
(2004) 05 AHC CK 0023
In the Allahabad High Court
Case No : C.M.W.P. No. 9557 of 1984

Masih Ullah

APPELLANT

Vs

Labour Court , Allahabad and Another

RESPONDENT

Date of Decision : 28-05-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2, 25B, 25B(2), 25F, 4K

Citation : (2004) 5 AWC 4870

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : K.P. Agarwal and Bhushra Marium, for the Appellant; Prabhat Tripathi and V.R. Agarwal, C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Miss Bushra Marium, learned Counsel appearing for the Petitioner and Sri. Vivek Ratan Agarwal, learned Counsel appearing for Respondent No. 2.

2. By this writ petition, the Petitioner has prayed for quashing the award of the labour Court dated 23rd February, 1984, passed in Adjudication Case No. 82 of 1982. A writ of mandamus has also been sought praying for a writ, order or direction commanding the Respondent to take back the Petitioner in its employment with effect from 23rd August, 1981 and to pay all his wages and other consequential benefits.

3. Brief facts of the case, as emerge from the pleadings of the parties, are Petitioner was working as apprentice since 23rd October, 1979 and continued to work as such till 22nd October, 1980. The Petitioner worked till 22nd August, 1981, with Respondent No. 2 and was paid wages on daily wage basis. An industrial dispute was referred by the State Government vide its order dated 24th June, 1982 u/s 4K of the Uttar Pradesh Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The dispute referred was as to whether

termination of services of workman with effect from 23rd August, 1981, was valid or not and if not to what relief the workman is entitled. The Petitioner's case was that after completion of apprenticeship he was engaged as Mechanical Draughtsman with effect from 23rd October, 1980 and he was illegally removed on 23rd August, 1981. The Petitioner's case was that he has worked for more than 240 days, hence his termination was contrary to the provisions of the Act. The employers' case was that workman was engaged on 26th October, 1980 and worked till 23rd May, 1981 and again was temporarily engaged from 23rd June, 1981 to 22nd August, 1981. The employers stated that workman has worked only for 214-1/2 days and he was paid wages on daily wage basis. Both the parties lead their evidence before the labour Court and the labour Court gave its award dated 23rd February, 1983, in favour of the employers upholding the termination. The writ petition has been filed challenging the award of the labour Court.

4. Learned Counsel for the Petitioner, challenging the award given by labour Court, raised following submissions:

(i) The Petitioner has worked more than 240 days preceding his termination and was entitled for the benefit of the provisions of the Act. The employers have incorrectly calculated the days of working by leaving out weekly holidays and other holidays. In the actual working the weekly holidays and leaves has to be included. Reliance has been placed by Counsel for the Petitioner on a judgment of Apex Court in Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation, and on a judgment of Delhi High Court in Municipal Corporation of Delhi v. Sanjay Kumar and Ors. 2004 (100) FLR 938.

(ii) The Petitioner was in continuous service as defined u/s 2(g) of the Act.

(iii) The period of apprentice is to be included under the definition of Section 2(s) of the Act. Adding the period of Petitioner as apprentice, he has completed requisite number of days for protection under the Act.

5. Learned Counsel appearing for the Respondent, refuting the submissions of the Petitioner, contended that Petitioner has not completed 240 days and was rightly not given the protection of Section 6N of the Act. He further contended that Petitioner was only a daily wager, hence he is not entitled for protection under the Act.

6. Counsel for both the parties have placed reliance on judgments of the Apex Court, this Court and other High Courts, which shall be considered while considering the respective submissions.

7. I have considered the submissions of the Counsel for the parties and perused the record.

8. The finding recorded by the labour Court is that Petitioner has actually worked for 214-1/2 days between October, 1980 to August, 1981. The employers had

produced punching card of the workman during the aforesaid period from which the days of working of the Petitioner were substantiated. The labour Court held that Petitioner having not actually worked for 240 days, his services cannot be treated to be one year continuous service and he is not entitled to the benefit of para 2 of Section 2(g) of the Act. With regard to period of apprentice finding has been recorded by labour Court that workman was kept on apprentice according to Apprenticeship Act and during the period 22nd October, 1979 to 21st October, 1980, the workman was only apprentice and cannot be treated under the employment of the employers.

