
(2003) 07 AHC CK 0052
In the Allahabad High Court
Case No : C.M.W.P. No. 12755 of 1983

Meerut Textiles

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 24-07-2003

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4A, 6H, 6N

Citation : (2003) 4 AWC 3350

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Advocate : R.P. Goyal, for the Appellant; G.C. Gaharana and V.K. Goel and Y.K. Sinha, S.C., for the Respondent

Final Decision : Dismissed

Judgement

D. P. Singh, J.—Heard learned counsel for the parties.

2. This writ petition is primarily directed against an award of the labour court dated 8th March, 1982 and also consequential recovery initiated on the strength of the impugned award.

3. The respondent workman was an employee of the petitioner's establishment, whose services were terminated on 8th November, 1979. This led to a reference u/s 4K of the U. P. Industrial Disputes Act. Before the labour court in spite of sufficient notices and opportunity, the petitioner did not file its written statement or the rebuttal. The labour court on consideration of the allegations and the evidence on the record found that the termination was against the provisions of the Act and thus ordered reinstatement with full back wages.

4. The counsel for the petitioner has urged that the petitioner's establishment was earlier a partnership firm owned by Sri Shiv Bhagwan Vyas and Mohammad Yasin Ansari, who by a registered sale deed dated 7th April, 1980 sold the entire firm along with its assets, etc. to Rajendra Kumar Modi, who is now the owner of the petitioner firm. On the strength of Clause 7 of the said sale deed, he has

urged that said Rajendra Kumar Modi is neither a successor nor assigned of the erstwhile owner and, therefore, the award was not binding on him. In support of his contention, learned counsel has relied upon the ratio laid down in the case of Bhagwan Dass Chopra Vs. United Bank of India and Others, In Bhagwan Dass Chopra case (supra), the Apex Court has held that the nature of the agreement for transfer, etc. would be determinative of the fact whether the purchaser could be termed as successor-in-interest or a assignee of the transferor.

5. Clause 4 of the deed of transfer which is annexed with the writ petition reads as under :

"That party of the second part takes every liability of all the workman employed in the concern known as M/s. Meerut Textiles, 67 Daryaganj, Meerut and the party of the second part shall be liable to pay all legal dues to the employed workmen for which they are legally entitled under/or shall be entitled in future according to law."

6. Further Clause 6 of the said deed of transfer also reads as under :

"That the party of the second part shall pay gratuity and/or bonus to the workmen employed on the day of transfer of business whenever shall legally be payable and the workmen shall be allowed annual leave with wages according to the provisions of the Factories Act, 1948. The workmen employed on 7th day of April, 1980, shall continue in the employment with the party of the second part and their continuity of service shall not be disputed."

7. A joint reading of both the covenants together, leaves no room of doubt that Rajendra Kumar Modi has stepped into the shoes of the erstwhile owners and would legally be termed as successor-in-interest of the transferor. However, learned counsel for the petitioner has urged that Clause 7 of the deed clearly states that if there is "any claim arising prior to period 7th day of April, 1980", it would not make the purchaser liable. Clauses 4 and 6 of the transfer deed are explicit that all conditions of service obtaining prior to 7th April, 1980, would continue with respect to the employees and if the interpretation which is sought to be given by the learned counsel for the petitioner is attributed to Clause 7, both will be contradictory to each other. Raising of an industrial dispute u/s 4K of the U. P. Industrial Disputes Act does not fall within the meaning of "claim" as used in the transfer deed. It only, to my mind, refers to any claim crystallized prior to the said date which may not bind the purchaser. Even otherwise, Rule 28 of the U. P. Industrial Disputes Rules also fortifies the intendment of Clauses 4 and 6 of the transfer deed. The award only declares that the cessation of employment of the workman being against the provisions of the Act, would be non-est and, therefore, the case of the workman is squarely covered by Causes 4 and 6.

8. Learned counsel for the petitioner has then relied upon the ratio of the Supreme Court rendered in Ram Singh and Others Vs. Ajay Chawala, In the case of Workmen of Brahmputra Tea Estate (supra), services of the workmen were

terminated under instructions of a Receiver appointed by the Court in a mortgage suit. The labour court held that the reference had lapsed. In my view, the facts of this case are absolutely different from the one which is being considered here. Even in Brahmputra Tea Estate case, the parties were represented before the labour court.

9. The next contention of the learned counsel for the petitioner is that on the strength of the award, an application u/s 6H (1) was allowed by the authority and when recovery was sought to be made against the petitioner, he approached the High Court and this Court rejected the petition on the ground that the petitioner could approach the authority thereunder. The contention is that when the detailed objection was filed in pursuance of the High Court order, it was incumbent upon the authority to have passed a reasoned order. In my view, the argument is without any substance. Proceedings u/s 6H (1) are not adjudicatory in nature. The proceedings are only to a very limited extent executionary in nature. The authority u/s 6H (1) is not required to write a detailed judgment because it has only to recover the amount on the basis of the award. It was upon the petitioner to have approached the labour court instead of authority u/s 6H (1). In fact, it was not the case of the petitioner that he had approached the labour court. Further, the erstwhile owners had contested the proceedings u/s 6H (1). Even otherwise, once the petitioner stepped into the shoes of the erstwhile management, it is bound by the order passed u/s 6H (1) and he cannot raise any new defence therein.

10. Learned counsel for the petitioner has brought to the notice of the Court that certain amount has already been deposited in pursuance of the aforesaid proceedings. In case, the amounts have been deposited and paid to the respondent-workman, the said amount shall be adjusted from the amounts payable to the workman under the award.

11. In view of the discussions hereinabove, the writ petition fails and is dismissed with costs.