
(2006) 11 AHC CK 0017

In the Allahabad High Court

Case No : Civil M.W.P. No"s. 4740, 4741 and 4742 of 1989

Nagari Pracharni Sabha

APPELLANT

Vs

Shiv Shanker Mishra and Others

RESPONDENT

Date of Decision : 28-11-2006

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 10, 4K, 6(3), 6(4)

Citation : (2007) 1 ADJ 382 : (2007) 6 AWC 6223

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : Mool Behari Saxena, for the Appellant; S.M.A. Kazmi, Satya Prakash and S.C., for the Respondent

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. Respondent No. 1 in each case was working as Clerk in the Petitioner's establishment. All the three Respondents were transferred from Varanasi to Teekamgarh, Madhya Pradesh. They did not join on their transferred posts and sought leave which was refused. Thereafter they were charge-sheeted for indiscipline, misconduct, absence without leave and refusal to comply with the transfer order. The workmen did not participate in the inquiry even though information regarding the same was also published in daily Hindi newspaper Aaj. Thereafter before Inquiry Officer workmen complained that charge-sheet was not given to them. Accordingly management was directed to supply copies of the charge-sheet to the contesting Respondents in the writ petition and 1.5.1982 was fixed as the next date of inquiry. On 1.5.1982 also no workman appeared before the Inquiry Officer, hence he submitted his report on 2.5.1982 holding the workmen guilty. Thereafter they were required to show cause against the proposed punishment on 27.6.1982. On the said date also they did not appear, hence their services were terminated with effect from 17.7.1982 (Respondent No. 1 in first and second writ petition) and 30.6.1982 (Respondent No. 1 in the third writ petition).

3. All the three workmen applied for making the reference which was accordingly made by the State Government. Matters were registered before the Presiding Officer, Labour Court, U.P. Varanasi as Adjudication Case Nos. 10 of 1983, 59 of 1983 and 58 of 1983 respectively. The labour court gave different but similar awards in each case. Labour court first held that the departmental inquiry was not fair and then directed/permitted the management to produce evidence before it in order to prove the charges against the workmen. Ultimately the labour court held that termination of services of Respondent No. 1 in each case through orders dated 17.7.1982 and 30.6.1982 by the Management was illegal and improper. Accordingly reinstatement with full back wages was directed.

4. The transfer order was held to be illegal by the labour court on the ground that the workmen were not competent to discharge the duties of translators while they were transferred as translators to Teekamgarh. It was further held that the action of transfer was unfair labour practice and amounted to victimization of the workmen as they were raising their demands and they had also filed some affidavit before the Supreme Court against the employers. Labour court also held that either before or after the transfer of the three workmen no other employee was ever transferred from Varanasi to Teekamgarh.

5. Learned Counsel for the Petitioner has argued that full opportunity was given to the workmen in departmental proceedings but they did not avail the same. Transfer orders were rightly passed and services of workmen were rightly terminated as they remained absent without any leave and did not comply with the transfer order.

6. Learned Counsel for the Petitioner has further argued that the award was not sent by the labour court for publication in the official Gazette to the State Government, instead labour court itself sent the award for publication in the official Gazette. In this regard it is important to note that for a certain period, including the time when the impugned awards were given, State Government issued a Government order permitting the labour courts to directly send the awards for publication in the official Gazette. The said G.O. which had been issued on 6.11.1988 was withdrawn later on. The argument of the learned Counsel for the Petitioner is that before publication of the award in the official Gazette State Government has to take a conscious decision regarding its publication and in certain circumstances it can refuse to publish the award. In this regard it may be mentioned that initially u/s 6(4) of the U.P. Industrial Disputes Act State Government was empowered to remit the award for reconsideration to the adjudicating authority (i.e., labour court) and that authority was compelled thereafter to reconsider the matter and submit the award again to the State Government. The Supreme Court in *B. B. Rajwanshi v. State of U.P.* and Ors. 1988 (56) FLR 705, declared the said provisions to be ultra vires for vagueness. In pursuances of the said judgment Section 6(4) of U.P. Industrial Disputes Act was amended by U.P. Act No. 3 of 1991 and was made effective with effect from 13.8.1990. Under the amended provisions the grounds on which

matter may be remitted have been mentioned. The awards impugned in this writ petition were given before 13.8.1990. The legal position in view of B. B. Rajwanshi's authority is that at the time when impugned awards were given, State Government had no power to remit the award to the labour court. In view of this no fault can be found with the Government order which empowered the labour court to directly send the award for publication. According to Section 6(3) of U.P. Industrial Disputes Act "Subject to the provisions of Sub-section (4) every Arbitration award and the award of a labour court or Tribunal shall within a period of 30 days from the date of its receipt by the State Government be published in such manner as the State Government thinks fit." If the State Government for a short while through the above mentioned Government order permitted the labour court to send the award for publication directly then it was nothing but providing a manner for publication of the award, which was permissible under the aforesaid Sub-section (3).

7. It may also be mentioned that against the preliminary finding of the labour court to the effect that disciplinary proceedings held by Management were not fair, writ petitions were filed in this High Court which were dismissed with liberty to challenge the said findings also in case ultimately the award was given against the employer.

8. Even if labour court holds that the departmental proceedings were fair, still in certain circumstances it has got power to interfere in the punishment order. However, labour court cannot sit in appeal over the findings of the Disciplinary authority. The net result is that if the findings are perverse in the sense that material circumstances have not been taken in to consideration or the punishment awarded is shockingly disproportionate then the findings may be reversed by the labour court. In such situation the jurisdiction of the labour court is more or less supervisory and not appellate. The facts that (1) labour trouble had started and the three concerned workmen were office bearers of recently formed Union and (2) the matter had been taken to the Supreme Court also and (3) the fact that the Management was highly annoyed with the allegations made by the workmen in the affidavit before the Supreme Court and (4) the fact that apart these three workmen no other workman either before or afterwards was transferred from Varanasi to Teekamgarh and (5) that these workmen were not competent to discharge the functions of Translators, clearly demonstrate that the transfer orders were not fair labour practice.

9. Accordingly I do not find any such error in the award of the labour court which may warrant interference in exercise of writ jurisdiction.

10. However, it has been admitted by the learned Counsel for both the parties that all the three workmen have long before crossed the age of superannuation. (In these writ petitions through interim orders operation of the impugned awards were stayed.) Accordingly now there is no question of actual reinstatement. As far as the back wages are concerned, the Supreme Court recently in several authorities, including Haryana State Electronics Development Corporation Ltd.

Vs. Mamni, ,has held that it is not necessary to award full back wages alongwith reinstatement. I, therefore, feel that interest of justice will best be served by modifying the award and directing the employer-Petitioner to pay Rs. 10,000 to Respondent No. 1 in each of these writ petitions. This amount shall be paid within 3 months from today failing which since after 3 months interest at the rate of 1 per cent per month shall be payable till actual payment.

11. Writ petitions are accordingly disposed of.