9. The thrust of submission of the Counsel for the Petitioner is that employers as well as labour Court have committed error in calculating the days of working of the Petitioner. The Petitioner has given a detail chart of working from 23rd October, 1980 to 22nd May, 1981. The Petitioner's Counsel contended that while calculating the actual period of working the days on which the workman was on leave is to be included. The detail of working of the workman during the aforesaid period was given in rejoinder-affidavit filed by the employers before the labour Court copy of which has been filed as Annexure-7 to the writ petition. The chart of working which is claimed by the Petitioner during the aforesaid period is annexed as Annexure-3 to the writ petition. From a perusal of the statement of details of the workman given in the rejoinder-affidavit of the employers (Annexure-7 to the writ petition) and details of working as given by the Petitioner (Annexure-3 to the writ petition) it appears that details of working of workman from October, 1980 to August, 1981, is almost same. According to own showing of the Petitioner (Annexure-3 to the writ petition) between 23rd October, 1980 to 22nd May, 1981, total working period of the Petitioner is 168 days and from 23rd May, 1981 to 22nd June, 1981, the Petitioner ceased to work and again from 23rd June, 1981 to 22nd August, 1981, the Petitioner claimed to have worked for 46-1/2 days, by adding 168 days with 46-1/2 days, total comes to 214-1/2 days. The Petitioner for calculating his working days has also added the leave taken by him between 23rd May, 1980 to 22nd June, 1981, which has also been added during which period workman has not worked. The Counsel for the Petitioner has tried to justify his calculation of more than 240 days by contending that weekly holidays, i.e., Sundays, were also to be added. Reliance has been placed by Petitioner's Counsel on Workmen of American Express International's case (supra). In the aforesaid case before the Apex Court the question for consideration was as to whether Sundays and other holidays for which wages are paid under the law shall be included in the actual workings days of a workman. The Apex Court after considering the provisions of Sections 25F and 25B of the Act held that actual working days shall not mean the days on which workman worked but necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service. Following was laid down in paragraph 5 of the judgment:

5. Section 25F of the Industrial Disputes Act is plainly intended to give relief to

retrenched workman. The qualification for relief u/s 25F is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer. What is continuous service has been defined and explained in Section 25B of the Industrial Disputes Act. In the present case, the provision which is of relevance is Section 25B(2)(a)(ii) which to the extent that it concerns us, provides that a workman who is not in continuous service for a period of one year shall be deemed to be in continuous service for a period of one year if the workman, during a period of twelve calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than 240 days. The expression which we are required to construe is "actually worked under the employer". This expression according to us, cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The learned Counsel for the management would urge that only those days which are mentioned in the Explanation to Section 25B(2) should be taken into account for the purpose of calculating the number of days on which the workmen had actually worked though he had not so worked and no other days...

10. From the aforesaid pronouncement of the Apex Court, it is clear that Sundays and other holidays on which workman was actually on leave can be treated to be in period of actually working if the workman was under the employment and paid wages for the aforesaid period. Thus, the crux of the matter is as to whether for Sundays (weekly holidays) and for the period of leave of the workman, the workman received wages or not. The Petitioner can claim for adding the aforesaid period in his actual working days only when he was paid wages for the weekly holidays and leave period. There is no averment that Petitioner was paid the wages for weekly holidays and for leave period. To the contrary the workman in his statement before the labour Court has clearly admitted that he was not paid for weekly holidays and for the period on which he was on leave. The statement of the workman has been annexed as Annexure-8 to the writ petition. In view of the aforesaid, the aforesaid period of weekly holidays as well as leave granted to the workman cannot be added in the period of actual working. The judgment of the Apex Court in *Workmen of American Express International's case* (supra), thus does not help the Petitioner. The judgment of Delhi High Court in *Municipal Corporation of Delhi's case* (supra) also lays down the same proposition that Sundays and other paid holidays to be taken into account while calculating actual number of days of working of the workman. In the present case, there being material to prove that workman was not paid wages for Sundays and other holidays, the said period cannot be added. In view of the above, I do not find any error in the finding of the labour Court holding that workman has worked only for a period of 214-1/2 days. The award of the labour Court, thus, in above respect cannot be faulted with nor can be

interfered with by this Court in exercise of its jurisdiction Under Article 226 of the Constitution.

11. The Counsel for the Respondent has raised an additional submission that workman being only daily wager, the benefit of the Act cannot be extended to him. In view of findings, recorded as above that workman has worked only for 214-1/2 days and not entitled for the benefit of Section 6N of the Act, there is no necessity to consider the submission raised by Counsel for the Respondent regarding status of workman as daily wager.

12. The last submission raised by Counsel for the Petitioner is that period of apprentice during which the workman worked is also to be added. Reliance has been placed on the judgments of this Court in *M/s. Tannery and Footwear Corporation of India Ltd. v. Labour Court, Kanpur* and Ors. 1993 LLR 579. The submission based on working of the workman as apprentice was also raised before the labour Court. The labour Court has recorded finding that workman was kept on apprentice from 22nd October, 1979, for a period of one year in accordance with Apprenticeship Act, 1961. The workman, also admitted before the labour Court that he has filled the apprentice bond. The labour Court after considering the materials on the record held that workman was only apprentice during the period 22nd October, 1979 to 21st October, 1980 and cannot be treated to be employee of the Petitioner. The labour Court has also held that apprentice cannot be treated to be workman unless he proves that he is employee of the employer and he is paid wages. The judgment of this Court in *M/s. Tannery and Footwear Corporation of India's case (supra)* has held that an apprentice under the Apprenticeship Act, 1961, cannot become apprentice for the purposes of Section 2(s) of the Act. In view of the clear findings recorded by the labour Court that workman was not employee of the employer during the apprentice period, the above judgment does not support the contention of the Petitioner.

13. In view of foregoing discussions, no error is found in the award of the labour Court. No grounds have been made out to interfere with the award.

14. The writ petition lacks merit and is dismissed.

15. Parties shall bear their own costs.