

(2003) 07 AHC CK 0065

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 27882 of 1997

Nagar Palika Parishad and Another

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 07-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2003) 3 UPLBEC 2314

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : S.N. Shukla and C.K. Parekh, for the Appellant; R.S. Sharma, G.S. Sharma, K.S. Rathore and S.C., for the Respondent

Final Decision : Dismissed

Judgement

1. The employers Nagar Palika Parishad, Mirzapur aggrieved by an award of the Labour Court, U.P., Allahabad dated 13th March, 1995, passed in Adjudication Case No. 38 of 1993, which is an ex-parte award and the order dated 6th June, 1997, refusing to set-aside the ex-parte award, approached this Court by means of present writ petition under Article 226 of the Constitution of India copies whereof are annexed as Annexures 7" and "IT to the writ petition.

2. The following reference was made to the Labour Court for adjudication :-

^^D;k lsok;kstdksa }kjk vius Jfed@deZpkjh Jh jke ukjk;u] VSDI dysDVj dh lsok;sa fnukad 11-11-1976 ls lekIr fd;k tkuk mfpr rFkk@vFkok oS/kkfud gS\\ ;fn ugha] rks lacaf/kr Jfed@deZpkjh D;k fgrykHk ?fjyhQ? ikus dk vf/kdkjh gS ,oa fdl fooj.k lfgr **

3. The Labour Court has given the aforesaid award ex-parte after recording a finding that inspite of service of notice from the Labour Court by Registered Post A/D, nobody appeared on behalf of the employers. The employers thereafter moved a recall application for setting-aside the ex-parte award, which application

has been rejected by the Labour Court on the ground that no sufficient cause has been given for making the application at the belated stage. The chequered history between the parties of the litigation clearly demonstrates that the workman concerned had approached the U.P. Public Service Tribunal, which found that the claim petition moved on behalf of the workman is not maintainable. Thereafter the workman preferred a writ petition before this Court, which also found that the writ petition is not maintainable, as the petitioner has a remedy by way of raising an industrial dispute. The workman concerned thereafter raised a dispute, which has been referred to the Labour Court, as stated above.

4. The Labour Court has held that inspite of notice being served upon the employers, nobody appeared on their behalf to contest the case set up by the workman and arrived at the conclusion that the services of the workman were terminated by the employers without complying with the provision of Section 6-N of the U.P. Industrial Disputes Act, 1947 and that the workman has completed more than 240 days of working in previous calendar year. These findings remain unassailed. Learned Counsel appearing on behalf of the petitioners-employers tried to assail these findings recorded by the Labour Court, but in vain. In view of the facts and circumstances of the case and the finding recorded by the Labour Court, I do not find any justification to interfere with these findings.

5. So far as the order refusing¹ to entertain the application for setting-aside the ex-parte award is concerned, in my opinion, the Labour Court has given sufficient reason to the effect that the employers have not been able to make out a case for condonation of delay in filing the application for setting-aside the ex-parte award, which was admittedly beyond time and the reasons given by them have not been believed by the Labour Court. This Court in exercise of power under Article 226 of the Constitution of India will not sit in appeal over the findings recorded by the Labour Court while arriving at the conclusion that the employers have failed to make out a case. This being the legal position and for the reasons stated above, this writ petition deserves to be dismissed.

6. However, in the interest of justice and as argued by learned Counsel for the employers, the award of the Labour Court is modified to the extent that the workman .concerned well be entitled only half of the wages from the date of termination of his services till the date of the award and thereafter he shall be entitled to full back wages.

7. In view of what has been stated above, this writ petition has no merit and is accordingly dismissed with the modification to the extent that the workman concerned shall be entitled to half back wages from the date of termination of his services till the date of the award and thereafter workman shall be entitled for full back wages. The interim order, if any, stands vacated. However, there shall be no order as to costs.