
(2011) 02 AHC CK 0084
In the Allahabad High Court
Case No : Writ C No. 40894 of 1997

Nirmal Chand Srivastava

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 24-02-2011

Acts Referred:

Citation : (2011) 4 ADJ 43 : (2011) 4 AWC 3551 : (2011) 129 FLR 370 : (2012) 1 LLJ 533

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—Heard Shri K.P. Agarwal, learned Senior counsel assisted by Ms. Pooja Srivastava, learned Counsel for the Petitioner. In spite of sufficient service no one has appeared on behalf of employer - Respondent No. 2 - Prabandhak, Jila Sahkari Bank Ltd., Jaunpur. Petitioner was an employee of District Cooperative Bank, Jaunpur, Manager of which is Respondent No. 2 in this writ petition. His services were terminated on 18.4.1968. He instituted a suit seeking a declaration that suspension order dated 4.2.1965 and termination order dated 18.4.1968 were void and illegal and for recovery of salary/balance suspension allowance. The suit was registered as O.S. No. 69 of 1968 and was dismissed by Additional Civil Judge, Jaunpur on 31.8.1971. Petitioner was Branch Manager. From the perusal of the judgment of the trial court it appears that termination order was passed during pendency of the suit. Initially the suit was filed only against suspension order. Thereafter plaint was amended and termination order was also challenged. Against the judgment and decree dismissing his suit Petitioner filed civil appeal No. 198 of 1971. Additional District Judge, Jaunpur dismissed the first appeal on 12.8.1977. Thereafter Petitioner filed Second appeal No. 622 of 1978 which was also dismissed by this Court on 24.5.1984, copies of these three judgments are Annexure 5, 6 and 7 to this writ petition.

2. Undaunted by these three judgments and decrees the Petitioner raised an industrial dispute. The matter was referred to the Labour court, Varanasi by the State Government where it was registered as adjudication case No. 117 of 1992. The dispute was raised by the Petitioner in the year 1990 (C.P. Case No. 62 of 1990) i.e. after six years of dismissal of the Second appeal. The matter which was referred to the Labour court was as to whether the action of employer-Respondent No. 2 terminating the services of the Petitioner with effect from 18.4.1968 was just and valid or not. The Presiding Officer, Labour Court, U.P., Varanasi decided the reference on 16.5.1997 holding that as matter had earlier been raised before the civil court and decided up-till the High Court against the Petitioner hence it had not jurisdiction to re-consider the dispute afresh. It is also mentioned in the impugned award that matter had been carried to the Supreme Court also. The only point argued by the learned Counsel for the Petitioner is that civil court had no jurisdiction to entertain the dispute as Petitioner was workman, Respondent No. 2 was an industry and only Labour court had jurisdiction to hear the matter. The Petitioner had challenged before the Civil court that his termination order was bad as he was not provided opportunity of hearing and termination order was passed by the authority inferior to the appointing authority of the Petitioner. Thirteen issues were framed. However, no issue related to the bar of the suit in view of remedy under Industrial Disputes Act. Issue No. 7 was as to whether the suit was not maintainable in view of the provisions of arbitration in the U.P. Cooperative Societies Act. Issue No. 10 was as to whether the suit was not maintainable for the reasons given in para18 of the written statement which were to the effect that against termination order Petitioner had a right to file departmental appeal. None of the parties raised the question that Petitioner was workman and dispute could be raised before the Labour court hence civil court had no jurisdiction. All the three courts including this High court in second appeal categorically held that due opportunity of hearing was provided to the Petitioner before passing termination order, that charges were proved and termination order was passed by the competent authority. Without entering into the question as to whether Petitioner can be said to be workman or not, writ petition is to be dismissed on the ground that the Supreme Court after thorough discussion of the matter held in Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, that the dispute between workman of an Industry and its management shall exclusively be decided by the Labour court only with effect from the date of the said judgment. All the judgments of the civil courts prior to 1995 were saved. Para-34 of the said authority is quoted below:

34. It is directed that the principles enunciated in this judgment shall apply to all pending matters except where decrees have been passed by the Trial Court and the matters are pending in appeal or second appeal, as the case may be. All suits pending in the Trial Court shall be governed by the principles enunciated herein as also the suits and proceedings to be instituted hereinafter.

3. The said authority has recently been followed in R.S.R.T.C. and Others Vs. Deen Dayal Sharma, Accordingly, there is no error in the impugned award. Writ

petition is dismissed.