
(2003) 04 AHC CK 0061
In the Allahabad High Court
Case No : C.M.W.P. No. 28690 of 1996

Nagar Panchayata

APPELLANT

Vs

Presiding Officer, Labour Court

RESPONDENT

Date of Decision : 29-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K, 6N

Citation : (2003) 5 AWC 4047

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Manish Kumar Nigam, for the Appellant; K.P. Agrawal, Suman Sirohi, K.C. Shukla and S.C., for the Respondent

Judgement

Anjani Kumar, J.—The Petitioner, Nagar Panchayat, Mathura aggrieved by the award of the Labour Court, Agra dated 31st October, 1995, passed in Adjudication Case No. 73 of 1992, approached this Court by means of present writ petition under Article 226 of the Constitution of India with the following prayers:

(i) To issue a writ, order or direction in the nature of certiorari quashing the award dated 31.10.1995 of the Labour Court, Agra, which was published on 6.6.1996 (Annexure-"5" to the writ petition).

(ii) To issue any other writ, order or direction, which this Hon"ble Court may deem fit and proper in the circumstances of the case.

(iii) To award the costs of this writ petition to the Petitioner.

2. The following dispute was referred by the order dated 13th February, 1992 in exercise of its power u/s 4K of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the "Act") before the Labour Court for adjudication.

3. The labour court by its award dated 31st October, 1995, have found that while

terminating the services of the workman concerned, the provision with regard to the retrenchment has not been complied with, hence the Labour Court has directed the re-instatement of the workman concerned to its original post with continuity of service and full back wages. It is this award, which is being challenged by the Petitioner-employer by means of present writ petition.

4. It is not in dispute that the workman concerned has worked for 240 days continuously in the previous calendar year before his termination. It is also not disputed and a finding has been recorded to this effect that the provision of retrenchment, namely, provision of Section 6N of the U.P. Industrial Disputes Act, 1947, has not been complied with before terminating the services of the workman concerned. Learned Counsel for the Petitioner-employer tries to argue that in fact the concerned workman was appointed only as Class IV employee, that too without complying with the provisions of law and it is incorrect to say that the concerned workman was working as clerk.

5. Be that as it may, in view of the matter referred to the Labour Court, the objection, if any, as is now being raised by the Petitioner-employer, should have been raised to the referring authority with the prayer to modify or amend the reference. That having not been done, this Court will not permit the employer to raise this point here, as this has no concern with the reference made to the Labour Court.

6. In the teeth of the findings recorded by the Labour Court on the basis of the admitted case, no interference is required by this Court in exercise of its power under Article 226 of the Constitution of India and the writ petition deserves to be dismissed. Learned Counsel for the Petitioner-employer then submitted that since admittedly the workman concerned has not worked with effect from 17th October, 1990, till the date of the award, the Labour Court has committed an error in awarding the full back wages, whereas on the basis of the principles of no work no pay, the workman concerned should not have been allowed the back wages. Considering the facts and circumstances of the case. I find that the interest of justice will meet that the award of the Labour Court be modified to the extent that from the date of the termination till the date of award the workman shall be paid half wages what he would have been entitled had he been in employment, instead of full back wages.

7. With the aforesaid modification, this writ petition, is partly allowed and the award of the Labour Court is modified to the extent aforesaid. In the circumstances of the case, the parties shall bear their own costs.