

(1984) 09 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 289 of 1977

Niru Bhushan Singh

APPELLANT

Vs

District Judge/Umpire (Shri A.B. Mathur), District Judge and
Others

RESPONDENT

Date of Decision : 20-09-1984

Acts Referred:

Arbitration Act, 1940 — Section 14, 14(2), 2, 3, 30
Constitution of India, 1950 — Article 226
Uttar Pradesh Agricultural University Act, 1958 — Section 27

Citation : (1984) AWC 614 Supp

Hon'ble Judges : K.N. Singh, J;A.N. Dikshita, J

Bench : Division Bench

Advocate : G.C. Dwivedi, for the Appellant; Dinesh Kumar and S.N. Verma, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Singh, J.—By means of this petition under Article 226 of the Constitution the Petitioner has claimed relief for the issue of a writ of certiorari quashing the award of the District Judge/Umpire dated 24-11-1976 and also for quashing of the termination order dated 11-10-1984.

2. The brief facts giving rise to this petition are that the Petitioner holds a diploma in Civil Engineering in the First Division from Handia Polytechnic, Allahabad. He was appointed on 23-9-1966 as Instructor in Civil Engineering in a temporary capacity in the U.P. Agricultural University, Pantnagar District Nainital. His services were temporary and liable to be terminated at any time on one month's notice. While the Petitioner was working on the said post an advertisement for the post of Instructor in Civil Engineering was published by the authorities of the University. The Petitioner applied for the same. He was Interviewed by a duly constituted committee which made recommendations in his favour but No. formal appointment letter was issued to him.

3. The Petitioner was Initially appointed In the pay scale Rs. 300-25-350 but later on the scale of Instructor in Civil Engineering was changed and the Petitioner was given the scale of Rs. 300-25-600 by a resolution of the Board of Management dated 21-9-1974. By order dated 11-10-1974 the Vice Chancellor of the University terminated the Petitioner's services. The Petitioner challenged the order of termination by means of a writ petition (No. 6570 of 1975). The writ petition was dismissed on 31-3-1975 on the ground that the Petitioner had not exhausted his remedy u/s 27 of the U.P. Agricultural University Act, 1958 by taking recourse to arbitration proceedings against the termination order. The Petitioner thereafter applied for referring the dispute to arbitration in accordance with Section 27 of the Act. Dr. Moti Singh was appointed Arbitrator on behalf of the Petitioner and Sri O.S. Misra was appointed Arbitrator on behalf of the University. Since both the Arbitrators failed to agree with each other on the validity of the order of termination the matter was referred to Shri A.B. Mathur, Umpire the then District Judge Nainital. The Umpire after hearing both the parties passed a speaking order on 24-11-1978 holding that the order of the Vice Chancellor dated 11-10-1974 terminating the Petitioner's services was legal and valid. Aggrieved the Petitioner has filed this petition under Article 226 of the Constitution for quashing the award and the order of the Vice Chancellor dated 11-10-1974 terminating the Petitioner's services.

4. Learned Counsel for the Petitioner made two submissions before us. Firstly he urged that the Petitioner had been appointed on probation and on the completion of the probationary period he acquired the character of a permanent employee of the University as such under the relevant statutes his services could not be terminated treating him to be a temporary employee. The Petitioner was not given any opportunity before his services were terminated. Secondly he urged that the Vice Chancellor had No. authority or jurisdiction to terminate the Petitioner's services without obtaining approval of the Board of Management as provided by the First statutes framed by the University. Since the Vice Chancellor did not obtain approval from the Board of Management the order of termination is rendered illegal and void. Challenging the order of the Umpire learned Counsel for the Petitioner urged that the Umpire failed to apply his mind to the questions raised on behalf of the Petitioner.

5. At the outset of the hearing Shri S.N. Verma, learned Counsel for the Respondent University raised a preliminary objection that the Petitioner is not entitled to challenge the validity of the termination order under Article 226 of the Constitution as the dispute relating to the validity of the termination order has marged in the award given by the Umpire. He further urged that under the U.P. Agricultural University Act read with the provisions of the Arbitration Act. 1940, the order of the Umpire has become final between the parties and the same could be challenged by the Petitioner only in accordance with the provisions of the Arbitration Act. Since the Petitioner has failed to challenge the order of he Umpire in accordance with provisions of the Arbitration Act he is not entitled to challenge the order by means of this petition. He urged that this Court should

not exercise its discretion in the Petitioner's favour.

