
(2011) 12 UK CK 0009

In the Uttarakhand High Court

Case No : Writ Petition No. 3776 of 2001 (M/S)

Kisan Sahkari Chini Mills Ltd.

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 30-12-2011

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : (2012) 2 UC 2177

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Judgement

Tarun Agarwala, J.—Heard Shri T.A. Khan, the learned counsel for the petitioner. Order sheet indicates that the opposite parties have been served by publication inspite of which no one has appealed nor counter affidavit has been filed. The petitioner has assailed the validity and legality of the reference orders issued u/s. 4-K of the U.P. Industrial Disputes Act, annexures 1 to 28 and 34 to 47 of the writ petition. The short ground taken by the petitioner is that two set of reference orders has been issued for the same workmen alleging termination of their services on the same date. The contention of the learned counsel for the petitioner is, that pursuant to the conciliation proceedings being initiated by the workman, the State Govt. issued a reference order for adjudication before the Labour Court. Subsequently, a second reference was made by the State Govt. which could not have been made and consequently, both the reference orders were liable to be quashed. It was further urged that assuming without admitting that the reference order was valid, the same should not have been referred to the Labour Court by the State Govt. since it was a case of retrenchment and such dispute could only be referred to the Tribunal.

2. The argument of the learned counsel for the petitioner seems to be very attractive in the first blush but, on a closer scrutiny, the court finds that the contention raised by the learned counsel for the petitioner was patently misconceived and bereft of merit.

3. In so far as the first contention is concerned, the Court finds that the State Govt. has, in fact, issued two reference orders questioning the validity and legality of the orders of termination of the workman on the same date. In the first reference order, the reference order is somewhat like this:-

whether the employers were justified in terminating the services of the workman, Shri Rajeshwar Pandey S/o Shri Gopi Nath Pandey, Seasonal Coolie, w.e.f. 01/11/1989? If not, to what relief is the workman entitled to?

4. The second reference order of the same workman is somewhat like this:-

whether the employers were justified in not taking the services of the workman, Shri Rajeshwar Pandey S/o Shri Gopi Nath Pandey, Seasonal Coolie, w.e.f. 01/11/1989, i.e. the date when the crushing operation started? If not, to what relief is the workman entitled to?

5. Similar reference orders were issued against the other workers and the terms of the reference orders are not being repeated. From a perusal of the reference order, the Court finds that the conciliation proceeding numbers indicated in the reference order is the same in the first reference order as well as in the second reference order. From this, an irresistible conclusion is drawn that the first reference order issued by the State Govt. stood modified and substituted by the second reference order and this is exactly what the Labour Court has held while rejecting the application of the petitioner on this issue. The Court does not find any error. The Court is of the opinion that the State Govt. having realized its mistake, issued a fresh reference order and, consequently, the first reference order issued by the State Govt. has been substituted by the second reference order.

6. The contention of the petitioner that a perusal of the reference order would indicate that it was a case of retrenchment for which the dispute was necessarily required to be referred to the Industrial Tribunal under the second schedule of the Act. The argument raised by the learned counsel is patently misconceived. A perusal of the reference order would indicate non-employment of the petitioner w.e.f. a particular date which amounts to termination of services and is not a case of retrenchment. In view of the aforesaid, the State Govt. was perfectly justified in referring the dispute to the Labour Court. No other ground has been raised. The writ petition is dismissed. Certified copy of the order shall be sent by the Registry to the Labour Court Haldwani, District Nainital respondent No. 2 for necessary information and action within two weeks from today.