
(2015) 02 AHC CK 0092
In the Allahabad High Court
Case No : C.M.W.P. No. 11369 of 2015

Hotel Yamuna View Ltd.

APPELLANT

Vs

Presiding Officer, Industrial Tribunal (4) and Others

RESPONDENT

Date of Decision : 25-02-2015

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 5-C

Citation : (2015) 4 ADJ 370 : (2015) 3 ALJ 508 : (2015) 3 AWC 2351 : (2015) 145 FLR 611

Hon'ble Judges : Surya Prakash Kesarwani, J

Bench : Single Bench

Advocate : Piyush Bhargava, for the Appellant; Gaurav Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Surya Prakash Kesarwani, J.—Heard Sri Piyush Bhargava, learned Counsel for the petitioner and Sri K.R. Rai, learned Additional Chief Standing Counsel for the respondent No. 1 and Sri Gaurav Singh, learned Counsel for the respondent No. 2. This writ petition has been filed belatedly challenging the impugned award dated 26th November, 2013 passed by the respondent No. 1 in Adjudication Case No. 31/2011 and the orders dated 12th December, 2007 and 17th October, 2012 passed by the Respondent No. 1.

2. Learned Counsel for the petitioner submits that the impugned award has been passed without compliance of the provision of section 5-C of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"), inasmuch as, the application of the petitioner for summoning witnesses was not allowed. The enquiry is wholly valid, and therefore, respondent No. 1 was not justified in passing the impugned award. The respondent No. 2 himself refused to take assistance of any co-workman. The request of the respondent No. 2 for being represented through an outsider Sri I.R. Hamilton, was not allowable as per Clause 16(e) of the standing order which provides that the workman shall be

entitled to be represented by a co-workman of the establishment and will not have any right to be assisted by an outsider. He submits that principles of natural justice have been followed, as evident from cross-examination of the workman. He submits that the respondent No. 2 himself did not cross-examine the witnesses of the petitioner. He submits that the petitioners are ready to comply with the order to reinstate the respondent No. 2, but despite the letter (Annexure-28) and the letter dated 27th January, 2015 (Annexure No. 29), the respondent No. 2 did not join the duties. He submits that the respondent No. 2 is merely interested in extracting money from the petitioner's management and for that reason, he is not joining, although petitioners are ready to comply with the award. In support of his submissions, he relied upon the following judgments:--

(i) Rajendra Kumar Sharma Vs. State of Rajasthan and Others, (2000) 87 FLR 109 : (2000) 2 LLJ 1466 : (2000) 3 WLC 6 : (2001) 3 WLN 70 .

(ii) Saran Motors Private Ltd., New Delhi v. Vishwanath and another, 1964(9) FLR 7 (SC).

(iii) Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi, (1992) JT 539 Supp : (1993) 1 LLJ 907 : (1992) 3 SCALE 518 : (1993) 2 SCC 115 : (1992) 3 SCR 559 Supp .

(iv) State Bank of India and Others Vs. Narendra Kumar Pandey, (2013) 2 ABR 787 : (2013) 2 AD 8 : AIR 2013 SC 904 : (2013) 136 FLR 704 : (2013) 1 JT 409 : (2013) LabIC 957 : (2013) 2 LLJ 1 : (2013) 1 LLN 349 : (2013) LLR 211 : (2013) 1 SCALE 385 : (2013) 2 SCC 740 : (2013) 1 SCC(L&S) 459 : (2013) 1 SCT 745 : (2013) 114 SLJ 331 .

3. Learned Additional Chief Standing Counsel supports the impugned award.

4. Learned Counsel for the respondent No. 2 submits that the impugned award has been passed well in accordance with law and it does not suffer from any illegality or infirmity. He submits that the petitioners have arbitrarily and illegally terminated the services of the respondent No. 2. The entire enquiry proceeding was conducted with a biased mind and by an unauthorized person, i.e. Sri Anil Kumar Agrawal, Advocate, inasmuch as Clause 16(b) of the certified standing order specifically provides that if the workmen's explanation is not satisfactory then inquiry will be held by an officer superior to him. He submits that since, the standing order specifically provides for enquiry by a superior officer, and therefore, the enquiry held by an outsider was wholly without authority of law. He submits that the petitioners have violated the principles of natural justice with regard to which findings of fact have been recorded in the order dated 12.12.2007 as well as in the impugned award. He submits that numerous opportunities were afforded to the petitioners by the respondent No. 1, but they failed to adduced any evidence, and therefore, the impugned award is wholly correct. He submits that the writ petition is highly belated and hit by principle of laches. He submits that the petitioners themselves accepted the award and learned Counsel for the petitioner has also stated before this Court that the