6. Section 27 of the U.P. Agricultural University Act, 1958 provides that any dispute arising out of contract between the University and any officer or teacher of the University shall, on the request of the officer or teacher concerned, be referred to a Tribunal of Arbitration consisting of one member nominated by the Board, one member nominated by the officer or teacher concerned and an Umpire appointed by the Chancellor. The decision of the Tribunal shall be final and No. suit shall lie in civil court in respect of the matters decided by the Tribunal. Every such request shall be deemed to be a submission to arbitration upon the terms of the section within the meaning of the Arbitration Act, 1940 and all the provisions of that Act, with the exception of Section 2 thereof, shall apply accordingly.

7. Admittedly the Petitioner had made a request for referring the dispute relating to the validity of the termination order to the Tribunal of Arbitrators consequently the provisions of the Arbitration Act, 1940 were applicable and the award given by the Umpire could be challenged in accordance with the provisions of the Arbitration Act, 1940. Section 14 lays down that arbitrators or Umpire shall make their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof. Under Sub-section (2) the Umpire or the Arbitrator is required to file the award in the Court for making the same rule of the court, on the request of the parties to the agreement. Section 30 of the Act lays down that an award shall not be set aside except on the grounds specified therein. Section 32 lays down that notwithstanding any law for the time being in force, No. suit shall lie on any ground whatsoever for a decision upon the existence or validity of an arbitration agreement or award. Admittedly the Petitioner who was aggrieved by the Award given by the Arbitrator did not file any objection u/s 33 or challenge the award u/s 30 of the Act. Since the Petitioner failed to challenge the award in accordance with the provisions of the Arbitration Act the same became final and binding on him.

8. Section 3 of the Arbitration Act lays down that arbitration agreement shall be deemed to include the provisions set out in the First Schedule to the Act. Clause 7 of the First Schedule to the Arbitration Act provides that the award shall be final and binding upon the parties and persons claiming under them respectively. The Petitioner submitted to the arbitration agreement and got a reference made to the Arbitrator for adjudication of the dispute. The conditions contained in Clause 7 of the First Schedule to the Arbitration Act became applicable, consequently the award given by the Umpire became final and binding on the Petitioner. The Petitioner could challenge the validity of the award in accordance with the provisions of the Arbitration Act but he did not do so with the result the Award made by the Umpire became final and binding.

9. Learned Counsel for the Petitioner, urged that since the Umpire did not file the award in the court for making the same rule of the court it was a waste paper and the Petitioner was under No. legal obligation to file objections u/s 33 or to

challenge the award as contemplated by Section 30 of the Act. He placed reliance on a Division Bench decision of this Court in Amod Kumar Verma v. Hari Prasad Burman AIR 1950 All 720 where it was held that till the award is filed in the court there is No. threat to the rights of any party therefore No. one would have any cause of action for setting aside the award. It is true that this decision supports the Petitioner's contention but a Division Bench of this Court considered the precise question in Kedar Nath Vs. Ambika Prasad and Others, . The Bench placing reliance upon the decision of the Supreme Court in Satish Kumar and Others Vs. Surinder Kumar and Others, that an award even though not made the rule of the court cannot be treated as a mere waste paper and the legal effect has to be given to it. The Bench further held that the award even though not made the rule of the court can be set up as evidence in a suit. We have gone through the judgment in Satish Kumar's case and we have also considered the law laid down by the Division Bench in Kedar Nath's case. Having given our anxious consideration we agree with the view taken in Kedar Nath's case. In our opinion the view taken by the Division Bench in Amod Kumar Verma's case is No. longer a good law in view of the declaration by the Supreme Court in Satish Kumar's case. In that view we hold that the award given by the Umpire could not be treated as a waste paper Instead it was binding on the parties in view of Section 3 read with Clause 7 of the First Schedule of the Arbitration Act. The Petitioner had an effective alternative remedy of challenging the award by taking proceedings u/s 30 or 33 of the Arbitration Act but he did not challenge the same with the result, the award has become final. It is not open to the Petitioner to challenge the same in the present proceedings.

10. The impugned order of termination dated 11-10-1974 has merged in the award given by the Umpire on 24-11-1978 and it is, therefore, not open to the Petitioner to challenge the validity of the termination order in the present proceedings. For the reasons stated above we are of the opinion that since the Petitioner failed to challenge the award before the appropriate authority under the provisions of the Arbitration Act he is not entitled to any relief in the present proceedings. The writ petition fails and is accordingly dismissed. It will, however be open to the Petitioner if he is advised to pursue his remedy before the appropriate forum against the impugned award. Parties shall bear their own costs.