
(2011) 07 AHC CK 0023

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 32429 of 2011

Meerut Development Authority, Meerut

APPELLANT

Vs

Labour Court, Saharanpur and another

RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 33(B), 6(H)

Citation : (2011) 130 FLR 868 : (2012) 1 LLJ 679

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Rakesh Tiwari, J.—Counter affidavit filed by Sri Neeraj Agarwal and rejoinder affidavit filed by Sri B. Dayal for petitioner, are taken on record. Heard Counsel for the parties and perused the record.

2. This petition is preferred challenging validity and correctness of the ex parte award dated 5.5.2010 enforced by publication on 1.11.2010, by which the Labour Court has held that termination of service of the workman with effect from 28.1.1987 by the employer is illegal and unjustified. The Labour Court, U.P. Saharanpur thereafter answered the relief part in the order of reference and directed the employer to reinstate the workman with continuity of service without back wages to the workman but he shall be entitled to wages from the date of reinstatement in the same mode or manner in which he was being paid prior to his illegal termination.

3. The petitioner has also challenged the order dated 7.4.2011 by which the restoration application filed by the employer petitioner for setting aside and recall of ex parte award aforesaid was rejected, as well as the order dated 10.3.2010 closing opportunity of the employer to file written statement and also the order dated 8.4.2010 to proceed ex parte in the case.

4. Contention of the Counsel for petitioner is that the workman was working as

daily wage chowkidar since October 1985 and had worked in the establishment till December, 1987. Thereafter he was disengaged. An industrial dispute was raised by him which was referred to the labour Court in which the reference was decided ex parte vide award dated 27.10.1999. The petitioner challenged the aforesaid award in Writ Petition No. 4238 of 2001 which was allowed by the High Court directing the Labour Court to decide the dispute after due opportunity to the petitioner to file written statement and evidence. The Court also fixed 23.11.2009 as the date before the Labour Court for appearance of the parties. After remand, proceedings were initiated by the Trial Court and notices were sent to the parties. It appears that petitioner vide its letter dated 12.1.2010 informed his Counsel Sri Shardendu Prakash for getting the case transferred from Labour Court, Saharanpur to Labour Court, Meerut and to take effective steps in this regard but according to the petitioner, the Counsel did not do any pairvee in the case resulting into an ex parte award dated 5.5.2010.

5. It is submitted that in the aforesaid circumstances, the petitioner moved a recall application for setting aside of the aforesaid ex parte award dated 5.5.2010, through another Counsel Sri Ahabab Hasan, Advocate which was registered as misc. case No. 215 of 2010. The petitioner is now aggrieved by the order dated 7.4.2011 by which the Labour Court has rejected the application of the petitioner for setting aside ex parte award dated 5.5.2010.

6. This petition was filed on 26.5.2011. The Court on 30.5.2011 passed the following order:

Ms. Deepa Verma holding brief of Sri Neeraj Agarwal states that Sri Neeraj Aggrawal is out of State and prays that the matter may be taken up as fresh on 4.7.2011.

Sri B. Dayal, learned Counsel for the petitioner submits that the recovery is said to be effected and therefore, interest of the petitioner may be protected till the next date of listing.

As prayed on behalf of Sri Neeraj Agarwal, put up as fresh before appropriate Court on 4.7.2011.

Till next date of listing, recovery pursuant to the award dated 5.5.2010 shall be kept in abeyance.

7. Details of the recovery proceeding sought to be effected mentioned in the order dated 30.5.2011 is not on record nor the same has been challenged in the writ petition.

8. It appears that as the Court was closing for summer vacation on 30.5.2011, an application u/s 6-H (1) shown by the Counsel for the petitioner that the workman has initiated recovery proceedings for recovery of a sum of Rs. 1,29,720.84/- which has been taken note of in the aforesaid order. A copy of the application has also been shown to the Court today.

9. Sri B. Dayal, learned Counsel for the petitioner has raised two contentions before the Court. The first contention of Sri B. Dayal, is that the employer by means of letter dated 12.1.2010 had directed Sri Sardendu Prakash, Advocate on panel of Meerut Development Authority, Meerut that adjudication case No. 80 of 1999: Yogendra Kumar v. Meerut Development Authority is pending in the Court of Labour Court, Saharanpur in which 13.1.2010 is fixed. A copy of letter of Labour Court fixing date in the case was also appended with the letter dated 12.1.2010. Sri Sardendu Prakash was also directed by this letter to move an application before the Labour Court to the effect that parties reside at Meerut, hence case may be transferred to Labour Court, Meerut. It was also expected by the letter aforesaid that Sri Sardendu Prakash, appear in all the matters pending before the Labour Court, Saharanpur and do effective pairvi on behalf of Meerut Development Authority, Meerut.

10. Learned Counsel for the petitioner has then placed reliance upon letter dated 20.5.2010 by which another Counsel Sri Ahbab Hasan Advocate was appointed on panel of Meerut Development Authority and the photo copy of the cheque by which he was paid his fee.

11. The second contention of learned Counsel for the petitioner is that the respondent-workman being daily wager was not entitled to reinstatement in regular service of the Development Authority. In support of this contention he has relied upon the following judgments:

(1) Nand Gopal v. Moti Chand and others 2010 (111) RD 78.

(2) Incharge Officer and another v. Shankar Shetty 2010 (127) FLR 187 (SC).

(3) C.S. Mani(D.) v. B. Chinnasamy Naidu(D.) 2011 (1) AWC 375 (SC).

(4) Senior Superintendent Telegraph (Traffic) Bhopal v. Santosh Kumar Seal and others 2010 (125) FLR 736 (SC).

12. As regards, the first contention of the counsel is concerned, suffice it to say that section 33-B of U.P. Industrial Disputes Act, 1947 provides power to the State Government for withdrawing any proceeding pending before a Labour Court or Tribunal etc. and transferring the same to another Labour Court. Therefore, there was no occasion for a direction to Sri Sardendu Prakash, Advocate to move an application to the Labour Court for transfer of proceedings itself to another Labour Court of co-ordinate jurisdiction which it deserves from the reference order referred to it by the State Government. Even if such an application would have been moved, the Labour Court, Saharanpur would have no jurisdiction to transfer the case to Labour Court, Meerut in view of section 33-B of the Industrial Disputes Act, 1947.

13. The second contention of learned Counsel for the petitioner does not appear to have any force for the reason that the Labour Court in its award while granting continuity of service has directed reinstatement of the workman.

14. It is apparent that the Labour Court has not regularized the services of the workman, therefore, decisions cited by learned Counsel for the petitioner, are clearly distinguishable.

15. This case could have been disposed of after noticing the aforesaid facts, but it appears that the interim order has been granted to the petitioner on the ground that proceedings u/s 6-H (1) pursuant to award are pending before the Court which have been stayed by order dated 30.5.2011.

16. It is, therefore, directed that the Labour Court after giving opportunity of hearing to the parties shall decide the application filed by the workman u/s 6-H (1) within the period of four months from today. In the meantime, the petitioner shall reinstate the workman as directed by award dated 5.5.2010 within fifteen days from today and pay his current salary till further orders. List this case after four months.