

(2013) 03 AHC CK 0283
In the Allahabad High Court
Case No : W.C. No. 57663 of 2010

Kesco	Vs	APPELLANT
P.O. Labour Court No. 1 and Others		RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2013) 3 LLJ 343

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Mridul Tripathi, Arvind Kumar and P.K. Tripathi, for the Appellant;
S.N. Dubey, for the Respondent

Final Decision : Partly Allowed

Judgement

Tarun Agarwala, J.—The petitioner has questioned the validity and legality of the award passed by the labour court. The facts leading to the filing of the writ petition is, that the workman concerned was appointed as a workman in the industrial establishment of the petitioner in the year 1972 in a permanent capacity and continued to work till his services were terminated by an order of 2nd December, 2002. The record reveals that the workman was suffering from an illness, and on account of which, he remained absent from 04th June, 2002 onwards. Eventually, the workman died on 31st March, 2003 after almost two months from the date of his termination. The heirs being, aggrieved, by the order of termination, raised an industrial dispute. The reference order was somewhat like this:

Whether the employers were justified in terminating the services of the workman w.e.f. 02.12.2002? if not, what relief the workman is entitled to. Further, if the termination was unjustified, whether the heirs of the workman are liable to be given an appointment under the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974.

2. Before the labour court, the parties led their evidence. The labour court held that the workman was in employment for 30 years and that no enquiry or disciplinary proceedings was initiated against the workman. The labour court held that having worked continuously for such a long period of time, the petitioner was entitled to an oral enquiry, which had not been done. The labour court, consequently, held that the order of termination was not only in violation of the principles of natural justice, but also in violation of the provisions of Section 6-N of the U.P. Industrial Disputes Act which had also not been complied with. The labour court, accordingly, quashed the order of termination. Since the workman had died, he could not be reinstated in service and, since the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as the Rules of 1974) were applicable, the labour court directed the employers to appoint one of the heirs of the workman under the Rules of 1974. The petitioner, being aggrieved, by the said award, has filed the writ petition.

3. Heard Sri Arvind Kumar, the learned counsel for the petitioner and Sri S.N. Dubey, the learned counsel for the workman.

4. Having perused the award and the documents filed in the writ petition, the Court finds that the order of the termination of the workman can not be sustained. The labour court was justified in setting aside the order of termination. The Court finds that the workman was working in a substantive capacity for more than 30 years and if he was absent on account of illness or had taken unauthorized leave, he was entitled to be given a notice and that disciplinary proceedings ought to have been initiated. No notice or disciplinary proceedings were initiated. On the other hand, an order of termination was passed. The Court is of the opinion that the action of respondent was wholly arbitrary and can not be sustained. Not only the provisions of Section 6-N of the U.P. Industrial Disputes Act was violated, the principles of natural justice was also not adhered to. The labour court was, therefore, justified in holding that the award of order of termination can not be sustained.

5. The Court further finds that the labour court committed an error in issuing a direction to appoint one of the heirs of the workman in the establishment of the employer under the Dying-in-Harness Rules. The Court is of the opinion that such mandatory direction could not be issued. The labour court at best could direct the employer to consider the application of the heirs of the deceased workman for appointment on compassionate ground in accordance with the educational qualifications of the workman vis-a-vis vacant post existing in the department. In the light of the aforesaid, the writ petition is partly allowed. The award of the labour court quashing the order of termination is affirmed. The award of the labour court directing appointment of one of the heirs of the deceased workman is set aside and is modified to the extent that one of the heirs of the deceased workman will move an appropriate application for appointment on compassionate ground within six weeks from today. If such an application is filed, the petitioner

will consider and decide the same by a reasoned and speaking order within four weeks thereafter in accordance with law.