

(2005) 08 AHC CK 0156

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 23476 of 2004

Kesarwani Zarda Bhandar

APPELLANT

Vs

Additional Labour Commissioner, State of U.P., Smt. Chandra
Devi and Smt. Kiran Devi

RESPONDENT

Date of Decision : 08-08-2005

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 33C(1), 33C(2), 4K, 6A, 6C

Citation : (2005) 6 AWC 5180 : (2005) 107 FLR 122

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : U.C. Kesharwani, for the Appellant; A.K. Sinha, S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. The petitioner has come up in this writ petition challenging the validity and correctness of the order dated 30.4.2004, passed by Additional Labour Commissioner, Allahabad Region, Allahabad- respondent no. I, and. recovery certificate dated 26.2.2004 issued in pursuance thereof, contained in Annexure 12 to the writ petition.

3. The facts of the case are that Smt. Chandra Devi and Smt. Kiran Devi-respondent nos. 3 and 4 raised an industrial dispute with regard to their, illegal termination of service w.e.f, 6.12.1995. The Deputy Labour Commissioner, U.P., Allahabad, in exercise of power conferred upon him under notification dated 29.8.1990 and u/s 4-K of the U.P; Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), referred the dispute regarding their termination vide order dated 10.9.1997 to the Industrial Tribunal (I), U.P., Allahabad where the references of respondent Nos. 3 and 4 were registered as: Adjudication Case Nos. 37 and 38 of 1997.

4. The Industrial Tribunal, vide its impugned award dated 29.9.1999 held that a number of dates were fixed for production of evidence by the employers and they had been granted repeated opportunities to examine the witnesses but in spite of last opportunity granted to them for examination of witnesses vide order dated 25.5.1999 on payment of cost, they again failed to examine the witnesses and as such, the case proceeded ex parte, On the next date, the employers again moved an application for adjournment and declined to argue the case. In the circumstances, the Industrial Tribunal heard the matter and directed reinstatement of the/workmen within one month from the date of publication of the award. The award was enforced by publication on the Notice Board u/s 6-A of the U.P. Industrial Disputes Act, 1947 on 31.10.2000 holding that:-

"...There is no justification in disbelieving the uncontroverted statement of the witnesses, and. there is no reason to repel and discard the evidence."

It was further held that:-

" ...employers had been misusing, their position and exploiting the poor uneducated labourers by not recording their names in the attendance register and not paying the full salary payable under the Minimum Wages Act. The workers proved the case and are entitled to be reinstated with continuity on their post and are also entitled to be paid full back salary as provided in the Minimum Wages Act till the date of reinstatement.

5. The award of the Industrial Tribunal was challenged by the petitioner in Civil Misc. Writ No. 9169 of 2002, which was dismissed by this Court on 3.3.2002. Thereafter, the respondent nos. 3 and 4 the workmen filed an application u/s 6-H (1) of the Act. Notice was issued to the petitioner-employers and objections were filed on their behalf.

6. On the application of the workmen, the Deputy Labour Commissioner, Allahabad forwarded recovery certificate to the Collector Allahabad on 24.11.2001 for an amount of Rs. 1,03,350/- in respect of each of the applicants-respondent nos. 3 and 4 up to 31.12.2000 in terms, of the award passed in Adjudication Case Nos. 37 and 38 of 1997 respectively. The aforesaid amount was recovered by the Tahsildar, Phoolpur, Allahabad on 6.12.1995 and has been paid to the respondent nos. 3 and 4 by the Deputy Labour Commissioner, Allahabad.

7. It appears that after recovery in terms of the award had been made up to December, 2000 respondent nos. 3 and 4 again moved applications u/s 6-H(1) of the Act before the Additional Labour Commissioner, U.P, Allahabad on 5.9.2002 claiming wages for the period January 2001 to July 2002 amounting to Rs. 39,539/- each. The claim applications were registered R.D. Case Nos. 29 of 2002 and 30 of 2002 respectively.

8. Notices were issued claiming the aforesaid amount till they joined duties/were reinstated by the employers.

9. The petitioner-employers filed objections, inter alia, that the respondent nos. 3 and 4 are not entitled to any wages for the period January 2001 to July 2002 as claimed on the principles of "no work no pay" because they had not reported for duty as per award rendered by the Industrial Tribunal, Allahabad. It was further stated that the workmen after publication of the award for the first time reported for duty on 12.1.2003 and have been allowed to join on the same day and are also being paid wages accordingly from that date. It was also stated that merely because award of reinstatement was passed in favour of the workmen it would not entitle them to wages without joining their duties and it is obligatory upon them to join their duties and perform work to be entitled for wages, as such, the application for recovery u/s 6-H(1) is neither logically maintainable nor justified and is liable to be rejected.

