
(2009) 08 UK CK 0001
In the Uttarakhand High Court

Kumaon Motor Owners" Union Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4A
Uttar Pradesh Reorganisation Act, 2000 — Section 35

Citation : (2010) 1 LLJ 26 : (2009) 3 UC 1973 : (2009) 2 UD 408

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Judgement

Prafulla C. Pant, J.—By means of this writ petition, moved under Article 226 read with Article 227 of the Constitution of India, the petitioner has sought writ in the nature of certiorari, quashing the order dated February 28, 1987, passed by the Labour Court, in Adjudication Case No. 91 of 1982, whereby the said Court has directed to reinstate respondent No. 4 Harnam Singh Kapur, with back wages. While passing said order, the Labour Court has further observed that there is no retirement age of the workman and he is entitled in petitioner's establishment to continue working, till he is mentally and physically fit.

2. Heard learned Counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit filed by the parties.

3. The question referred by the State Government to the Labour Court as an industrial dispute reads as under:

Whether, dismissal/termination of the workman Harnam Singh Kapur (respondent No. 4) S/o Sardar Shiv Singh by the employers on May 29, 1973, is proper and/or lawful? If not, to what benefits/reliefs is he entitled and with what particulars?

4. Brief facts of the case are that respondent No. 4 Harnam Singh Kapur was engaged as a member of ministerial staff with the petitioner Kumaon Motor

Owners" Union Limited, in the year 1965. His date of birth was April 4, 1921. He completed age of 58 years on April 3, 1979. Before said date, on May 25, 1973, the respondent No. 4 was placed under suspension allegedly for committing certain irregularities. It appears that some domestic enquiry was initiated against him, and he was dismissed from service on April 27, 1974, making said order effective from May 29, 1973. On this, the matter was got referred by respondent No. 4 to the Labour Court, and industrial dispute was referred on June 23, 1983 u/s 4-A of the U.P. Industrial Disputes Act, 1947, which was registered as Adjudication Case No. 91/1982. It appears that after notices were issued to the parties, initially, the employer (present petitioner) contested the case. While the proceedings were in progress before the Labour Court, the Labour Court framed some five issues out of which the first related as to whether the respondent No. 4 was a workman, or not; the second issue related as to whether the reference was bad in law; and the third issue related to the domestic enquiry initiated against the respondent No. 4. After hearing the parties, the Labour Court decided all these three issues in favour of the workman. Thereafter, the Labour Court remained vacant from February 1986 to June 1986. It appears that thereafter when the new Presiding Officer took over, July 21, 1986 was the date fixed in the case, but no one turned up on behalf of the employer. Consequently, the case proceeded ex-parte, and impugned award dated February 28, 1987 was passed, in favour of the workman (respondent No. 4) directing that he be reinstated in service with full back wages. While, the impugned award dated February 28, 1987, was passed by the Labour Court, Bareilly, on issue Nos. 4 and 5 observation was made that there was no age of retirement in the petitioner's establishment and the workman can continue till he is mentally and physically fit. On August 17, 1987, the petitioner (employer) moved an application before the Labour Court for setting aside the ex-parte award, which was dismissed vide order dated November 19, 1987. In Para 20 to 24 of the writ petition, the petitioner has stated reasons and circumstances under which no representation could be made on behalf of the employer on the date fixed before Labour Court. Challenging the award February 28, 1987 and order dated November 19, 1987, this writ petition was filed before the Allahabad High Court in the year 1987, where it was admitted on December 3, 1987. The writ petition is received by this Court u/s 35 of the U.P. Reorganization Act, 2000 (Central Act No. 29/2000), for its disposal.

5. In the counter affidavit filed on behalf of contesting respondent No. 4, it has been stated that there was no age of retirement in the petitioner's establishment. The reasons for absence stated in the writ petition are also denied in the counter affidavit. It is further stated that the Labour Court has committed no error of law in passing the impugned award, and in rejecting the application moved by the petitioner for setting aside the ex-parte award.