petitioners are ready to comply with the impugned award and are ready to reinstate the respondent No. 2. He submits that the letter filed as Annexure No. 28 and the letter dated 27th January, 2015 filed as Annexure No. 29 itself show that the petitioners have accepted the award, and therefore, he cannot be allowed to challenge the award. He submits that the writ petition is hit principle of approbate and reprobate. He submits that the fact is that although the petitioners have accepted the award and are ready to give joining to the respondent No. 2 but they did not permit the joining, when the respondent No. 2 appeared on 7.6.2014 and 9.6.2014 before the petitioners. On 9.6.2014, he reported for joining in writing to the General Manager of the petitioner, which was duly acknowledged who directed the petitioner not to enter into the lobby and to remain with the doorman out side the hotel. He submits that under the circumstances, the respondent No. 2 wrote a letter on 9th June, 2014 to the Deputy Labour Commissioner, Agra and on that the Deputy Labour Commissioner directed the Labour Enforcement Officer, Agra, that the joining of the respondent No. 2 be ensured. He submits that the respondent No. 2 also written a letter dated 16.6.2014 requesting the petitioner to take him on duty on the post on which, he was working.

5. He further submits that the respondent No. 2 is ready to join duty, and therefore, the petitioner may be directed to permit the respondent No. 2 to join the duty in compliance to the award which they have accepted.

6. I have carefully considered the submissions of learned Counsel for the parties.

7. Briefly stated the facts of the present case are that the petitioners terminated the services of the respondent No. 2 on 7.10.2003. An industrial dispute was raised by the respondent No. 2 and a reference was made by the competent authority vide order dated 11.5.2004 which was registered as Adjudication Case No. 124 of 2004. The Presiding Officer, by order dated 12.12.2007 held that the domestic enquiry is not correct and found it to be against the standing order and in violation of principles of natural justice.

8. Against this order, the petitioner preferred a Writ Petition No. 14522 of 2008 which was dismissed by order dated 17.10.2008. Thereafter, the petitioner did not adduce any evidence, despite number of opportunities offered by the prescribed authority, and instead, he moved an application for transfer of the case from the Court of Prescribed Authority before the Labour Court, U.P., Agra and on that the case was transferred to the respondent No. 1 by order of the competent authority dated 31st January, 2011. Thus, the matter came up for hearing before the respondent No. 1, Prescribed Authority and it was renumbered as Adjudication Case No. 31/2011.

9. In the order dated 12.12.2007 the prescribed authority found the domestic enquiry to be wholly arbitrary and illegal on the grounds that as per standing order only an officer superior to the workman can be appointed as an enquiry officer, and therefore, the appointment of an outsider as enquiry officer wholly

illegal. No evidence was produced before the enquiry officer on the basis of which it can be said that the demand letter was forcibly signed by the employees. In the complaint letters there is no reference of any date of the alleged demand letter. Vide letter dated 9.5.2003 the respondent No. 2 demanded the copies of the documents on the basis of which the charge-sheet was prepared and the names of witnesses, but the documents and list of witnesses were not given. No misconduct is proved from the complaints and no action was taken by the petitioners on the allegations made by the respondent No. 2 against the enquiry officer. The respondent No. 2 sought permission to take assistance of one Sri I.R. Hamilton, but it was not permitted. The statements of petitioner's witnesses, namely, Nandeshwar Giri and Vimal Joshi were recorded by the Enquiry Officer behind the back. Briefly on these findings, the Prescribed Authority came to the conclusion that enquiry was not fair and legal.

10. In the impugned award dated 26th November, 2013 the respondent No. 1 has recorded findings of fact that from perusal of the demand letter, it is evident that it does not bear any demand of the respondent No. 2. No evidences whatsoever were filed by the petitioners before the respondent No. 1 in support of the charges levelled against the respondent No. 2. The charges have not been proved by any documentary or oral evidence. The respondent No. 1, while passing the impugned award has also observed that number of opportunities were afforded to the petitioners to adduce evidences to prove the charges, but the petitioners did not turn up. The respondent No. 1 observed/held in paragraph Nos. 2.6, 3 and 4 of the impugned award as under:--

11. By the impugned award, the respondent No. 1 rejected the claim of the respondent No. 2 for back wages on the ground that the respondent No. 2 could not establish that he was not in any gainful employment. However, the respondent No. 2 was directed to be reinstated in service.