10. In reply to the objection the workmen averred in the rejoinder that they had reported for duty immediately after the award but were not allowed to join by the employers or the pretext of pendency of writ petition against the award and they were permitted to join only when the Labour Commissioner on the complaint made by them deputed a Labour Inspector to ensure their joining. It is also averred that the workmen had also sent repeated letters dated 6.11.2000, 8.7.2002 and 28.11.2002 to the employers to permit them to join duties.

11. Thereafter, the Additional Labour Commissioner forwarded the impugned recovery certificate of the Collector, Allahabad.

12. It appears that the petitioner filed an application along with affidavit dated 11.2.2004 on 21.2.2004 for recall of the recovery certificate and praying for an opportunity to establish its case as they could not give reply of the averments on affidavit made by the workmen since it was not made available to them resulting in one-sided order.

13. After exchange of objections and reply, the Additional Labour Commissioner, Allahabad, sent letter to the Collector, Allahabad on 30.4.2004 along with impugned recovery certificate dated 26.2.2004 for recovery of Rs. 79,078 in respect of both the workmen.

14. Counsel for the petitioner has urged that scope of Section 6-H(1) of the Act is in the nature of execution proceeding and the provisions of the aforesaid Section can be taken recourse to only where the workman has a pre-existing right. He submits that the respondents have filed applications without rendering service in the establishment in letter and spirit of the award. The applications moved by them once the decree under the award was satisfied, were not maintainable and beyond the scope of Section 6-H(1) of the Act. It is urged that the Additional Labour Commissioner has mechanically issued the recovery certificate without jurisdiction and application of his judicious mind, as such, the recovery certificate being illegal and arbitrary is liable to be quashed.

15. Counsel for the petitioner has relied upon a judgment in National Thermal Power Corporation Ltd., Sonebhadra V. The Deputy Labour Commissioner, Pipri

and Ors. 2003(98) F.L.R.-538 wherein it has been held by this Court that- all non- monetary benefits have to be computed before they can be granted and since computation cannot be made u/s 6-H(1) of the Act, the only alternative is to approach the Labour Court u/s 6-H(2) of the Act.

16. Counsel for the respondents submits that the respondent-workmen wrote, j letters time and again for taking them back in service after delivery of the award but they were not permitted to join their duties and as such are entitled to wages in pursuance of award till the date of their joinig. He placed reliance upon the decisions of this Court in Executive Engineer, Electricity Distribution Division-1. U.P. State Electricity Board, Mathura V. Kailash Chandra Gautam and Ors. (1990) 2 U.P.L.B E.C 879 and Kesarwani Zarda Bandar, Sahson, Allahabad v. The Presiding Officer. Industrial Tribunal (I) U.P., Allahabad and Ors.- Civil Misc. Writ No. 9169 of 2002 decided on 5.3.2002.

17. In the case of Executive Engineer, Electricity Distribution Division-I, State Electricity Board Mathura (supra) the workman was directed to be reinstated with back wages by the High Court, He had filed an application before the Deputy Labour Commissioner u/s 6-H(1) of the Act claiming back wages. The Court held that the Deputy Labour Commissioner was fully justified to take recourse Sub-Section (1) of Section 6-H of the Act for recovering as back wages of the workman in accordance with the judgment of Court (Allahabad High Court). This case is, therefore, clearly distinguishable on facts and law as in the instant case, the decree under the award stood satisfied as recovery had been made u/s 6-H(1) of the Act in pursuance thereof.

18. The case of M/s. Kesarwani Zarda Bandar, Sahson, Allahabad (supra) was that the workmen therein complained that they had been employed by the employers; they were paid their emoluments but their names had not been recorded in the records of the employers despite their repeated complaints. The disputes were referred to the Industrial Tribunal which had been decided in favour of the workmen by a common order The review petition tiled by the employers was also dismissed. The question involved in the present writ petition regarding successive recovery certificate being, issued subsequent to the award was not in that case. Thus both the aforesaid decisions are clearly distinguishable on facts and are not applicable to the facts and circumstances of the instant case.

19. The impugned recovery Certificate, in the instant case, is regarding disputed period after delivery of award wherein parties are in variance the employers have taken firm stand "that the workmen have not come forward to join their duties except writing letters. They have been allowed to join the moment they have reported for duty and have also been paid their wages.

20. The workmen have equally firmly taken a stand that they had been writing letters for joining their duties and had many times physically presented themselves for joining duties but were not permitted by the employers. They have also emphatically stated fiat they even made complaints to the Labour

Officer and were ultimately on intervention of the Assistant Labour Commissioner, they were permitted by the employers to join duties in presence of Labour Inspector deputed by him.

