
(1997) 04 AHC CK 0170
In the Allahabad High Court
Case No : C.M.W.P. No. 12061 of 1994

Jeewan Prasad Misra

APPELLANT

Vs

Labour Court (II) and Others

RESPONDENT

Date of Decision : 02-04-1997

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (1997) 04 AHC CK 0170

Hon'ble Judges : M. Katju, J

Bench : Single Bench

Advocate : K.M. Misra, for the Appellant;

Final Decision : Allowed

Judgement

M. Katju, J.—Heard Sri K. P. Agrawal for the Petitioner and Sri Rajiv Sharma for the Respondent.

2. It appears that the Petitioner was employed by the Respondent No. 2 in 1976. On 19.7.83 he made an application for grant of leave praying for leave from 25.7.83 to 13.8.83 which was allowed. Thereafter also he applied for leave on various dates. On 27.7.83 he was transferred from Kanpur to Dehradun but he did not Join at Dehradun alleging that such transfer order is against his service condition. His service was terminated on 11.6.84. He raised an industrial dispute which was referred to the Labour Court. Kanpur which has decided against the workman, hence this writ petition.

3. A perusal of the impugned award shows that the Labour Court has held in paragraph 8 of the impugned award that it can be presumed that the workman abandoned his job since he was absent without leave and hence this cannot be said to be a case of retrenchment.

4. In D.K. Yadav Vs. J.M.A. Industries Ltd., , it has been held that even when a worker is absent without leave he has to be charge-sheeted and domestic enquiry should be held against him. In this case no charge-sheet was given

against the Petitioner nor was any enquiry held against him, and instead his service was terminated. In view of the aforesaid decision of the Supreme Court, the termination has to be held to be illegal. In paragraph 9 of the award, it has been held that the Petitioner has raised the dispute after a great delay. This does not appear to be correct because from the perusal of the award, it appears that the Petitioner initiated C. B. case No. 8 of 1987, and thus it appears that the Petitioner initiated a dispute by starting an execution case in the year 1987. Hence it cannot be said that the dispute (sic) to be after too much delay.

5. In Rolston John Vs. Central Government Industrial Tribunal-cum-Labour Court and others, , it has been held that abandonment of a job amounts to retrenchment, and this is also the view in D. K. Yadav case (supra). Hence Section 6N of U.P. Industrial Disputes Act should have been complied with, but admittedly that has not been done.

6. In view of the above, the impugned award dated 29.10.93 is illegal and is hereby quashed. The Petitioner shall be reinstated in service but with backwages from 1.1.88 only, since he initiated the C.B. case only in the year 1987. The backwages will be paid within three months.

7. The writ petition is allowed. No order as to costs.