12. In paragraph No. 55 of the writ petition the petitioners have quoted para 16(b) of the Standing order as under:--

"(b) Workmen who have committed the misconduct will be inflicted upon with the punishment charge-sheet has to be given to him, writing a recital of the specific misconduct, asking him within a reasonable time to state whether he wishes to take assistance of co-worker cross-examine, any witness, documents in defence. If the workmen's explanation is not satisfactory then inquiry will be held by an officer superior to him."

13. In view of the clear provision in the aforequoted standing order, it is evident that if the workman's explanation is not satisfactory then enquiry will be held by an officer superior to him. The use of the word "will" clearly indicates that enquiry can be held only by an officer superior to the workman and not by an outsider.

14. Learned Counsel for the petitioners has relied upon the judgment of Hon'ble Supreme Court in the case of Indian Telephone Industries Ltd. (supra) in which

Hon"ble Supreme Court considered the provision of another standing order and held that there is no other prohibition about choice of the person to be appointed as an Enquiry Officer inasmuch as one or more than one person may be appointed as enquiry officer other than from security department. In the present set of facts, the standing order in question contains a specific provision that if workman's explanation is not satisfactory then enquiry will be held by an officer superior to him. The aforementioned position with regard to the standing order being subject matter of consideration by Hon"ble Supreme Court in the case of Indian Telephone Industries Ltd. (supra) is evident from paragraph Nos. 3 and 4 of the judgment which are reproduced below:

"3. Standing Order 16(2)(b) is as under:

16. Procedure for Punishment:--(1)(2)(a)(b) For major punishments listed in para 15.2 before disciplinary action amounting to postponement of annual increment for more than three months or reduction in the grade or revision or demotion to a lower grade or dismissal is taken, action on the following lines will be taken by the Manager:

(a) * * *

(b) On receipt of the explanation of the employee or on expiry of the time limit whichever is earlier or under special circumstances at the time of issuing the charge-sheet, the Manager shall appoint an Enquiry Officer or constitute an Enquiry Committee consisting of one or more than one person, other than from Security Department....."

4. It is clear from the above provision in the Standing Order that the requirement is to appoint an Enquiry Officer who is not from the Security Department. There is no other prohibition about choice of the person to be appointed Enquiry Officer in the above provision. The reason for excluding a person belonging to the Security Department is obvious. Such a person who is in the Security Department may have some interest in the successful conclusion of the domestic inquiry against the delinquent employee. His exclusion, therefore, is to eliminate the likelihood of any bias. Such a provision cannot be construed to mean that a person who is not even an employee in any other department and being an outside having no interest in the outcome of the domestic inquiry is also to be excluded. The view taken by the High Court is, therefore untenable."

15. For the reasons aforementioned, considering the specific provision of Clause 16(b) of the certified standing order in question, the judgment of Hon"ble Supreme Court in the case of Saran Motors Private Ltd. (supra) is also distinguishable on the facts of the present case.

16. The reliance placed by the learned Counsel for the petitioner on the judgment in the case of Management of National Seeds Corporation Ltd. v. K.V. Rama Reddy and the provision of Clause 16(e) of the certified standing order as quoted in para 61 of the writ petition shows that the workman will not have any

right to be assisted by an outsider.

17. The findings recorded in the impugned award are findings of fact. Petitioners themselves could not adduce any evidence in support of charges levelled against the respondent No. 2, even though, the date for evidence of the petitioners was being continuously fixed since 25th March, 2008.

18. It is also relevant to note that this writ petition has been filed by the petitioner belatedly to challenge the impugned award dated 2nd November, 2013 published on 21st May, 2014 and the order dated 7th October, 2012, without any proper explanation for delay.

19. There is another aspect. It is evident on record from the undated letter filed as Annexure No. 28 and the letter dated 27th January, 2015 of the petitioner (Annexure No. 29) that the petitioners agreed to reinstate the respondent No. 2 which is the only relief granted by the impugned award to the respondent No. 2. Learned Counsel for the petitioner has also stated before this Court that the petitioners are agreed to comply with the award. Thus, there remains no grievance of the petitioner against the impugned award, inasmuch as, the petitioners are ready to reinstate the respondent No. 2 which is only relief granted in the impugned award. By the impugned award back wages has not been granted to the respondent No. 2. Under the circumstances, the petitioners cannot be allowed to take contrary stand by stating that on the one hand petitioners are ready to comply with the impugned award and on the other hand to challenge the award. Under the circumstances, the writ petition is itself not maintainable. In view of the above discussions, the writ petition fails and is hereby dismissed.