
(2013) 04 AHC CK 0222

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 46532 of 2008 and 28215 of 2009

M/s. Bharat Pumps and Compressors Ltd. and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-04-2013

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2A, 6H(1)

Citation : (2013) 5 ADJ 444 : (2013) 5 AWC 4502 : (2013) 138 FLR 390

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : P.K. Mukherji and Sharad Malaviya, for the Appellant; C.J. Yadav, Anil Kumar Srivastava and Swarn Kumar Srivastava, for the Respondent

Final Decision : Disposed Of

Judgement

Tarun Agarwala, J.—Respondent No. 3 Masooq Ahmad was transferred from Allahabad to Bombay by an order dated 10.10.1994. The respondent No. 3 filed a writ petition which was disposed of directing the said respondent to make an appropriate representation and the authority was also directed to decide the representation. Pursuant to the said order, an appropriate representation was made and, the authority, by an order dated 10.1.1995, rejected the representation. The said respondent, Masooq Ahmad, being aggrieved, filed Writ Petition No. 13436 of 1995, in which an interim order dated 17.8.1975 was passed staying the transfer order. The management, being aggrieved by the interim order, filed Special Appeal No. 644 of 1995, which was allowed by a judgment dated 25.9.1995 and the order of the learned Single Judge was set aside. The appellate Court directed the respondent to join at Bombay and thereafter make an appropriate representation, if so advised. It is alleged that pursuant to the said order, the respondent No. 3 joined at Bombay and after working for a few months left for Allahabad and since then did not report back for duty at Bombay.

2. In the meanwhile Writ Petition No. 13436 of 1995 came up for orders again

before the learned Single Judge, who again by an order dated 15.10.1998 stayed the transfer order. The management, being aggrieved, filed Special Appeal No. 972 of 1998, which was again allowed and the interim order of the learned Single Judge was set aside.

3. The matter did not conclude here. The writ petition again came up for consideration before the learned Single Judge, who by a detailed judgment dated 2.3.2000 allowed the writ petition and quashed the transfer order. The learned Single Judge held that the transfer order was arbitrary, illegal and was also discriminatory. The learned Single Judge found that transfer order of similarly situated persons, was cancelled, but, in so far as the respondent No. 3 was concerned, he was discriminated.

4. Against the order of the learned Single Judge dated 2.3.2000 allowing the writ petition, the management filed a Special Appeal No. 204 of 2000 (defective), which was dismissed by a judgment dated 2.4.2007. A review application was filed, which also met the same fate. The matter stood concluded finally and the battle which was started in the year 1994 eventually came to an end after a long journey of 13 years in the year 2007.

5. Even though the transfer order stood quashed and the matter reached a finality, the respondent No. 3 grievances were not settled. He claimed wages for the period 1994 onwards, which he was denied. He filed a writ petition before this Court praying for a direction that the management should be directed to release the salary. The said writ petition was dismissed directing the said respondents to raise an industrial dispute. On the basis of this order, the respondent No. 3 filed an application before the Conciliation Officer for conciliation of the dispute and when the conciliation failed, the matter was referred to the State Government alongwith a failure report. The State Government eventually referred the matter for adjudication. The terms of the reference order was somewhat like this:

Whether the employers were justified in not giving work to the workman pursuant to the transfer order dated 10.10.1994? If not, to what relief was the workman entitled to?

6. The Labour Court after considering the entire matter found that the employers were not justified in giving work to the workman pursuant to the transfer order dated 10.10.1994 nor were the employers justified in not giving work even the transfer order was quashed by the High Court. The Labour Court accordingly held that the workman was entitled for the payment of wages pursuant to the order of transfer dated 10.10.1994.

7. Pursuant to the award passed by the Labour Court, the workman, respondent No. 3 filed an application u/s 6-H(1) of the U.P. Industrial Disputes Act for computation of the wages. The Deputy Labour Commissioner by an order dated 18.7.2008 computed a sum of Rs. 7,61,540/- towards arrears of wages. The management, i.e., the petitioner, being aggrieved by the award of the Labour

Court and the order of the Deputy Labour Commissioner, has filed the present writ petition.

