

(2013) 10 AHC CK 0184

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9658 of 1993

M/s. Towers and Transformers Pvt. Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-10-2013

Acts Referred:

Citation : (2013) 10 ADJ 163 : (2013) 139 FLR 1015

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Y.K. Sinha, for the Appellant; A.K. Bimal, A.K. Bind, K.P. Agarwal and Radhey Shyam Dwivedi, for the Respondent

Judgement

Tarun Agarwala, J.—Heard Sri Y.K. Sinha, the learned counsel for the petitioner. List has been revised. No one appears for the respondent-workman.

2. The present writ petition is against the award of the Labour Court directing reinstatement with continuity of service and with back wages.

3. It transpires that the respondent-workman was appointed as a Supervisor and worked in that capacity between 1984 to 1986 and, eventually, on 29.11.1986, it is alleged, that his services was terminated by an oral order of the management. The workman, being aggrieved, raised an industrial dispute, which was referred to the Labour Court for adjudication with regard to the validity and legality of the order of termination.

4. The stand of the workman was that he had raised a demand through the Union with regard to the increase of his Dearness Allowance, which was rejected by the management. On account of this demand, the management orally directed the workman not to come for work any further and on account of refusal of work being given by the management from 29.11.1986 onwards, the present dispute was raised.

5. On the other hand, the stand of the employer was that the workman absented

himself from 29.11.1986 onwards. The management issued various letters directing the petitioner to report for work. Such letters were issued at his registered address. One such letter came back with the endorsement of refusal while another letter came back was with the endorsement that he was not available at that place and, eventually, the management struck off the name of the workman from the register, on the ground, that he was no longer interested in working. It was also contended by the employer that whatever dues of the petitioner that was required to be paid by the management was also sent by post, which the workman had accepted.

6. The Labour Court, after considering the material evidence on record, accepted the version of the workman holding, that the demand of the Union and the letter sent by the workman through registered post was not denied by the management. The Labour Court further went on to hold that retrenchment compensation was payable in such a situation and, since the same was not done, the alleged order of termination was in violation of the provision of Section 6N of the U.P. Industrial Disputes Act. The petitioner, being aggrieved by the said award, has filed the present writ petition.

7. Sri Y.K. Sinha, the learned counsel for the petitioner has raised three submissions, namely, that as per the contention of the workman in his written statement, there was no order of termination and that there was only a refusal to give work to the workman by the employer. The learned counsel contended that such refusal does not amount to termination, therefore, the reference order was bad in law and was liable to be quashed. The learned counsel further submitted that, as per the own case of the workman, he indicated that he was working as a Supervisor and was drawing wages more than Rs. 500/- per month and consequently, was not a workman, as defined u/s 2(z) of the U.P. Industrial Disputes Act. The learned counsel, in the end, submitted that the award of back wages was wholly arbitrary since no evidence has been filed to indicate that the workman was unemployed during the interim period nor any pleading to that effect has been brought on record.

8. Having heard the learned counsel for the petitioner, the Court finds that the Labour Court after appreciating the evidence has held that the stand of the workman seems to be more plausible and consequently accepted his version and rejected the stand of the employer. The Court is of the opinion, that when there are two diverse stand taken by the parties and both the stands are based on facts, the Labour Court, considering the factual aspects and the evidence, that has been brought on record had rightly accepted the stand of the workman. Such acceptance by the Labour Court is based on appreciation of evidence, which is neither perverse and cannot be set aside merely because the stand of the petitioner was not accepted. The Court is of the opinion that the findings given by the Labour Court was based on appreciation of evidence and being a finding of fact, which is neither perverse, cannot be set aside in a writ jurisdiction.

9. The fact, that the workman was a Supervisor, does not automatically take him

out of the ambit of the definition of workman as defined under the U.P. Industrial Disputes Act. Mere designation as Supervisor does not mean that the workman belongs to the officer cadre and does not belong to the ministerial cadre. Such pleading was never raised before the Labour Court nor has any finding been given on that aspect. Consequently, this Court is unable to appreciate the submission of the learned counsel of the petitioner with regard to the status of the workman.

10. So far as back wages are concerned, the Court finds that the back wages cannot be granted by the Labour Court as a matter of right, merely because the order of termination has been set aside. The Labour Court while setting aside the order of termination is also required to give a finding with regard to the loss of wages, which the workman had incurred during the interim period and, for this purpose, was required to give a finding as to whether the workman was unemployed or was gainfully employed. In the instant case, the Court finds that there is no pleading by the workman to the effect that he was unemployed.

11. In the light of the aforesaid, the Court is of the opinion, that the finding of the Labour Court granting back wages was wholly arbitrary and to that extent the award cannot be sustained.

12. The contention of the petitioner that there was only refusal of employment and that there was no action of termination of services of the workman is patently erroneous. Mere jugglery of words of "refusal" and "termination" cannot be a ground to interfere in the award. The Court is of the opinion that the consistent stand of the workman was that the employer refused to give work and that he continuously came to the premises asking for work, which was refused by the employer. Such action of the management in refusing to give work amounts to termination of the services. Consequently, the reference made by the State Government with regard to the alleged termination was perfectly correct.

13. In the light of the aforesaid, the award of the Labour Court directing reinstatement does not suffer from any manifest error of law and to that extent the award is sustained.

14. However, the Court finds that the workman is not responding before this Court. This Court finds that by an interim order, the Court directed the petitioner to pay a sum of Rs. 3500/- to the workman, which the petitioner has done. The order of termination is of the year 1986. The award is of the year 1992 and the interim order was passed on 25.8.1993. More than 20 years have elapsed and it is not known as to what is the status of the workman.

15. Considering the aforesaid facts, the Court is of the opinion, that reinstatement as on date is not justifiable and, consequently, the award of the Labour Court is modified to the extent that in the event the workman is still alive and applies before the employer, he would be given a sum of Rs. 15,000/- in lieu of reinstatement. The writ petition is accordingly disposed of.