
(2013) 10 AHC CK 0158

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8511 of 2007

Nagar Panchayat and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2013) 9 ADJ 758 : (2014) 4 ALJ 102 : (2013) 6 AWC 6266 : (2013) 139 FLR 766 : (2014) 1 LLN 56 : (2014) LLR 305 : (2013) 4 UPLBEC 3224

Hon'ble Judges : Manoj Misra, J

Bench : Single Bench

Advocate : Anil Bhushan, Miss Rashmi Tripathi and Adarsh Bhushan, for the Appellant; S.S. Nigam and Alok Srivastava, for the Respondent

Final Decision : Partly Allowed

Judgement

Manoj Misra, J.—Heard Sri Adarsh Bhushan, holding brief of Sri Anil Bhushan, learned counsel for the petitioners and Sri Alok Kumar Srivastava, holding brief of Sri S.S. Nigam, learned counsel for respondent-workman.

As parties have exchanged their affidavits, with the consent of learned counsel for the parties, the petition is being decided finally at the admission stage itself.

By this petition, the petitioners have challenged the award dated 14th July, 2006, passed by the Presiding Officer, Labour Court, Bareilly in adjudication case No. 14 of 1999, which was published on 28th September, 2006, whereby termination of service of the respondent-workman on 1st March, 1989 has been held to be illegal and it has been ordered that the respondent-workman would be reinstated in service. However, with regard to back wages, it was provided that from the date of termination of service up to the date of reference i.e. 17.2.1999, the respondent-workman would not be entitled for any back wages whereas from the date of reference up to the date of reinstatement he would be entitled to 50% of the wages, which he was getting immediately prior to the date of his termination.

2. Learned counsel for the petitioners has assailed the award of the Labour Court

on three grounds: (a) that reference was made on 17.2.1999 that is after 9 years and 6 months from the date of termination of the workman and on ground of delay alone, the respondent-workman was not entitled to any relief; (b) that even if the termination amounted to retrenchment and was in violation of provisions of Section 6N of the U.P. Industrial Dispute Act, 1947, there was no justification to grant relief of reinstatement in service as award of compensation would have been sufficient; and (c) that there was no justification to award 50% of back wages from the date of the reference up to the date of reinstatement, inasmuch as, no finding has been recorded that during this period the respondent-workman was not gainfully employed elsewhere.

3. In support of his submission that because of the delay reference itself was bad, the learned counsel for the petitioners cited judgment of the Apex Court in the case of *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, . Whereas to support his plea that there should not be automatic reinstatement, and instead compensation can be awarded, in the event of there being violation of the procedure provided u/s 6N, the learned counsel for the petitioners cited a single judge decision of this Court in the case of *Nagar Palika Parishad Vs. State of U.P. and Others*, . Further, relying on averments made in paragraph No. 15 of the writ petition, the learned counsel for the petitioners submitted that the respondent-workman had worked with the petitioners from the year 2000 up to the year 2006 and has also been paid wages, which fact was concealed by the respondent-workman, therefore, in any case, he was not entitled to the back wages as has been awarded by the labour Court. It has been submitted that the aforesaid plea could not be placed before the labour Court inasmuch as the officers of the petitioners' establishment were in collusion with the respondent workman.

4. The learned counsel for the respondent-workman sought to justify the award. He also cited Apex Court's decision in the case of *Ajaib Singh v. Sirhind Cooperative Marketing Cum-Processing Service Society Ltd. and another*, (1996) 6 SCC 82, so as to contend that there is no limitation for making a reference and that employer's plea of delay in seeking reference, unless coupled with proof of real prejudice to him, is not sufficient to deny relief to the workman. In addition thereto, the decision of the Apex Court in the case of *Sapan Kumar Pandit Vs. U.P. State Electricity Board and Others*, , was relied so as to contend that the opinion as to the existence of the dispute has to be formed by the Government alone and none else. It was submitted that in the said case the validity of a reference made after 15 long years of termination was upheld.

5. Having considered the rival submissions, the submission of the petitioners' counsel that as the reference was highly belated, therefore, no relief ought to have been granted, cannot be accepted, inasmuch as, in paragraph 7 of the award it has been specifically observed that no objection with regards to delay was taken by the employers before the labour Court. The labour Court has also noticed certain authorities, wherein it has been provided that there is no

limitation for making a reference of an industrial dispute to which, there can be no objection. In view of the above, as also for the reason that no prejudice has been shown to have been caused to the petitioners on account of the delay, this Court is of the view that the award of the labour Court cannot be set aside on the ground of delay.

