

(2016) 11 AHC CK 0042

In the Allahabad High Court

Case No : Writ C. No. 12323 of 2008, Writ C. Nos. 25114, 11998, 12321, 25113, 12322 and 12324 of 2008

M/S Universal Cables Ltd.

APPELLANT

Vs

Presiding Officer, Industrial Tribunal

RESPONDENT

Date of Decision : 23-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10

Citation : (2017) 152 FLR 144 : (2017) 1 LLN 321

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : Krishna Mohan, Advocate, for the Petitioner; C.S.C., Devendra Swaroop, M.S. Singh, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J. - These writ petitions involve an identical controversy. They have therefore being heard together and are being decided by a common order.

2. I have heard Sri Krishna Mohan, counsel for the petitioner in all these writ petitions and Ms. Bushra Mariyam as also Sri M.S. Singh for the various respondents in this bunch of writ petitions.

Writ Petition No.12323 of 2008 is directed against the award of the Industrial Tribunal, Allahabad dated 28.09.2007 published on 07.01.2008 in Industrial Dispute No.08 of 2006, Babloo v. Universal Cables Ltd. and others.

Writ Petition No.25114 of 2008 is directed against the award of the Industrial Tribunal, Allahabad dated 22.12.2007 published on 30.04.2008 in Industrial Dispute No.09 of 2006, Ram Bhawan v. Universal Cables Ltd. and others.

Writ Petition No.11998 of 2008 is directed against the award of the Industrial Tribunal, Allahabad dated 28.09.2007 published on 07.01.2008 in Industrial

Dispute No.42 of 2006, Vishnu Kumar v. Universal Cables Ltd. and others.

Writ Petition No.25113 of 2008 is directed against the award of the Industrial Tribunal, Allahabad dated 07.03.2008 published on 30.04.2008 in Industrial Dispute No.07 of 2006, Phool Chand v. Universal Cables Ltd. and others.

Writ Petition No.12321 of 2008 is directed against the award of the Industrial Tribunal, Allahabad dated 20.09.2007 published on 07.01.2008 in Industrial Dispute No.10 of 2006, Vidya Sagar Mishra v. Universal Cables Ltd. and others.

Writ Petition No.12322 of 2008 is directed against the award of the Industrial Tribunal, Allahabad dated 20.09.2007 published on 07.01.2008 in Industrial Dispute No.41 of 2006, Ram Jatan v. Universal Cables Ltd. and others.

Writ Petition No.12324 of 2008 is directed against the award of the Industrial Tribunal, Allahabad dated 28.09.2007 published on 07.01.2008 in Industrial Dispute No.39 of 2006, Jhoori Lal v. Universal Cables Ltd. and others.

3. Learned counsel for the petitioner has submitted that although the writ petitions pertain to different workman allegedly working, on different posts and their alleged appointment is also of different dates, however, the evidence in all the cases was identical and an identical finding has been recorded in all the cases. Accordingly, the writ petition No.12323 of 2008 is taken as the leading case.

4. In this case, an industrial dispute referred to the Industrial Tribunal, Allahabad, under Section 4-K of the Industrial Disputes Act, was registered as Industrial Dispute No.08 of 2006.

5. The reference made was whether, the employer was justified in terminating the services of the workman and the relief, if any, to which the workman was entitled.

6. The workman filed his written statement stating that he had been appointed as a washerman in 1999. He had worked continuously for 240 days in every year but his services were illegally terminated by an oral order.

7. The case of the petitioner-employer was that there exists no sanctioned post of washerman. The M.P. Birla Anand Kanan Chhatnag Jhuns, Allahabad is a Guest House of M/s Universal Cables Ltd. It is not an industry and the provisions of the Industrial Disputes Act are not applicable to it. It was therefore, contended that the opposite party was neither a workman nor the M.P. Birla Anand Kanan Guest House, an industry.

8. The submission of learned counsel for the petitioner is that the evidence adduced on behalf of all the workman in support of their case was that only their oral testimony, wherein they stated to have completed 240 days in each calendar year.

