the employers and held that the workman shall be deemed to continue in service and entitled to i payment of full wages till the date of his being allowed to resume duty as if the order dated July 24, 1975 had not been passed.

4. The first submission made by Sri Vinod Swarup, learned counsel appearing for the petitioner, is that the Tribunal is in error in holding that there was contravention of Section 6-E of the Industrial Dispute Act and that no permission or approval as stated by the Tribunal was necessary. Hence, according to the petitioner, the application made by the workman u/s 6-E of the Act was not

maintainable. To examine this submission a few more facts, which have been brought on record by way of supplementary affidavit, have to be considered. In the supplementary affidavit dated July 24, 1991 filed in this Court, a copy of the order dated May 6, 1991 passed by the Industrial Tribunal has been annexed. From a perusal of the same it appears that with regard to the same dismissal order dated July 24, 1975 on an earlier occasion, i.e. on December 22, 1976 Sri D.N. Singh, the workman had moved an application before the Tribunal stating that by the said dismissal order dated July 24, 1975 provisions of Section 6-E of the Industrial Disputes Act have been violated and that the complaint be adjudicated upon which was registered on January 3, 1977. After the reply of the employers was filed a preliminary issue was raised by the employers that there was no prima facie case made out u/s : 6-E of the U.P. Industrial Disputes Act in as much as there was no pendency of any proceeding before the Tribunal involving the workman, Sri D.N. Singh, and as such the complaint is not adjudicable. The Tribunal entered into the said controversy and gave an award on August 17, 1972. After publication, the said award became enforceable on February 17, 1973. The said award was challenged in a writ petition. The High Court, however, remitted the dispute to the Labour Court again by its judgment dated March 13, 1975. The operative portion of the decision of this Court was as follows:

"In respect of dispute No.5, the Labour Court will after giving the parties fresh opportunity of being heard, decide the dispute afresh in accordance with law."

5. Accordingly, in compliance of the aforesaid direction of the High Court, the said dispute, which was already registered as Adjudication Case No. 75 of 1971, was re-registered before the Industrial Tribunal and on the date is pending before the Tribunal. The contention of the employers before the Tribunal was that Section 6-E of the U.P. Industrial Disputes Act, 1947 provides that proceedings before a Tribunal shall be deemed to have concluded on February 17, 1973 when the award became enforceable. The contention of the representative of the workman is that this construction is untenable because after the High Court had remitted back the matter on Issue No. 5 to the Tribunal for decision afresh the proceeding before the Tribunal shall be deemed to have been revived and to have recommenced Section 5-D of the U.P. Industrial Disputes Act, 1947 mentions about the commencement of pendency before the Labour Court or tribunal. The crucial date for the purposes of adjudication of the complaint is July 24, 1975, on which date the employers took action for dismissal of the workman. The tribunal held that the construction sought to be put on the wording "commencement of the proceedings" occurring in Section 6-D, viz. that the order of remand by the High Court did not result in the revival of the proceedings before the Tribunal, is neither logical nor sustainable. It further held that the proceedings before the Industrial Tribunal revived and, therefore, the preliminary objection raised by the employers that prima facie no proceedings were pending before the tribunal in this respect was overruled. Admittedly this order dated May 6, 1978 had become final between the parties in as much as the employers did

not carry the matter further. In this view of the matter, in my opinion, since this controversy between the parties had already been settled by the Tribunal on May 6, 1978 and the result thereof was that the said proceedings were already pending before the Tribunal and, in my opinion, the Tribunal was right in holding that the impugned order of dismissal was passed without securing the approval of the tribunal is correct and in accordance with law. The first submission made on behalf of the petitioner, therefore, has got no force.

