

(2015) 04 AHC CK 0165

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 34650 of 2013

Nagar Palika Parishad, Mathura

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 08-04-2015

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2015) 6 ADJ 320 : (2015) 4 AWC 3533 : (2015) 3 UPLBEC 2112

Hon'ble Judges : Surya Prakash Kesarwani, J

Bench : Single Bench

Advocate : Saurabh Tiwari, for the Appellant; S.S. Sharma, R.S. Chauhan, S.P. Singh, Surya Prakash Singh and S.C., Advocates for the Respondent

Final Decision : Allowed

Judgement

Surya Prakash Kesarwani, J—Heard Sri Saurabh Tiwari, learned counsel for the petitioner, Sri Alok Sharma, learned Standing Counsel for the respondent No. 1 and Sri S.S. Mishra, learned counsel for the respondent No. 2. In this writ petition the petitioner has prayed for a writ, order or direction in the nature of certiorari to quash the award dated 12.2.2013 passed by the respondent No. 1 in Adjudication Case No. 120/2004. By the impugned award, the respondent No. 2 has been directed to be reinstated in service with 50% back wages from the alleged date of termination i.e. 15.9.2003.

2. Learned counsel for the petitioners submits that the entire award is based merely on forged and fabricated piece of papers, namely, alleged log sheet which does not bears signature of any officers of the petitioners and a manipulated piece of papers dated 7.8.2001, in which the respondent No. 2 has been shown as doing duty at Pump House, Theknar. He submits that no evidence could be filed by the respondent No. 2 to establish that he was ever employee of the petitioners. He submits that the fact is that no appointment or engagement of any kind was made by the department after the year 1995. The allegation of the respondent No. 2 that he was appointed as Pump Operator on 1.5.2001 is wholly

false, baseless and without any evidence on record. During the period 1998 to 2002 contract for operating the Pump House were given after due advertisement to one M/s. Banke Bihari Ji Plumber and Sanitary Works, Krishna Nagar, Mathura thereafter the contract was given for the year 2002 and 2003 to M/s. National Pump Corporation, Bhuteshwar Road, Dwarka Puri, Mathura after due advertisement. In June, 2003 the contract was given to M/s. M.D. Enterprises, he submits that there was no employer-employee relationship between the petitioner and the respondent No. 2. The entire award is based on surmises and conjecture.

3. Learned counsel for the respondent No. 2 submits that the impugned award has been passed in accordance with law. He relied upon the logbook dated 1.6.2001 of fifteen days from 16th to 31st day of the month, a copy of which has been filed alongwith the counter-affidavit. He submits that this logbook bear the signature of the respondent No. 2 and another person Sri Mohan Saini. He also relied upon a paper dated 7.8.2001 filed alongwith the counter-affidavit, in which the name of the respondent No. 2 finds mentioned at serial No. 3. He submits that the respondent No. 2 was an employee of the petitioners but his service was terminated without any notice or retrenchment compensation and in breach of Section 6N of U.P. Industrial Dispute Act, 1947 (hereinafter referred to as the "Act") and as such the impugned award has been lawfully passed directing the petitioners to reinstate the respondent No. 3 in service with 50% back wages.

4. I have carefully considered the submissions of learned counsel for the parties and perused the records.

5. In paragraph No. 4 of the impugned award, the stand of the respondent No. 2 has been recorded that he was regularly appointed by the petitioners on 1.5.2001 as Pump Operator and he has completed service of more than 240 days but his service was illegally terminated on 15.9.2003. No evidence was adduced by the respondent No. 2 in support of his case that he was regularly appointed. Neither any appointment letter was filed by the respondent No. 2 nor any document was filed before the respondent No. 1 to establish either his appointment by the petitioners or payment of any salary. However, the respondent No. 1 has allowed the claim of the respondent No. 2 and held him to be an employee of the petitioners, merely on the basis of a paper alleged to be a log sheets dated 1.6.2001 and also a paper dated 7.8.2001 which bears at serial No. 3, the name of the respondent No. 2 showing him on duty. The petitioners stated that the paper filed as log sheet is forged and the other paper dated 7.8.2001 is manipulated. I have perused the alleged log sheet dated 1.6.2001, a copy of which has been filed alongwith counter-affidavit. I find that this alleged log sheet does not bear the signature of any of the officers of the petitioners even though at the bottom of this sheet the words "Jalk Kal Abhiyanta" and "Avar Abhiyanta" are printed for signature. This log sheet bears the date 1.6.2001 while on the top it bears hand written period of log sheet to be from 16th to 31st which is impossible since the month of June is only of thirty days. All this clearly