9. On the contrary, the documentary evidence adduced by them showed that

they had worked for only a few days. The documentary evidence filed by none of the workman established that they had worked for 240 days in even one calendar year. They were therefore, contract workers and therefore, not entitled to any retrenchment, compensation or notice.

10. It is also contended that it was for the respondents to establish that they had worked for 240 days in the year preceding their termination and a mere affidavit, stating this fact, cannot be construed as sufficient evidence to hold in their favour. The Industrial Tribunal, therefore, committed patent illegality in directing re-instatement of the workmen with full back-wages.

11. It is lastly submitted that no finding has been returned on the question as to whether, the petitioner was covered by the provisions of the U.P. Industrial Disputes Act.

12. Learned counsel for the petitioner has placed reliance upon the decision of the Apex Court in the case of *R.M. Yelltti v. Assistant Executive Engineer* (2006) 1 SCC 106, in support of his contention that the burden of proving service of 240 days, lies upon the workman. A mere affidavit or a self serving statement made by the workman, will not suffice in the absence of other cogent evidence, either oral and documentary.

13. Learned counsel appearing for the respondent workmen have submitted that relevant documents were summoned from the employer and despite a specific order in this regard having been passed by the Industrial Tribunal, the employer thereafter failed to appear. They also failed to produce the documents summoned. They also failed to adduce any evidence, either oral or documentary, in support of their contentions. The documents summoned were the wage register, duty chart etc.

14. The Tribunal has observed that there was documentary evidence to show that the workman had in fact worked in the petitioners establishment but the documents summoned, which would have been conclusive, were never produced, despite having been summoned. It has therefore, drawn an adverse inference against the employer. The Industrial Tribunal has also observed that there is absolutely no evidence, either oral or documentary, filed on record by the petitioner-employer. Accordingly, it has held that there is no justification, not to believe the case of the workman and has accordingly directed their re-instatement with full back-wages.

15. Despite a pointed query by the Court, learned counsel for the petitioner could not offer any explanation as to why the documents summoned were not produced. There is also no explanation as to why the employer never appeared in the proceedings after filing the written statement.

16. In the aforesaid facts and circumstances, I do not find any illegality in the impugned award, which has accepted the case of the workman after drawing an adverse inference against the employer, on account of its failure to produce the

documents summoned by the Industrial Tribunal. The Tribunal, therefore, accepting the case of the workman that they have worked continuously and their services had been terminated without any notice, has directed their re-instatement with full back wages.

17. The petitioner is also not entitled to any benefit under the judgment cited, wherein it has been held that the burden of proof that a claimant had worked for 240 days in a given year is upon the workman and is discharged only when the workman states in the witness box and adduces cogent evidence, both oral and documentary. It is also held that in case of termination of service of a daily wager, there will be no letter of appointment or termination and also no receipt or proof of payment and therefore, the workman claimant can only call upon the employer to produce before the Court, the muster roll, and the wage register, attendance register etc.

18. Admittedly, in the case at hand, though these documents were summoned, but they were never produced. The employer even failed to appear and participate in the proceedings, thereafter. The Industrial Tribunal has therefore rightly drawn an adverse inference against the employers and the adverse inference drawn is in consonance with the law laid down in the judgment cited. The impugned award, in my considered opinion, cannot be said to be vitiated in any manner at all.

19. In view of the above discussion, this Court finds that the impugned awards call for no interference. The writ petitions are devoid of substance and are liable to be dismissed.

Accordingly, the writ petitions are hereby dismissed.

20. The interim orders granted in these petitions, required the petitioner to deposit a sum of Rs.25,000/- in each of the petitions with the Registrar General of this Court and this amount appears to have been duly deposited. The Registrar General is directed to remit the deposit made in each of these petitions to the Deputy Labour Commissioner, for its disbursal to the workman, in accordance with law, after adjusting this deposit towards payments that the workman may be entitled to, under the impugned award.