
(2014) 09 UK CK 0042

In the Uttarakhand High Court

Case No : Writ Petition No. 2487 of 2013 (M/S)

Kanhaiya Lal Polytechnic

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 09-09-2014

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6E

Citation : (2015) 144 FLR 217 : (2014) 4 LLJ 253

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Siddhartha Sah, Advocate for the Appellant; Pankaj Miglani, Advocate for the Respondent

Judgement

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Alok Singh, J.—Present petition is filed assailing the award dated 04.07.2013, passed by the Labour Court, Haridwar. Brief facts of the present case, inter alia, are that workman respondent herein was engaged purely on temporary basis as Chowkidar of the Institution. Workman approached the Labour Court for regularization of his services. During the pendency of the proceedings before the Labour Court, termination order dated 31.01.2013 was passed terminating the services of the workman under the Services Regulation of 1996 after offering one month's advance wages on the ground that workman despite several warnings issued tried to encroach upon the land of the institution and misbehaved with the Principal and other staff members of the Institution.

2. Learned Labour Court, in the impugned award dated 04.07.2013 has held that termination of the services of the workman is in violation of proviso of Sub-section (2) of Section 6-E of the U.P. Industrial Dispute Act, 1947. Feeling aggrieved, employer has approached this Court by way of present writ petition.

3. I have heard Mr. Siddhartha Sah, learned counsel for the employer petitioner and Mr. Pankaj Miglani, learned counsel for the workman respondent and have

carefully perused the record.

4. Admittedly, reference was pending disposal before the Labour Court as to whether services of the petitioner should be regularized and during the pendency of the reference, order dated 31.01.2013 was passed terminating the services of the petitioner on the ground of alleged mis-conduct of encroaching upon the land of the institution and misbehavior with the Principal and other staff members of the Institution. Sub-section (1) and (2) of Section 6-E of the Act reads as under:

"Conditions of service, etc. to remain unchanged in certain circumstances during the pendency of proceedings-(1) During the pendency of any conciliation proceeding before a Conciliation Officer or a Board or of any proceeding before a Labour Court or Tribunal in respect of an industrial dispute, no employer shall,-

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding, or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise any workman concerned in such dispute save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute,--

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding, or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

5. As per sub-section (1) of Section 6-E of the Act, employer may discharge or punish the workman for any mis-conduct connected with the dispute with the express permission in writing of the authority. However, under sub-section (2) of Section 6-E of the Act, workman may be discharged or dismissed on the ground of misconduct not connected with the dispute on payment of wages for one month. However, an application has to be made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

6. In the present case, no application was ever moved before the Labour Court for approval as required by the proviso of sub-section (2) of Section 6-E of the

Act.

7. In view of the above, I do not find any reason to take contrary view to the view taken by the Labour Court.

8. Consequently, writ petition fails and is hereby dismissed. CLMA No. 11367 of 2013 also stands disposed of accordingly.