8. During the pendency of the writ petition, the workman filed a contempt application for drawing contempt proceedings against the officers of the petitioner alleging that by interpolating the award the petitioner got undue advantage in obtaining an interim order. The said contempt application was dismissed by the Court. Thereafter, the workman filed a Criminal Contempt Application No. 1 of 2009, which was dismissed at the admission stage itself by a judgment dated 23.1.2009, with the observation that it would be open to the workman to file an appropriate application before the Labour Court for taking such action against the opposite party and if the Labour Court after making necessary inquiry found that a suitable action was required to be taken in accordance with law, it would refer the matter to the High Court for necessary action. Pursuant to the order of the Court dated 23.1.2009, an appropriate application was filed by the workman before the Labour Court in which a notice dated 7.3.2009 was issued directing the Managing Director and the Deputy General Manager of the petitioner Company to appear in person before the Labour Court. The said Managing Director and the Deputy General Manager, being aggrieved by the summoning order, filed Writ Petition No. 28215 of 2009, which was entertained and further proceedings were stayed. The said petition has been connected with the first writ petition and both the writ petitions are being decided together.

9. Heard Sri Sharad Malaviya, the learned counsel holding brief of Sri P.K. Mukherji, the learned counsel for the petitioner and Sri Anil Kumar Srivastava, learned counsel for the respondent No. 3, workman.

10. The learned counsel for the petitioner submitted, that pursuant to the transfer order dated 10.10.1994 and pursuant to the order of the appellate Court, in Special Appeal No. 644 of 1995, dated 25.9.1995, the workman had joined at Bombay and consequently the writ petition filed by him challenging the transfer, order had become infructuous, but, subsequently the writ petition was allowed by judgment dated 2.3.2000. The learned counsel submitted that upon the writ petition being allowed by judgment dated 2.3.2000 the workman should have applied for being relieved at Bombay, which he did not do so and consequently, no relief of wages could be granted to him till such time he applied for being relieved from Bombay. The learned counsel submitted that the workman after working for a few months at Bombay left and did not report back for duty and consequently, on the principle, that the workman did not put any work was not entitled for any wages. In furtherance to the aforesaid, the learned counsel submitted that since the workman had joined at Bombay, no industrial dispute could have been referred by the State Government of Uttar Pradesh nor could any such application be filed. The learned counsel submitted that the Labour Court, which gave an award, had no territorial jurisdiction to decide the dispute. Not only this, the learned counsel made a further submission that the

petitioner is a Central Government undertaking and that appropriate Government was the Central Government to refer the dispute, whereas in the instant case the dispute has been referred by the State Government of U.P., which Government was totally incompetent as it was not the appropriate Government and consequently, on this ground, the award of the Labour Court as well as the order of the Deputy Labour Commissioner was wholly illegal and without jurisdiction and was liable to be quashed.

11. The learned counsel further submitted that no industrial dispute could be raised u/s 2-A of the U.P. Industrial Disputes Act since it was not a case of dismissal, discharge, retrenchment or termination of the service of the workman and that the dispute was in relation to the wages which could not be referred as it was not an industrial dispute.

12. Having heard the learned counsel for the parties at some length, the Court is unable to appreciate the contention raised by the learned counsel for the petitioner. The contention that the Central Government alone had the power to make a reference seems to be attractive in the first blush but on a closer scrutiny, the Court finds that such contention cannot be accepted by the Court, for the reasons that no such objection was raised by the petitioner either before the Labour Court in its written statement nor was raised even before this Court in the writ petition. Consequently, such point of jurisdiction, which has not been raised at any stage cannot be allowed to be argued by the learned counsel in the absence of pleadings being made. It is a settled principle of law that arguments can only be advanced on the pleadings raised by a party.

13. The contention of the learned counsel, that the workman remained at Bombay and was not relieved and therefore, Bombay had the jurisdiction, is bereft of merit for the reason that such grounds has not been taken either before the Labour Court or before this Court. Further, the Court finds that the order of transfer was quashed by the High Court vide its judgment dated 2.3.2000. Once the order of transfer is quashed, the question of asking for being relieved does not arise. The appropriate competent authority was required to pass a fresh order for his postings which has not been done. Once the order of transfer is quashed, it necessarily implies that the employer has to post the employee at the original place where he was working prior to his transfer. The petitioner was at Allahabad prior to his transfer to Bombay. Once the transfer order was quashed, he was required to report at Allahabad, which he had done. Since he was not allowed to join, he filed a writ petition for payment of wages, which was dismissed by an order directing the workman to raise an industrial dispute. The industrial dispute was raised and referred by the State Government of Uttar Pradesh, which had the territorial jurisdiction to refer such dispute since the industrial, establishment was located in the State of Uttar Pradesh. The order of the State Government in referring the dispute does not suffer from any error of law. The contention of the petitioner that the reference could not be made since the petitioner was not relieved, is patently erroneous and is misconceived.