6. Further, in paragraph 3 of the award, it has been noted that the employers admitted that the respondent-workman was employed as Peon with them from 1st May, 1985 up to 28th February, 1989 and that due to their mistake, the name of respondent-workman could not be sent to the Government for regularisation and when the same was sent subsequently, the Government had refused sanction for regularisation. The correctness of the aforesaid observations have not been assailed as being without any basis. Thus, in view of the admitted position, it is not a case where delay would have caused serious prejudice to the employers.

7. A careful perusal of the award further reveals that there is no dispute that the respondent-workman had worked for a period of 3 years, 9 months and 27 days and that he had completed 240 days in each calendar year, before termination of his service. There is also no dispute that the retrenchment procedure, as is required by Section 6N of the U.P. I.D. Act, was not followed.

8. In view of the above, I do not find any reason to disagree with the finding recorded by the labour Court that the termination of service of the respondent-workman, on 1.3.1989, was neither justified nor legally valid.

9. So far as the plea of the petitioners' counsel that instead of reinstatement only compensation ought to have been awarded, suffice it to say that the same does not lie in the mouth of the petitioners as they have themselves admitted in paragraph No. 15 of the writ petition that the respondent-workman had been working in their establishment and had been drawing salary right from the year 2000 up to the year 2006. Thus, there is no reason why reinstatement should not be provided. More so, when the petitioners have admitted before the labour Court that the name of the respondent-workman was not sent for regularization due to their mistake and that when it was sent later, the sanction was not received. Taking a conspectus of the facts and circumstances, the Court is of the view that it would not be proper to deprive the respondent-workman of the benefit of reinstatement.

10. As far as the payment of back wages is concerned, there is no discussion by the labour Court, in its award, as to whether the respondent-workman was gainfully employed or not during the intervening period. The submission of the learned counsel for the petitioner is that the respondent-workman was gainfully employed from the year 2000 up to the year 2006, in the petitioners' establishment itself, therefore, the award of back wages is not justified. Few documentary evidences have also been filed through supplementary-affidavit to support the contention. The respondent-workman has not entirely disputed the

aforesaid fact, but has submitted that he had worked, intermittently, from the year 2000 up to the year 2005, as a contract labour, the details of which have been given in paragraph 5 of the supplementary counter-affidavit dated 29.7.2013.

11. The Apex Court in the case of *Kendriya Vidyalaya Sangathan and Another Vs. S.C. Sharma*, vide paragraph 16 of the report, observed as follows: "when the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After, and if, he places materials in that regard, the employer can bring on record materials to rebut the claim." Further, in *P.G.I. of M.E. and Research, Chandigarh Vs. Raj Kumar*, in para 12, it was observed that "payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no strait-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety." In para 9 thereof, it was observed that "it is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect."

12. In view of the above, the Court is of the view that although the Labour Court was justified in denying back wages for the period up to the date of reference, on account of the delay, but for the period commencing from the date of reference up to the date of reinstatement, before awarding the back wages, the labour Court ought to have addressed itself to the issue as to whether the respondent-workman was gainfully employed or not during the intervening period and then it ought to have taken a decision, dependent on the facts and circumstances, whether to award or not to award the back wages and if so, to what extent. As there is a serious lis between the parties on this issue, which would require assessment of evidence, the Court is of the view that the said issue will have to be remitted to the labour Court for determination. For the reasons aforesaid, the award dated 14th July, 2006, which was published on 28th September, 2006 (Annexure-"7" to the writ petition), is set aside only to the extent of award of back wages. The declaration in the award that the termination of service of the respondent-workman on 1.3.1989 was illegal and unjustified as well as the direction given in the award to reinstate the respondent-workman, is affirmed. The issue with regards to entitlement of the respondent-workman for back wages, with effect from the date of the reference up to the date of reinstatement, is remitted back to the labour Court, which shall decide the same, in accordance with the law, preferably, within a period of three months from the date of production of certified copy of this order, by either side. Upon deciding the said issue, the labour Court would pass an award in respect thereto, which will be treated as part of the earlier award dated 14th July, 2006. It is made clear that it will be open to the parties to lead their respective evidence with regards to gainful employment or otherwise of the respondent-workman, during the period between the date of reference up to the date of reinstatement, for the purpose of deciding the issue, which is being remitted to the labour Court.

The writ petition is partly allowed to the extent indicated above.