
(1995) 11 AHC CK 0109
In the Allahabad High Court
Case No : C.M.W.P. No. 14416 of 1981

Jain Shudh Vanaspati Ltd.

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 09-11-1995

Acts Referred:

Employees State Insurance Act, 1948 — Section 73
Uttar Pradesh Industrial Disputes Act, 1947 — Section 2

Citation : (1996) 2 LLJ 950

Hon'ble Judges : Binod Kumar Roy, J

Bench : Single Bench

Advocate : Sudhir Chandra and Dinesh Dwivedi, for the Appellant; S.C., R.C. Singh and Santosh Kumar Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Binod Kumar Roy, J.—The Petitioner prays to quash (i) the order of reference of the appropriate Government (State of U.P. Respondent No. 4) as contained in Annexure-1 and (ii) the award dated 14th September, 1981 of the Presiding Officer, Labour Court, Ghaziabad (Respondent No. 2) in Adjudication Case No. 151 of 1979.

The Facts:

2. Respondent No. 3 Kartar Singh Tyagi was employed as an Apprentice-Chemist in the establishment of the Petitioner. On 7.7.1978, he did not report to work. Respondent No. 3, on the other hand, took up a plea that on account of ailment of his wife he went to his home to attend her after sanction of leave from 7.7.1978 to 27.7.1978 by the Chief Chemist Sri K.K. Singh and that on 28.7.1978 he himself fell ill and his illness continued till 3.8.1978 and got himself treated from 28.7.1978 to 3.8.1978 in the Employees' State Insurance Dispensary, Kiran Colony, Ghaziabad and after obtaining medical certificate on 4.8.1978, he went to join his duties but was told by the Time Keeper that he has been removed from service by the Petitioner who also refused to accept the

medical certificate. On 4.8.1978, he informed the Conciliation Officer, Ghaziabad of the aforementioned facts by telegram and on 5.8.1978 the management of the establishment by a registered letter and requested to continue his employment. Reference was made by Respondent No. 4 to Respondent No. 1 and the following findings were recorded in the impugned award: (i) Labour court is not competent to adjudicate the validity of reference though made in regard to only one workman besides in view of Section 2(a) of the U.P. Industrial Disputes Act termination of even an individual workman will also be an industrial dispute, (ii) Both sides accept that the workman was on sanctioned leave on 5.7.1978 and 6.7.1978 was his weekly leave who may differ on facts in regard to 7.7.1978 onwards. (iii) On 7.7.1978, the application dated 7.7.1978 of the workman for grant of leave of 22 days duly recommended by Sri K.K. Singh, the Chief Chemist, who was his departmental head, was received by the Manager and it was the Manager's responsibility to obtain an order of either according the leave prayed for or its rejection by the management and communicate the fate of this application to the workman inasmuch as normally the applications for grant of leave supported by the recommendation of the departmental head are accepted. Accordingly, to treat the absence of the workman without leave from 7.7.1978 to 27.7.1978 was not proper. The workman had also applied for grant of leave on account of his own ailment from 28.7.1978 to 31.7.1978 which was also proved by the medical certificate granted by the Employees State Insurance Dispensary and received by the Manager. According to Section 73 of the Employees' State Insurance Act, 1948 if a workman is on leave due to for treatment of his ailment, his services cannot be terminated. Accordingly striking of the name of the workman on 31.7.1978 from the register by the management was illegal and improper, (iv) The provisions of Clause 10(j) of the Standing Orders are not applicable because the departmental head had accorded approval for grant of leave of the workman, which is ordinarily treated to be granted. (v) The management has also failed to prove that the workman was otherwise gainfully employed from 31.7.1978. (vi) For the reasons aforementioned, termination of the services of the workman was improper and illegal and thereby the management is being directed to appoint the workman in continuity of his earlier service and pay his full wages till 31.7.1978. (vii) The management is also directed to pay a cost of Rs. 100 to the workman.

The submissions:

3. Mr. Dinesh Dwivedi, learned Counsel appearing in support of the Rule very fairly pressed only one point, namely, that in view of the decision of the Supreme Court in *D.K. Yadav v. J. M.A. Industries Ltd.* 1993 (67) FLR 111, as the workman had admittedly not worked at all from 7.7.1978 till the passing of the impugned order, the labour court should have granted only 50% of the back wages.

4. Sri Santosh Kumar Misra, learned Counsel appearing on behalf of the workman-Respondent No. 3, on the other hand, contended that the sole submission made by Sri Dwivedi is not sound inasmuch as in *D.K. Yadav*, the

Supreme Court had awarded only 50% of the back wages to the workman after finding that the workman was to blame himself for the impugned action whereas in the instant case, on the findings of fact recorded by the labour court, which were not shown to be vitiated on account of any error, the fault lay with the management and accordingly, the impugned award cannot be said to be vitiated and the writ petition is liable to be dismissed with cost.

My Findings:

5. The relevant part of the judgment in D.K. Yadav (supra), relied upon by Mr. Dwivedi, reads thus--

The conclusion leads us to the question as to what relief the Appellant is entitled to. The management did not conduct any domestic enquiry nor give the Appellant any opportunity to put forth his case. Equally the Appellant is to blame himself for the impugned action. Under those circumstances, 50 per cent of the back wages would meet the ends of justice. The appeal is accordingly allowed. The award of the labour court is set aside and the letter dated December 12, 1980 of the management is quashed. There shall be a direction to the Respondent to reinstate the Appellant forthwith and pay him back wages within a period of three months from the date of the receipt of this order. The appeal is allowed accordingly. The parties would bear their own cost.

(Emphasis supplied).

A bare perusal of the aforesaid passage shows that only 50% of the back wages was allowed by the Supreme Court after recording a finding that the workman was also equally to be blamed for the impugned action.

In the instant case, however, there is no finding against the workman that he was also equally to be blamed for the impugned action. On the other hand, on the findings of fact recorded by the Tribunal, it was the management who was to be blamed and not the workman. Thus, D.K. Yadav (supra) does not support the solitary submission made by Mr. Dwivedi.

6. Since the solitary submission made by Mr. Dwivedi has failed, there is no merit in this writ petition.

7, Accordingly tills writ petition is dismissed with cost. Hearing fee quantified to the tune of Rs. 250.