shows that the alleged log sheet is forged one and not a legal piece of evidence. Thus the impugned award cannot be sustained.

6. It is settled law that fraud and justice never dwell together. Lord Denning had observed that no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything. Fraud vitiates every solemn act. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. A person, whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. The aforesaid principles are well-settled and are also supported by the law laid down by Hon'ble Supreme Court in the cases of *United India Insurance Company Ltd. v. B. Rajendra Singh and others*, JT 2000 (3) SC 151, *Vice Chairman, Kendriya Vidyalaya Sangathan and another v. Girdhari Lal Yadav*, 2004 (6) SCC 325, *Ram Chandra Singh Vs. Savitri Devi and Others*, (2004) 1 BC 187 : (2005) 11 JT 439 : (2003) 8 SCALE 505 : (2003) 8 SCC 319 : (2003) 4 SCR 543 Supp, *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, AIR 1994 SC 853 : (1993) 2 BC 546 : (1993) 6 JT 331 : (1995) 109 PLR 293 : (1993) 4 SCALE 277 : (1994) 1 SCC 1 : (1993) 3 SCR 422 Supp : (1994) 1 UJ 1 and *Jainendra Singh Vs. State of U.P. Tr. Prinl. Section Home and Others*, (2012) 134 FLR 1054 : (2012) 7 JT 307 : (2012) 7 SCALE 22 : (2012) 8 SCC 748 : (2012) 3 SLJ 289 : (2012) AIRSCW 4347 : (2012) 5 Supreme 215. Applying the aforesaid settled principles of law on the facts of the present case as aforesaid, the impugned award cannot be sustained.

7. Apart from the above, the petitioners took specific stand before the respondent No. 1 for the years 1998 to 2002, the work of operating the pumps was given to contractors M/s. Banke Bihari Ji Plumber and Sanitary Works, Krishna Nagar, Mathura, after inviting tenders published in the daily newspaper. Likewise, for the year 2002 and 2003 the contract of operating the pump was given to one M/s. National Pump Corporation, Bhuteshwar Road, Dwarka Puri, Mathura, after inviting tenders published in the daily newspaper. In June, 2003 the contract was given to M/s. M.D. Enterprises. They operated the pumps deputing their employees. This statement of fact has been totally ignored in the impugned award even though this was not disputed by the respondent No. 2. The respondent No. 2 has not denied the fact of engagement of aforementioned contractors by the petitioners for operating the pumps. The respondent No. 1 has also not recorded any finding contrary to the stand taken. The respondent No. 1 merely observed that the license of the contractors and list of valid contractors of the petitioners have not been filed. It further goes to show that the respondent No. 1 or the respondent No. 2 have not disputed the contracts entered by the petitioners with the aforesaid contractors for operating the pumps and that the contracts were given through tender process after due publication in the daily newspaper. Not even a single evidence was filed by the respondent No. 2 to establish that he was regularly appointed by the petitioners on 1.5.2001 and proof of any amount received by him from the petitioners as salary.

8. Thus, in the light of these facts, it is absolutely clear that the finding recorded by the respondent No. 1 in the impugned award that the respondent No. 2 was a daily wage employee of the petitioners, is wholly perverse and based on no evidence.

9. In view of the above discussions, the impugned award cannot be sustained and is hereby set aside.

10. In result, writ petition succeeds and is hereby allowed. Any amount deposited by the petitioner pursuant to the order dated 29.7.2013 passed by this Court shall be returned by the respondent No. 1 to the petitioner within three weeks from the date of production of a certified copy of this order.