6. The second submission made by the learned counsel for the petitioner is with regard to the effect of the remand order passed by the High Court on March 13, 1975. His contention is that after the remand, a fresh case came into existence and the same had got to be registered as per scheme envisaged by the U.P. Industrial Disputes Act. I, however, do not agree. Section 6-D of the U.P. Industrial Disputes Act, 1947 does speak of the commencement and conclusion of the proceedings. The said Section 6-D is reproduced below:

"6-D: Commencement and conclusion of proceeding. -Proceedings before a Labour Court or Tribunal shall be deemed to have commenced on the date of reference of a dispute to adjudication, and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable u/s 6-A."

7. Since in the present case, the award made by the Tribunal was set aside by the High Court and the case was remitted back, the effect of the same shall be that in the eyes of law said proceeding or the reference of dispute to be adjudicated upon was not deemed to have concluded but to have continued. Admittedly, it was a reference of the dispute and the proceedings had commenced and because of the order of remand passed by the High Court, the said proceedings did not and could not conclude but remained pending and, therefore, it cannot be said that because of the remand order of the High Court a fresh reference has come into existence after remand order. To my mind, the reference of the dispute, which was already pending before the date of the alleged award, continued to be so as a result of the order of remand of the High Court and in the eyes of the law it was never terminated and that after the passing of the remand order the said reference revived. In my opinion this was the effect of the remand order passed by the High Court. This second submission made on behalf of the petitioner, therefore, also has got no force.

8. The third submission made on behalf of the petitioner is that the tribunal ought to have gone into the merit and the validity of the order dated July 24, 1975. A perusal of the impugned award, however, shows that the Tribunal has, in fact, gone into the validity of the said order and held in its concluding portion that the order dated July 24, 1975 terminating the service of the workman, was arbitrary. A challenge has been also thrown by the learned counsel for the petitioner that the Labour Tribunal ought to have gone into the question of termination as per Standing Order No. 22. From a perusal of award, it, however, appears that this point was not taken up by the employers before the Labour Tribunal. The same cannot be gone into by this court now only on grounds of

challenge raised in the present writ petition as follows:

"(a) Because the respondent No. 1 has clearly erred in law in overlooking the facts that it is none of the duties of the employer to wait for an employee to return to his duty for an indefinite period of time without his sending any intimation to the employer asking for leave or intimating his whereabouts.

(b) Because the impugned order passed by the employer was not an order terminating the service of respondent No. 2 but merely striking off his name from the muster roll treating that he had been absent from his job.

(c) Because no order of dismissal has been passed against the workman, the provisions of Section 6-E (ii) of the U.P. Industrial Disputes Act were riot attracted to the facts of the case.

(d) Because the findings recorded by respondent No. 1 that the employers must have known about the whereabouts of respondent No. 2 is clearly conjectural and is not based on any evidence.

(e) Because the entire record of respondent No. 1 is merely passed on surmises and conjectures."

A reading of the above grounds shows that the writ petition is confined only to aforesaid grounds (a) to (e). At the time of hearing learned counsel for the petitioner has not pressed ground (a) above and has relied upon the remaining grounds.

9. From a perusal of the above and on the facts and circumstances of the case, in my opinion, the Labour Court has gone into the merits of the termination order and the petitioner, who are employers, have also challenged the aforesaid decision regarding the merits of the said order in the writ petition. It is abundantly clear that in a writ petition under Article 226 of the Constitution of India, this Court does not sit in an appeal against the order of the Labour Court and is not in a position to re-appreciate or re-appraise the evidence on record before the Labour Court. Learned counsel for the petitioner has also, however, during the course of his submissions has not been able to point out and satisfy me that the said findings recorded by me Labour Court holding that the termination order was invalid was vitiated in law in any matter whatsoever.

10. The last submission made by the learned counsel for the petitioner is that the workman cannot get wages for the period he has not worked. A perusal of award, however, shows that the Labour Court has only awarded wages till the date of dismissal only. This contention also, therefore, is wholly devoid of merit.

11. Thus all the submissions made by the learned counsel for the petitioner fail.

12. The writ petition is accordingly dismissed with costs. The interim order, if any, is hereby vacated.