
(2008) 09 AHC CK 0178
In the Allahabad High Court
Case No : Special Appeal No. 1085 of 2008

Jaswant Singh

APPELLANT

Vs

Labour Commissioner, Kanpur and Others

RESPONDENT

Date of Decision : 09-09-2008

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 3(b)

Citation : (2008) 09 AHC CK 0178

Hon'ble Judges : V.M.Sahai, J and Pankaj Mithal, J

Final Decision : Allowed

Judgement

1. The appellant claims himself to be a workman of M/s Gangeshwar Limited, Deoband, now Triveni Engineering Industries Limited respondent No. 2. He was transferred to Ram Kola Chini Mill and for not joining at the transferred place his services were terminated. According to the appellant under the Standing Orders there is no provision for such transfer and therefore his transfer is against law. Accordingly, his services could not have been terminated for not joining at the transferred place. He therefore challenged the transfer order and the termination order by filing writ petition No. 8630 of 2008. The writ petition was disposed of vide judgment and order dated 19.2.2008 with liberty to the appellant to move a representation before the Labour Commissioner, Kanpur, U.P., under Clause "W" of the Standing Orders applicable which was directed to be decided within a period of three weeks. The representation of the appellant in pursuance of the above has come to be decided by the Labour Commissioner, U.P., vide order dated 14.5.2008. Before the Labour Commissioner a serious dispute was raised as to whether the appellant who was appointed as a Ganna Adhikari was a workman or not. The Labour Commissioner therefore disposed of the representation by stating that the dispute as to whether the appellant is a workman or not is a matter to be adjudicated under the provisions of U.P. Industrial Disputes Act, 1947 and this aspect cannot be decided under Clause "W" of the Standing Orders.

2. Aggrieved by the order of the Labour Commissioner dated 14.5.2008 the

appellant preferred a writ petition which was dismissed by the learned Single Judge by the impugned judgment and order dated 25.7.2008. The learned Single Judge held that the application/representation of the appellant under Clause "W of the Standing Orders was not maintainable and Labour Commissioner has rightly rejected the same.

3. We have heard Sri B.N. Singh, learned Counsel for the appellant, learned Standing Counsel for respondents No. 1 and 3 and Sri S.D. Singh, learned Standing Counsel for respondent No. 2.

4. Clause "W of the Standing Orders which have been framed in exercise of powers under Section 3 (b) of the U.P. Industrial Disputes Act reads as under:

"If any question arises as to the application or interpretation of these Standing Orders, any employer/workman may refer it to the Labour Commissioner of the State and the Labour Commissioner shall after giving the parties an opportunity of being heard, decide the question."

5. Admittedly, under Clause W of the Standing Orders the question as to the application of the Standing Orders is required to be decided by the Labour Commissioner. Therefore, in deciding the application of the Standing Orders if the Labour Commissioner feels and is called upon to decide ancillary question as to whether the appellant is a workman, the same also falls within its sphere. Accordingly, we are of the view that the Labour Commissioner while deciding the question of the applicability of the Standing Orders could have also decided the issue of appellant being a workman or not in a summary manner and as such could not have refused to decide the same by relegating the matter to the Labour Court particularly when he was called upon by this Court by an order passed in earlier writ petition to decide the representation of the appellant.

6. In view of the aforesaid facts and circumstances, we are of the opinion that the learned Single Judge had gone wrong in holding that the application/representation of the petitioner was not maintainable under Clause W of the Standing Orders before the Labour Commissioner. Accordingly, we set aside the judgment and order of the learned Single Judge dated 25th July, 2008, quash the order of the Labour Commissioner dated 14.5.2008 and remit the matter to the Labour Commissioner to decide the application/representation of the appellant afresh along with the preliminary issue about the nature of service of the appellant in accordance with law as expeditiously as possible preferably within a period of three months from the date of production of the certified copy of this order. It shall be open to the parties to adduce necessary evidence in support of their respective contentions before the Labour Commissioner.

7. The appeal is allowed accordingly. No orders as to costs.