

(2009) 02 AHC CK 0182

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 31505 of 2004

Manik Chandra Srivastava

APPELLANT

Vs

Regional Deputy Labour Commissioner, Gorakhpur and others

RESPONDENT

Date of Decision : 05-02-2009

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6H(I)

Citation : (2009) 121 FLR 227

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : A.K. Singh, for the Appellant; S.S. Sharma, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—Heard Sri A.K. Singh, the learned Counsel for the Petitioner and Sri S.S. Sharma, the learned Standing Counsel for the Respondents.

The Petitioner is a workman and his services was terminated by the employer. The dispute with regard to the validity and legality of the order of termination was referred to the Labour Court for adjudication. The Labour Court, by an award dated 2.2.1998, held that the termination of the Petitioner was invalid and that he was liable to be reinstated and was also entitled for arrears of wages. The employer, namely, the Irrigation Department of the State Government preferred a writ petition which was dismissed by a judgment dated 17.5.2000. In the meanwhile, the Petitioner filed an application u/s 6-H(I) of the U.P. Industrial Disputes Act, for computation of the benefit in terms of award, before the Deputy Labour Commissioner, towards the arrears of wages for the period July, 1990 to February, 1999. The Deputy Labour Commissioner, after considering the matter and, after computing the amount issued a recovery certificate dated 23.9.2000 for a sum of Rs. 2,58,049/-, This amount was eventually paid to the Petitioner on 9.1.2004.

2. It transpires that the Petitioner thereafter moved a second application u/s 6-

H(1) of the Act before the Deputy Labour Commissioner for computation of the arrears of wages as per the award for the period March, 1999 to December, 2003 amounting to Rs. 3,02,939/-. This application was rejected by the Deputy Labour Commissioner, by its order dated 28.6.2004. The Petitioner, being aggrieved, has filed the present writ petition No. 31505 of 2004. During the pendency of the writ petition, an interim order dated 16.1.2007 was passed wherein an ad interim mandamus was issued commanding the Respondents to reinstate the Petitioner in terms of the award dated 2.4.1990. It is alleged by the Petitioner that he approached the employers and asked for employment which the employers refused and that the employer did not comply with the interim order as a result of which, the Petitioner filed a third application u/s 6-H(I) of the U.P. Industrial Disputes Act before the Deputy Labour Commissioner for payment of wages in terms of the interim order of the High Court for the period February, 2007 to January, 2008. The Deputy Labour Commissioner, after considering the matter, issued a recovery certificate dated 25.6.2008, for recovery of an amount of Rs. 91,845/-. It is alleged that the recovery certificate was sent to the District Magistrate, in spite of which the amount was not being recovered and consequently the Petitioner filed Writ Petition No. 362 of 2009, praying for a writ of mandamus commanding the Collector to recover the amount of Rs. 91,849/- from the employers pursuant to the recovery certificate dated 25.6.2008. This is how the matter rests as on date.

3. The Learned Standing counsel appearing for the employers submitted that pursuant to the award, the Petitioner joined but thereafter absented himself and did not work and consequently the Petitioner was not entitled for payment of wages. In any case, the proceedings initiated before the Deputy Labour Commissioner was without jurisdiction and that the Deputy Labour Commissioner had rightly rejected the application as not maintainable. With regard to the recovery certificate issued by the Deputy Labour Commissioner dated 25.6.2008, it was submitted that the same is based on an interim order of this Court which the Petitioner himself did not comply and never appeared for employment.

4. On the other hand, the learned Counsel for the Petitioner submitted that pursuant to the interim order of the Court, the Petitioner joined but thereafter he was not allowed to work by the employers and that is why the Petitioner moved an application again before the Deputy Labour Commissioner for the computation of the benefit in terms of the interim order of the Court.

5. Having heard the learned Counsel for the parties at some length this Court is of the opinion that the Petitioner is not entitled for any relief. The benefit which the Petitioner is claiming stems from the award. A perusal of the award indicates that the services of the Petitioner was wrongly terminated and that he was entitled for such benefits and compensation as provided under the law. There is no specific direction in the award that the Petitioner is liable for reinstatement in the service or that he is entitled for back wages. These questions were left open since it was an ex parte award and details with regard to the rate of wages, etc.

was not available before the Labour Court. However, the ex parte award was affirmed by the High Court, and certain computation of the benefit pursuant to the award was made by the Deputy Labour Commissioner and, admittedly, a recovery certificate of Rs. 2,58,049/- towards arrears of wages upto the period February, 1999 was issued and which has been recovered from the employers and paid to the Petitioner.

6. The Petitioner thereafter filed a second application u/s 6-H(I) for recovery of arrears of wages at the same rate for the period March, 1999 to December, 2003. This application was rejected by the Deputy Labour Commissioner.

7. In my opinion, the second application filed by the Petitioner u/s 6-H(I) for computation of the benefits in terms of the award was not maintainable. In my opinion, the computation of the benefit in terms of the award, especially, the post award wages cannot be computed u/s 6-H(I) of the Act for the simple reason that other factors comes into play, namely, whether the Petitioner had worked in terms of the award or not. In the present case, I find that the award does not speak clearly about the reinstatement of the workman. The award only states that the Petitioner is entitled to such relief and compensation that is available under the law. Since there was no specific order of reinstatement and for payment of wages, such adjudication could not be made u/s 6-H(I) of the Act and the remedy available, if any, could either be u/s 6-H(2) of the Act where such benefit could be computed and adjudicated or a reference is made u/s 4-K of the U.P. Industrial Disputes Act.

8. Another reason for the rejection of the claim is, that the employer has disputed that the Petitioner was willing for employment pursuant to the award. This again, being a disputed question of fact could not be adjudicated u/s 6-H(I) of the Act and such questions could only be adjudicated before the Labour Court in an appropriate forum.

9. In view of the aforesaid, the Deputy Labour Commissioner was justified in rejecting the Petitioner's second application u/s 6-H(I) of the Act by its order dated 28.6.2004. The writ petition filed against the said order fails and is dismissed.

10. In view of the dismissal of the aforesaid writ petition, the interim order dated 16.1.2007 comes to an end automatically. The recovery proceedings initiated pursuant to the interim order of the Court also falls through and cannot be recovered. In any case, if the interim order of the Court was not complied with by the employers it does not entitle the Petitioner to move an application u/s 6-H(I) for the simple reason that the Petitioner has not worked and, further, the recovery of any amount u/s 6-H(I) can be for such benefit which has already been adjudicated or computed. The mere fact that the employers have refused to give employment to the Petitioner in terms of the award does not entitle the Petitioner for the computation of salary u/s 6-H(I). At best, the Petitioner can complain of the non-compliance and for the punishment of the employer for non-

compliance of the order of the Writ Court.

11. In view of the aforesaid, Writ Petition No. 362 of 2009 fails and is dismissed. No such mandamus could be issued to the Collector to recover the amount pursuant to the recovery certificate. This Court further holds that the recovery certificate dated 25.6.2008 issued by the Deputy Labour Commissioner was illegal and void. The writ petition is dismissed.