
(2002) 10 AHC CK 0224
In the Allahabad High Court
Case No : C.M.W.P. No. 21441 of 1999

Khaitan Fertilizers

APPELLANT

Vs

Dy. Labour Commissioner and Others

RESPONDENT

Date of Decision : 31-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 12, 12(3), 12(4), 2

Citation : (2002) 5 AWC 4292

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : S.S. Nigam, for the Appellant; S.N. Dubey and S.C., for the Respondent

Final Decision : Allowed

Judgement

Anjani Kumar, J.—By means of this writ petition under Article 226 of the Constitution of India, Petitioner-employer challenges the order dated 6th May, 1999 passed by Dy. Labour Commissioner, Moradabad Region, Moradabad, directing the Petitioner-employer to pay a sum of Rs. 1,12,000 within fifteen days on the ground that the claim of the workmen was based on registered settlement dated 19.5.1997.

2. The facts leading to the filing of present writ petition are that the union of the workmen filed an application before the Conciliation Officer/Dy. Labour Commissioner stating therein that the employers are not paying the variable dearness allowance, (hereinafter referred to as "V.D.A.") according to law to the workman represented by the union. Pursuant to the aforesaid application filed before the Conciliation Officer/ Dy. Labour Commissioner, a conciliation case was registered and conciliation proceedings started. Petitioner-employers filed their objection that there is already a registered settlement and that the employees are being paid V.D.A. according to the registered settlement and since three years period have not yet elapsed, therefore, the demand of revision of the

V.D.A. is not legal and deserves to be dismissed.

3. The Conciliation Officer on the basis of the rival contentions has directed for the payment of the aforesaid amount by the order impugned in the present writ petition dated 6.5.1999. The contention of the learned Counsel for the Petitioner-employers is that the aforesaid demand has been raised by the Conciliation Officer/Dy. Labour Commissioner pursuant to a dispute wherein no conciliation was possible. It is also settled that the power of the Conciliation Officer is governed by the provision of Section 12 of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). Learned Counsel next contended that in view of the provision of Section 12 of the Act, the Conciliation Officer has not been conferred with the power of adjudicating upon the rival claims and issue a demand even if he has come to the conclusion that the demand of the workmen was justified, he can at the most refer the dispute for adjudication because in view of the rival contentions, no conciliation proceedings were possible.

4. Learned Counsel for the Petitioner has placed reliance on the decision in *Sasamusa Sugar Works Ltd. v. State of Bihar and Ors.* AIR 1955 Pat 49 and the decision of Bombay High Court in *Paints Employees' Union (by general secretary) and Another Vs. Nail (M.D.) (Assistant Commissioner of Labour at Bombay) and Another*, . Paragraphs 14 and 15 of the case in AIR 1955 Pat 49, relied upon by Petitioner's counsel is reproduced below:

"(14) In the course of the argument on the first point a subsidiary point was also raised by the Petitioner that the conciliation proceeding based on the agreement dated 23.1.1952, had after the decision given by the Assistant Labour Commissioner exhausted itself and there was no proceeding left thereafter wherein any decision could be given by the Labour Commissioner. I think it is not necessary to decide this point. Even if it be accepted for the sake of argument, as contended by the learned Government pleader, that the conciliation proceeding based on the agreement dated 23.1.1952, remained pending before the Labour Commissioner even after the decision given by the Assistant Labour Commissioner and even after the satisfaction of the claims by the Petitioner on the basis of that decision, this much is clear that the Labour Commissioner in that conciliation proceeding had no authority in law to pass any final order of the nature of those made by him on 21.2.1953 and 29.4.1953. The powers and duties of a Conciliation Officer are given in Section 12, Industrial Disputes Act, 1947. That section reads:

"(1) Where any industrial dispute exists or is apprehended, the Conciliation Officer may, or where the dispute relates to a public utility shall, hold conciliation proceedings in the prescribed manner.

(2) The Conciliation Officer shall, for the purpose of bringing about a settlement of the dispute, without delay investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable

settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the Conciliation Officer shall send a report thereof to the appropriate Government together with the memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the Conciliation Officer shall, as soon as practicable after the close of the investigation send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in Sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board or Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government."

This Section obviously contemplates that what is referred to a Conciliation Officer to be decided in a conciliation proceeding under the Industrial Disputes Act, 1947, is an industrial dispute. In this view of the matter, the very argument advanced by the learned Government pleader presupposes that the controversy between the parties over the interpretation of the award of 26.9.1950, regarding its application to the different categories of workmen was taken by the parties as an industrial dispute, and it was, therefore, agreed between them to be referred to the Labour Commissioner to be decided by him as a Conciliation Officer in a conciliation proceeding.

