
(2007) 05 AHC CK 0396
In the Allahabad High Court
Case No : C.M.W.P. No. 36831 of 1998

Kshetriya Sahkari Samiti Ltd.

APPELLANT

Vs

Regional Additional Labour Commissioner and Others

RESPONDENT

Date of Decision : 24-05-2007

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 33C1, 33C2, 4K, 6H(1), 6H(2)

Citation : (2007) 6 AWC 5504

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Triloki Nath, for the Appellant; V.K. Agrawal, V.K. Birla and S.C, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—Heard Sri Triloki Nath, the learned Counsel for the Petitioner and Sri V. K. Agarwal, the learned Counsel for the Respondent workman.

2. It transpires that the workman was working on a daily rated basis as a clerk in the Petitioner's cooperative society and for certain reasons, his services was dispensed with. The workman raised an industrial dispute u/s 4K of the U.P. Industrial Disputes Act. The Petitioner appeared and filed a written statement alleging that since the workman was a daily rated worker, he was not a workman as contemplated under the U.P. Industrial Disputes Act, and therefore, no dispute could be referred under the provisions of the U.P. Industrial Disputes Act. The record suggests that the Petitioner did not participate any further before the labour court and eventually, the labour court gave an ex parte award dated 21.7.1997. It has also come on record that the Petitioner subsequently filed an application, for the recall of the ex parte award, which was rejected by the labour court, by an order dated 3.10.2000.

3. In the meanwhile, the workman initiated proceedings for the recovery of money in terms of the award by moving an application u/s 6H(1) of the U.P.

Industrial Disputes Act before the Deputy Labour Commissioner. The Petitioner appeared and filed an application for stay of the proceedings on the ground that a recall application was pending before the labour court. Notwithstanding the pendency of the Petitioner's application, the Deputy Labour Commissioner, by the impugned order, issued a recovery certificate for a sum of Rs. 1,89,376 in terms of the award. The Petitioner, being aggrieved by the said order, has filed the present writ petition.

4. The learned Counsel for the Petitioner submitted that the recovery proceedings was wholly without jurisdiction in view of the latest judgment of the Supreme Court in the case of Ghaziabad Zila Sahkari Bank Ltd. Vs. Addl. Labour Commissioner and Others, in which it has been held that the U.P. Cooperative Societies Act, 1965 being a special enactment would prevail over the U.P. Industrial Disputes Act, 1947, and therefore, the provision of the U.P. Industrial Disputes Act could not be invoked by a workman, who is employed in a cooperative society registered under the U.P. Cooperative Societies Act, 1965.

5. The learned Counsel submitted that since the award of the labour court was without jurisdiction, the recovery of any amount pursuant to the award, which was void ab initio could not be recovered in a proceeding u/s 6H(1) of the U.P. Industrial Disputes Act.

6. In support of his submission, that this point could be urged in a writ jurisdiction even though it was not urged earlier, the learned Counsel relied upon a decision of the Supreme Court in the case of Kiran Singh and Others Vs. Chaman Paswan and Others, and a Division Bench judgment of this Court in Kunmun Singh v. Ram Sewak 1961 ALJ 997, wherein the Court held that a point not urged before the trial court or even before the first appellate court, the same could be urged and determined even in a second appeal because it went into the root of the matter with regard to the jurisdiction of the civil court.

7. This Court is of the opinion that the Petitioner cannot be permitted to raise the ground of jurisdiction at this stage. The Court finds from a perusal of the written statement that the question with regard to the invocation of the provision of the Industrial Disputes Act qua the provision of the U.P. Cooperative Societies Act was never raised. The Petitioner had never questioned the invocation of the provision of the U.P. Industrial Disputes Act at any stage. The only point that was urged in the written statement before the labour court was that the workman could not be treated as a workman as defined under the U.P. Industrial Disputes Act.

8. Further, even before this Court, no ground has been raised or urged in the writ petition that the provisions of the U.P. Cooperative Societies Act would prevail over the provisions of the U.P. Industrial Disputes Act and that the U.P. Industrial Disputes Act could not be invoked for the redressal of the grievance raised by the workman. Merely because the Supreme Court has now delivered a judgment, the Petitioner cannot be permitted to urge this ground for the first time at the stage

of the hearing of the writ petition. Further, I find that the award of the labour court has not been challenged by the Petitioner. The application for the recall of the ex parte award was dismissed as far back as on 31.10.2000. No ground has been made by the Petitioner to challenge the order rejecting the recall application or the ex parte award. Consequently, it can only be presumed that the Petitioner was satisfied with the ex parte award and had acquiesced in the matter. No doubt proceedings u/s 6H(1) of the Act are execution proceedings and point of jurisdiction can be raised even in the execution proceedings. However, in the present facts and circumstances of the case, this Court finds that the Petitioner cannot be permitted to raise this ground at the stage of hearing of the petition especially when nothing has been urged in the writ petition.

9. In view of the aforesaid, I do not find any substance in the submission of the learned Counsel for the Petitioner that the proceedings initiated by the workman u/s 6H(1) of the Act was a nullity in the eyes of law on the ground that the award was void and that the provisions of the Industrial Disputes Act could not be invoked.

10. The learned Counsel for the Petitioner submitted that even otherwise, the proceedings u/s 6H(1) of the Act could not have been invoked by the workman for the recovery of the money in terms of the award, inasmuch as, from the perusal of the award the amount of back-wages had not been determined nor quantified by the labour court. The learned Counsel submitted that unless and until the amount was quantified, the same could not be adjudicated u/s 6H(1) of the Act and that before recovery proceedings could be initiated u/s 6H(1) of the Act, it was necessary for the workman to file an application u/s 6H(2) for the determination of the amount pursuant to the award.

11. In my opinion, the submission of the learned Counsel for the Petitioner is bereft of merit. Section 6H(1) is pari materia with the provisions of Section 33C(1). The scope of Section 33C-1 and 33C-2 has been determined in a large number of decisions given by the Supreme Court, wherein it has been held that a benefit under an award could be determined in a proceedings u/s 6H(1) of the Act. In *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, the Supreme Court held that a benefit can be determined u/s 33(1) unless it is disputed.

12. In the present case, no doubt the application is for the realisation of back wages for a sum of Rs. 1,89,376. The Petitioner has not disputed the amount claimed by the workman. Consequently, there was no occasion for the Deputy Labour Commissioner to determine the amount since it was not disputed. Even otherwise, arithmetical calculation can always be calculated by the Deputy Labour Commissioner. Even before this Court, I do not find any averment disputing the quantum determined by the Deputy Labour Commissioner.

13. Consequently, for the reasons stated aforesaid, this Court does not find any error in the award passed by the Deputy Labour Commissioner.

The writ petition fails and is dismissed.