21. The ratio laid down in the case of Thermal Power Corporation Ltd. Sonebhadra (supra) cited by the petitioner is not applicable to the facts and circumstances as in the instant case the question of computation of non-monetary benefits is not involved rather award has been implemented and the recovery claim in pursuance thereof was satisfied.

22. The scope of Section 6-H(1) and 6-H(2) of the act has been explained by the Hon"ble Apex Court as far back as in 1963 in the case of The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., wherein it was held that Sub-section (2) of Section 6-H of the Act is wider in scope than Sub-section (1). The rights conferred under the provisions of Section 6-H(2) of the Act exist in addition to any other mode of recovery which the workman has under the law.

23. The scope of Section 6-H(1) and 6-H(2) of the Act has also been dilated upon by Hon"ble the Supreme Court in catena of cases and now it is settled law that it is only where any amount is due to the employee from an employer u/s 6-J to 6-R or under a settlement or an award given by the adjudicator that provisions of Section 6-H(1) of the Act can be invoked. Reference, in this regard, may be had to Mathura Zila Sahkari Bank Ltd. Vs. Uppar Shram Ayukta, Agra and others, . in M.D. Oswal Hosiery v. D.D. Gupta and Ors. 1994 (69) F.L.R 238 wherein it has been held that classes of claims mentioned in Section 33-C(1) analogous to Section 6-H(1) are not necessarily excluded from the purview of Section 33-C(2). Money due u/s 6-H(1) of the Act should not necessarily be a pre-determined amount if it is a mere mathematical calculation but it has to be determined where it is disputed.

24. The question that once the award had been implemented and recovery certificate issued u/s 6-H(1) in pursuance thereof was satisfied, whether subsequent applications could have been filed again for the same cause can be looked into from another angle in this case.

25. Section 6-C of the Act provides the period for operation of the award of Labour Court, shall, at the first instance, remain in operation for a period of one year or such shorter period as may be specified in the award. It is thereafter provided that the State Government may extend or shorten the period of operation of award from time to time as thinks fit. Section 6-C is as under :-

6-C. Award of Labour Court or Tribunal or arbitration and its operation- An award shall in the first instance, remain in operation for a period of one year or such shorter period as may be specified therein:

Provided that the State Government may extend the period of operation of an award from time to time, if it thinks fit:

Provided further that where the State Government whether of its own motion or

on the application of any party bound by the award, considers that since the award was made there has been a material change in the circumstances on which it was based, the State Government may, after such enquiry as it may think fit, shorten the period of operation of the award.

26. Admittedly, the award was published on the Notice Board on 3.10.2000. It became enforceable u/s 6-A of the Act after 30 days of its publication. The maximum period of operation of the award u/s 6-C read with Section 6-A of the U.P. Industrial Disputes Act 1947 was up to 2.11.2001. Thus, the application filed by the workmen u/s 6-H(1) for recovery of Rs. 39,539/- on 5.9.2002 for the period January 2001 to July 2002 was not maintainable or enforceable u/s 6-H(1) as there was no order of the State Government extending the period for enforcement of the award u/s 6-C of the Act.

27. The direction of the Labour Court that the workmen are "entitled to be reinstated with continuity on their post and are also entitled to be r"aid full back salary as provided in the Minimum Wages Act till the date of reinstatement. The workers are directed to be reinstated within one month from the date of publication of the award." does not mean that workers have to be reinstated on paper or forced to work with pen and sickle against their wishes. To my mind, it is clear that the direction, in letters and spirit, would mean that if the workers present themselves for work in pursuance of the award within one month of its publication, they shall be reinstated and permitted to work by the employers.

28. Whether the workmen have worked or not, is a highly disputed question of fact which has to be adjudicated upon and computed in appropriate proceeding. The "award having been implemented and recovery in pursuance thereof having once been satisfied as is admitted to the parties u/s 6-H(1) of the Act, no subsequent application can lie for execution of award again u/s 6-H(1) for disputed claims.

29. In view of provision of Section 6-C of the Act, subsequent application filed by the workmen on 5.8.2002 for implementation of award u/s 6-H(1) which had already been executed earlier by way of recovery" of Rs. 1,03,350 in respect of each workman cannot be re-executed particularly after the period of operation of the award came to an end on expiry of one year from the date of it became enforceable. The disputed Amount has to be got computed first by an industrial adjudicator before any further recovery can be made.

30. I am, therefore, of the view that the writ petition is liable to succeed on both counts.

31. For the reasons stated above, the writ petition succeeds and is allowed. The impugned recovery certificate dated 26.2.2004 as well as the order dated 30.4.2004 passed by Additional Labour Commissioner. Allahabad, passed in R.D. Case Nos. 29 of 2002 and 30 of 2002 are quashed. The respondent-workmen may approach the competent authority for reference in this regard, if they are so advised. No order as to costs.