6. In the rejoinder affidavit filed on behalf of the petitioner it has been reiterated that there was age of retirement as there was gratuity scheme applicable in the petitioner's organization, and gratuity scheme has no meaning unless there is

age of retirement. As to the three examples of the persons who continued in service after the age of 58 years in the petitioner's establishment, as mentioned in the impugned award, it is stated in the rejoinder affidavit that they worked on daily wages/ad hoc basis, on their re-employment (after their retirement). With the rejoinder affidavit copy of gratuity scheme applicable to the employees of the petitioner organization and its recognition, are filed as Annexure-2 and Annexure-1, respectively. Annexure-3 to the rejoinder affidavit is the certificate dated of March 16, 1988, issued by the petitioner's Executive Director stating that the age of retirement in the petitioner's establishment is 58 years, and the employees are entitled to the benefits of the provisions of Gratuity Act on completion of said age. The Annexure-4 to the rejoinder affidavit is the copy of resolution No. 3 passed on November 14, 1977, by the Board of Directors, in which it is provided that the employees who have completed 55 years of age may also be benefited under the Gratuity Act.

7. So far as the validity of the termination/dismissal order passed by the petitioner's organization dismissing the services of the respondent No. 4 is concerned, since the findings recorded by the Labour Court on issue Nos. 1, 2 and 3 were not challenged before any Forum, the same attained finality. The three issues related to the question whether the respondent No. 4 was a workman or not; whether the reference made to the Labour Court was bad in law; and whether the domestic enquiry held against the respondent No. 4, needs no interference? As such, the reinstatement of the respondent No. 4 with back wages directed by the Labour Court in the impugned award does not require any interference by this Court.

8. The only question which requires to be examined by this Court is whether, the Labour Court has erred in law in observing that there was no age of retirement in the petitioner's establishment, and the respondent No. 4 could have continued till he is mentally and physically fit, suffers from any illegality, or not? At the outset it is relevant to mention here that this dispute was never referred to the Labour Court to examine whether there is any age of retirement of the employees in the petitioner's establishment or not? By drafting issue No. 4 and by giving observations on it (that too at the ex-parte stage of the proceeding) is outside the scope of the reference made to the Labour Court. It was sufficient for the Labour Court to hold that dismissal of respondent No. 4 was bad in law, and he was entitled to reinstatement with back wages. But finding on the question which was not referred to the Labour Court, in the present case, is beyond the reference.

9. Mr. S.K. Posti, learned Counsel for the petitioner drew attention of this Court the case of Agra Electric Supply Co. Ltd. Vs. Sri Alladdin and Others, in which it has been laid down that the employees are bound by the Standing Orders of the employer regarding their conditions of service, if the same are certified under the Industrial Employment (Standing Orders) Act, 1946. Attention of this Court is also drawn to the case of Dunlop India Limited Vs. Their Workmen, , in which it

has been held by the Apex Court that where the Standing Order provide a particular age of retirement, the employee is bound by it even if such Standing Order was passed after he joined the service. Mr. Rajendra Dobhal, learned senior counsel appearing on behalf of respondent No. 4 relied on the decision dated July 22, 1998, passed by the Allahabad High Court in Writ Petition No. 10722/1998; Kumaon Motor Owners' Union Limited v. Prescribed Authority and Anr. and contended that there is no age of retirement in the petitioner's establishment. I have gone through said case law and found that the Allahabad High Court has observed that in the case which was under challenge before the Allahabad High Court, on behalf of petitioner on the question of retirement no evidence was adduced. In that circumstance, the Allahabad High Court held that it would be treated that there was no age of retirement fixed by the employer. However, the same is of no help to the respondent No. 4 in this case for there is not the question of reference to the Labour Court on that point. Apart from this, with the rejoinder affidavit in the present case, copy of the gratuity scheme applicable to the employees in the petitioner's establishment is filed.

10. For the reasons as discussed above, the writ petition is partly allowed. The impugned award dated February 28, 1987, passed by the Labour Court, in Adjudication Case No. 91 of 1982, is set aside only to the extent it relates to age of retirement of the workman (respondent No. 4) and observations made relating thereto. As far as the impugned award relating to reinstatement of respondent No. 4 with back wages (till the age of retirement) is concerned, the same is not interfered with. No order as to costs.