14. The contention that no industrial dispute could be raised u/s 2-A of the U.P. Industrial Disputes Act is also patently erroneous. The transfer order was not under challenge. What was under challenge was the non-allocation of work. If work is not allocated, or where the workman is not allowed to join the post pursuant to the order of the writ Court, it amounts to retrenchment. Denial of work leads to denial of payment of wages. Such denial of work amounts to retrenchment and consequently, an industrial dispute as per Section 2-A of the U.P. Industrial Disputes Act. The contention that no dispute could be referred u/s 2-A, is consequently misconceived.

15. The transfer order was quashed. The petitioner was liable to join at Allahabad. Since the same was not done, the workman became entitled for payment of wages. A categorical finding of fact has been given by the Labour Court, which is neither perverse and is based on appreciation of evidence. The Court is of the opinion that in the facts and given circumstances that has come on record, the Labour Court was justified in directing payment of wages for not validly giving work to the workman by the employer and in not allowing the work to join the post. The Court further finds that the calculation of the wages is in accordance with law for which no interference is required.

16. The contention, that the workman was not entitled for payment of wages as he had left Bombay and did not report back for duty, is patently erroneous. If the workman had left Bombay unauthorisedly, it was open to the petitioner to take disciplinary action, but, having not done so it is not open to the petitioner to contend at this stage that the workman was not entitled for wages for that period on the principle of "no work no pay".

17. In the light of the aforesaid, Writ Petition No. 46532 of 2008 fails and is dismissed.

18. In so far as Writ Petition No. 28215 of 2009 is concerned, the Court finds that a Contempt Application No. 3685 of 2008 was filed, which was dismissed by the learned Single Judge vide order dated 23.10.2008. Thereafter the workman filed a Criminal Contempt Application No. 13207 of 2009, which was dismissed by giving a liberty to the workman to approach the Labour Court. The Labour Court thereafter issued the summons asking the Managing Director and the General Manager of the Company to appear in person. The allegation made in the complaint by the workman is manipulation of the record of Writ Petition No. 46532 of 2008. The contention is, that the copy of the award filed in the writ petition did not disclose the date of the award on account of which the petitioner gained undue advantage in obtaining an interim order. The contention is that, in the event, the date was disclosed, the Court would not have passed an interim order as the award was passed one year before the filing of the writ petition.

19. Having heard the learned counsel for the parties, the Court is of the opinion, that if there is an interpolation of the record of the writ petition, the complaint, if any, has to be made before the Writ Court. The Labour Court, is not competent

to inquire into the interpolation of the record of the writ petition in the High Court. Consequently, on this short ground, the complaint made by the respondent No. 3 before the Labour Court, Allahabad and the notice dated 7.3.2009 issued by the Labour Court is totally without jurisdiction and are quashed. The writ petition No. 28215 of 2009 is allowed.

20. Before parting, the Court finds that when the writ petition was called out for hearing in the first round, the Court found that stitching of the Writ Petition No. 46532 of 2008 was broken and the pages of the writ petition was in disarray. The Court, accordingly directed the Bench Secretary to get it stitched. The Court has been informed that Sri Aslam, Daftari was called and the writ petition was stitched in presence of Sri Ajai Singh, who has been deputed to work in this Court to help the Bench Secretary. When the matter was being heard with regard to interpolation of the record, the Court realised that the stitching of the writ petition could be broken deliberately for vested reasons. The Court found that the original copy of the award is missing and there are only a few pages of the award. Page Nos. 27 to 30 and page No. 32 of the writ petition are missing. These pages probably relates to the original copy of the award.

21. Sri Radhey Shyam Patel, Assistant Registrar, of Writ-C(1) Section was also called and he was shown and explained the discrepancy and the shoddy manner in which the records are kept.

22. Prima facie it is apparent that the stitching of the writ petition was broken in order to gain undue advantage by someone. The record of the Court cannot be interpolated without the connivance of the officials of the Court.

23. The Registrar General is accordingly directed to institute an inquiry. A certified copy of the order shall be placed before the Registrar General within two weeks from today for necessary information and action.