

(2009) 01 AHC CK 0015
In the Allahabad High Court
Case No : C.M.W.P. No. 28911 of 1994

Jai Karan Singh

APPELLANT

Vs

Authority Concerned, Labour Court (IInd), Kanpur and
Another

RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47

Citation : (2010) 124 FLR 13

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : N.D. Shukla and Bhoopendra Nath Singh, for the Appellant;

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Heard Shri Bhoopendra Nath Singh, learned Counsel for the petitioner.

2. The petitioner-workman has prayed for setting aside the award of the Labour Court-II, U.P. Kanpur dated 13.12.1993 published on 1.4.1994 awarding compensation of Rs. 12,000/- to him in lieu of reinstatement in employment.

3. Brief facts giving rise to this writ petition are that the petitioner-workman was employed in the Ring Frame Department of the M/s U.P. Cooperative Spinning Mills Ltd. (in short the employer) as "Three Side Piecer". He met with an accident on 10.12.1982 in which three fingers of his right hand were amputated. When he went to attend to his duties, after he was given the fitment certificate in July, 1983, he was asked to attend to the duties as "Bobbin Cleaner". He was, however, paid the salary of "Three Side Piecer". Later his wages was deducted on which he initiated proceedings under the Payment of Wages Act demanding wages as Three Side Piecer. He was, therefore, asked to work as Three Side Piecer. When he requested to continue to work as Bobbin Cleaner as he could not perform the duties with his amputated fingers and to be paid as Three Side Piecer,

the employer did not allow him to work and stopped noting his attendance in the attendance register w.e.f. 4.3.1989, giving rise to the reference made by the State Government on 8.8.1990 to the Labour Court, Kanpur to adjudicate as to whether the termination of Shri Jai Karan Singh son of Shri Angad Singh as Three Side Piecer on 4.3.1989 by the employer was proper and valid and the reliefs, which the workman is entitled to receive from the employer.

4. The employer challenged the validity of the reference and stated that the workman has demanded the wages of "Three Side Piecer". When he was asked to work as Three Side Piecer, he stopped attending to work w.e.f. 4.3.1989. Several notices were sent to him and thereafter he was given a charge-sheet. He did not participate in the proceedings. The employer denied that he was stopped from attending the work w.e.f. 4.3.1989.

5. Shri Jai Kishan Singh, the petitioner examined himself as DW-1 and filed documentary evidence. In reply Shri Subhash Chandra, the clerk was examined by the employer as EW-1 and that documents were filed as Ex. E-I to E-31. The Labour Court found that the workman met with an accident on 10.12.1982 in which he lost his three fingers. When he became fit, he was asked to work on some other work but was paid the wages at old rate. When his wages were reduced at Rs. 65/- from February, 1985, he made a complaint to Labour Inspector. After the amputation of his fingers, he was unable to work as Three Side Piecer and had requested for lighter duties. He, however, was not allowed to work and was thereafter stopped from coming to duties. Shri Subhash Chandra, EW-1 stated that bobbin work was closed in 1985-86 and thereafter stated that it was closed in 1989. The Prescribed Authority, Payment of Wages Act by his order dated 25.10.1989 rejected the petitioner's claim to be paid as Three Side Piecer. The Labour Court found that the workman could not perform the duties as Three Side Piecer due to amputation of his fingers and thus he could not be held guilty of refusing to work. The workman did not stop coming to the factory to attend to his duties and that he cannot be held guilty of failing to report the duties after 4.3.1989. If the workman is asked to perform the work, which he is unable to perform, his services could not be terminated. The Labour Court, however, found that the workman is getting Rs. 400/- as pension from the Employees State Insurance Corporation and thus instead of reinstatement if he is paid Rs. 12,000/-, he will be adequately compensated.

6. Shri Jai Karan Singh, the workman was 50 years old in the year 1985. By now he would have retired from employment.

7. The workman suffered injuries while operating the machines in the factory. With the loss of his three fingers he could not have performed the work as Three Side Piecer. The employer realised his plight and allowed him to work as Bobbin Cleaner. The employer, thereafter, was not justified in reducing his wages. The findings that he was prepared to work and was not allowed to work on the alternate duties of Bobbin Cleaner as the work was not available, do not suffer from any illegality. A workman, who had suffered disability while working in the

establishment, requires special consideration. He should not have been stopped from attending to work only on the ground that the work of Bobbin Cleaner had come to an end in the year 1985-86. He should have been asked to do some other work.

8. Shri B.N. Singh has relied upon section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which provides for non-discrimination in Government employment on the ground of disability during his service. The U.P. Cooperative Spinning Mills Ltd. is wholly owned and controlled by the State Government. In *Umesh Nagpal v. State of Haryana* 1994 (68) FLR 1191 (SC.), *Kunal Singh v. Union of India* 2003 (96) FLR 990 (SC) : 2003 (4) AIC 514, and in *Bhagwan Das and another v. Punjab State Electricity Board* 2008 (116) FLR 627 (SC) : 2008 (62) AIC 91 : 2008 (70) ALR 47 (Sum.), the Supreme Court has expressed concern for the disabled and for the enforcement of their rights provided to the disabled u/s 47 of the Act. In this case the workman did not suffer from disabilities as defined in section 2 (i) of the Act, nor the Act of 1995 is applicable, as it came into force on 1.1.1996. The principles underlying the statute will, however, be attracted. A disability acquired for a particular description of a job during the course of employment should not be a ground for reduction of wages and termination of services.

9. The Labour Court has not given any reasons for awarding compensation of only Rs. 12,000/- except the fact that he is getting Rs. 400/- as pension for loss of fingers from the Employees State Insurance Corporation. The employer did not challenge the award, and has thus acquiesced to the findings given by the Labour Court. The employee was 45 years old, when his services were terminated. He had about 15 years left to work. A sum of Rs. 75,000/- at the rate of Rs. 5,000/- per year, for loss of wages, would be just and fair compensation to the workman.

10. The writ petition is partly allowed enhancing the compensation to Rs. 75,000/-. The amount shall be paid to the workman in three months.