This aspect of the question finds support also from the definition of the phrase "industrial dispute" given in Clause (k) of Section 2, Industrial Disputes Act, 1947. That reads:

"industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

In this case, therefore, there was a dispute between the employers and workmen, as contemplated by the Industrial Disputes Act, over the interpretation of the award as to whether it did or did not apply in the case or particular categories of workmen. That being so, all that the Labour Commissioner u/s 12, Industrial Disputes Act, could do was to induce the parties to come to a fair and

amicable settlement on the matter. On his success in the attempt what he could do under Sub-section (3) of Section 12, Industrial Disputes Act was to send a report thereof to the Government together with a memorandum of the settlement signed by the parties to the dispute.

It is admitted in this case that though the parties had agreed to appoint the Labour Commissioner as the Conciliation Officer no settlement could be arrived at before the Labour Commissioner in the course of the conciliation proceeding and even if there was any that was not before him but before the Assistant Labour Commissioner which had already been acted upon by the parties and thus, it had exhausted itself. If, therefore, the contention of the learned Government pleader is accepted that even after the decision given by the Assistant Labour Commissioner the conciliation proceeding still remained pending before the Labour Commissioner, this much is to be held that as no settlement thereafter was arrived at between the parties before the Labour Commissioner in that proceeding, he had no option under Sub-section (4) of Section 12 but to send to the Government only a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at. And in any case in the absence of the settlement before him he had no authority under law to pass a final order of the type said to have been given by him in the letters issued from his office on 21.2.1953 and 29.4.1953.

Sub-sections (4) and (5) of Section 12, Industrial Disputes Act, 1947, say that on receipt of the report submitted to the Government under Sub-section (4) of the section, it was for the Government to decide as to whether the case should be referred to a Board or Tribunal for a decision. It does not provide for a final decision to be given by the Conciliation Officer even when a settlement is arrived at between the parties and much less when no settlement is arrived at between them. In either case he has only to report the matter to the Government. For these reasons, I hold that the orders passed by the Labour Commissioner on 21.2.1953 and 29.4.1953, in a conciliation proceeding said to be based on the agreement dated 23.1.1952, are without jurisdiction.

(15) The law on the second point also, in my opinion, is equally clear. Section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950, reads:

(1) Any money due from an employer under any award or decision of an industrial tribunal may be recovered as arrears of land revenue or as a public demand by the appropriate Government on an application made to it by the person entitled to the money under that award or decision.

(2) Where any workman is entitled to receive from the employer any benefit under an award or decision of an industrial tribunal which is capable of being computed in terms of money, the amount at which such benefit should be

computed may subject to the rules made under this Act, be determined by that industrial tribunal, and the amount so determined may be recovered as provided for in Sub-section (1).

(3) For the purpose of computing the money value of a benefit, the industrial tribunal may, if it so thinks fit, appoint a Commissioner, who shall, after taking such evidence as may be necessary, submit a report to the industrial tribunal, and the said tribunal shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

Under Sub-section (1) of the section the Government can recover under the Public Demands Recovery Act only that money which is due from an employer under any award or decision of an industrial tribunal. This Sub-section, therefore, does not give power to the Government to realise any money under the Public Demands Recovery Act, which is due from an employer under a decision given by a Conciliation Officer in a conciliation proceeding. I, therefore, think that the learned Government pleader was not correct in pressing that the money found due by the Labour Commissioner under his orders dated 21.2.1953 and 29.4.1953, given in the conciliation proceeding could be executed by the Government by procedure laid down in Section 20, Industrial Disputes (Appellate Tribunal) Act, 1950. The contention of the learned Government pleader, therefore, on this point fails."

5. In this view of the matter, in view of the decision, referred to above, the order passed by the Dy. Labour Commissioner is wholly without jurisdiction as he had no authority to pass such final orders u/s 12 (4) when no settlement was arrived at before him in the conciliation proceeding.

6. In view of what has been stated above, it is clear that the issue of the recovery by the order impugned in the present writ petition is wholly illegal and without jurisdiction and deserves to be set aside and is hereby set aside. The writ petition, therefore, is allowed. The order dated 6.5.1999 passed by Respondent No. 1, Annexure-6 to the writ petition, is hereby quashed. The interim order dated 24.5.1999, granted by this Court is made absolute. However, there shall be no order as to costs.