
(2002) 10 AHC CK 0039
In the Allahabad High Court
Case No : C.M.W.P. No. 35305 of 1998

Nirmal Kumar Jain

APPELLANT

Vs

Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court and Another

RESPONDENT

Date of Decision : 04-10-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2003) 1 AWC 114 : (2003) 96 FLR 301

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : R.K. Nigam, for the Appellant; K.L. Grover and S.C., for the Respondent

Final Decision : Allowed

Judgement

Anjani Kumar, J.—By means of this writ petition under Article 226 of the Constitution of India, the petitioner challenges the award of the Central Government, Industrial Tribunal-cum-Labour Court, Kanpur, passed in Industrial Dispute No. 58 of 1997. The following matter was referred by the Central Government to the said Tribunal-cum-Labour Court for adjudication :

"Whether the action of the management of Rani Lakshmi Bai Kshetriya Gramin Bank, Jhanst in terminating the services of Sri Nirmal Kumar Jain, Peon at Head Office w.e.f. 26.8.1985 is legal and justified? If not, to what relief the workman is entitled?"

2. After issuance of notice, the concerned workman has filed his written statement stating therein that he was engaged as a water boy cum messenger by the employer and was asked to work at Kalyanpur Branch of the Bank. He joined on 31st January, 1984. Later on by the order of the Chairman of the Branch, he was asked to report for duty at Head Office. It is pertinent to note that date of this instruction as has been given was not mentioned in the

pleadings. It is further alleged by the workman that he joined at Head Office on 25th November, 1984 and worked there upto 25th August, 1985, when his services were brought to an end by oral order. It is further stated that when the concerned workman was not paid salary for the period 25th November, 1984 to 25th August, 1985, he filed a claim petition for payment of wages for aforesaid period before the payment of wages authority and the said authority registered the case as C.P.W. No. 73 of 1985 and decided the same vide its order dated 17th July, 1987, in favour of the concerned workman and direction was issued to the employer to pay wages of the concerned workman with effect from 25th November, 1984 to 25th August, 1985 amounting to Rs. 1,920 towards salary, Rs. 25 towards damages and Rs. 100 towards costs within 30 days. The said order has been filed as "Annexure-7" to the writ petition. This order passed by the payment of wages authority has not been challenged by the employer as there is nothing on record to show that it has been challenged. Thus, this order has become final. The employer have put up defence before the Tribunal that the concerned workman has not worked from 31st January, 1984 and he applied for leave on 27th March, 1984, due to illness and thereafter did not join at all. Ultimately, he reported for duty on 14th August, 1984 at Sojana Branch. It is denied that at any stage Chairman had instructed the concerned workman to join at Head Office. The concerned workman after joining on 14th August, 1984, did not turn up for duty after 31st October, 1984, Thus, it is a case of abandonment on the part of the concerned workman and he has not worked at all after 31 st October, 1984.

3. The labour court after considering the pleadings of the parties and evidence before it arrived at the conclusion that in view of the order passed by the payment of wages authority wherein employer have been directed to pay the wages to the concerned workman with effect from 25th November, 1984 to 25th August, 1985, It is demonstrated that the concerned workman has worked from 14th August, 1984 to 25th August, 1985. Thus, it is clear that the workman has worked for more than 240 days and, in my opinion, labour court had not committed any error in accepting the case of the workman that the workman was employed on 31.1.1984 till at least the date up to which the workman was awarded the wages by the payment of wages authority. It is admitted case of the parties that the employer have terminated the services of the concerned workman without complying with the provisions of Section 25F of the Industrial Disputes Act, herein after called the "Act".

4. In this view of the matter, the labour court after recording the aforesaid finding have given award that in fact there had been no termination of service instead the concerned workman had left the job. This award of the labour court is in the teeth of the documentary evidence available on record with the order of payment of wages authority and even if the case set up by the employer is taken to be correct that the concerned workman has abandoned, then also his services cannot be terminated in the manner as, it has been done without complying with the provisions of Section 25F of the Act.

5. In this view of the matter, the award of the labour court deserves to be set aside and is hereby set aside.

6. In the result, the writ petition succeeds and is allowed. The award dated 1st May, 1988 (Annexure-6 to the writ petition) is quashed. It is held that the services of the concerned workman have been terminated without complying with the provisions of Section 25F of the Act as he has completed more than 240 days in the previous calendar year. The concerned workman is entitled for reinstatement with continuity of service but on the facts and circumstances of the case, as the concerned workman had not worked, he is entitled to 1/4th wages from the date of reference till the date of award. Needless to say, the workman will be entitled for full wages from the date of the award.