

(1996) 04 AHC CK 0001
In the Allahabad High Court
Case No : C.M.W.P. No. 4827 of 1989

Panki Thermal Power Station

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-04-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(4)

Citation : (1996) 04 AHC CK 0001

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : A.K. Yog and Ranjit Saxena, for the Appellant; S.C. and S.C. Shukla, for the Respondent

Judgement

D.K. Seth, J.—The Respondent No. 4, a workman under the Petitioner was appointed on 23.6.1969 where his date of birth was recorded as 1st March, 1931. According to Sri Ranjit Saxena, learned counsel for the Petitioner, the workman had never applied for correction of the service record and had raised a dispute only on 28.3.1986 out of which a reference was made on 15.4.1988, giving rise to the Adjudication case No. 74 of 1988 pending before the labour court (V), U.P. Kanpur. It is alleged that by an order dated 20.3.1989, the labour court had granted an interim order to the extent that the employer shall not super-annuate the workman till the proceedings of the case is concluded. This order has been challenged by means of present writ petition.

2. Sri Ranjit Saxena, learned counsel for the Petitioner in support of the writ petition contends that the interim order has virtually granted the whole relief involved in the dispute and such an interim order could not have been passed by the Tribunal even though prima facie case has been made out. According to him, no application for correction of age is maintainable after five years from the date of appointment. Therefore, the interim order should not have been passed.

3. It appears that by an order dated 4.4.1989 passed in the present writ petition, it was clarified that the employer may not take work from the workman but the

employer would have to pay salary to the workman on due date.

4. Sri S. C. Shukla, learned counsel appearing on behalf of Respondent No. 4 on the other hand contends that there was no infirmity in the impugned order, inasmuch as according to him, the Tribunal had fixed 5.4.1989 for hearing of the dispute/case continuously and by means of interim order, interest of the workman has been protected, in view of peculiar facts and circumstances of the case. It was the creation of the employer himself, by reason whereof the dispute has not yet been decided. Therefore, the employer could not have any grievance against the said interim order.

5. Sri Ranjit Saxena, learned counsel for the Petitioner in support of his contention has relied on the decision in the case of Gopal Krishna Sinha v. State of U.P. and Ors. 1992 ACJ (2) 969 ; U.P. Junior Doctors' Action Committee and Others Vs. Dr. B. Sheetal Nandwani and Others, ; Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, and Gujarat Water Resources Development Corporation Ltd. v. Parvin Kumar N. Makwana and Anr. JT1992 (Supp) SC 778 and contended that the interim relief granting whole relief, should not be granted. There is no doubt about the said proposition. This is an established principle of law which has been enunciated by Hon"ble Supreme Court time and again. But such proposition cannot be said to be an absolute proposition, in the facts and circumstances of the case, when the circumstances so warrant that the interim order is necessary to be passed, in the interest of justice and without such interim order, the entire matter might become infructuous. There are extraordinary cases where such an interim order may be warranted but for that, adequate protection is also necessary.

6. As submitted by Sri Shukla, relying on the decision in the case of The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union, and various other cases that the Tribunal has power to grant interim order also, appears to be sound. Sri Ranjit Saxena also cannot deny or dispute the said proposition. Admittedly, the Tribunal has power to adjudicate on the point of reference and matter incidental thereto by reason of Sub-section (4) of Section 10 of the Industrial Disputes Act. The interlocutory order incidental to the main dispute can be passed by the learned Tribunal. An interim order cannot be said to be not incidental to the dispute.

7. Though, however, the interim order ought to be granted with caution and care and that it should be granted sparingly only in appropriate cases even wherein the interim order might amount to grant of whole relief with adequate protection. In the present case, the interim order, has, in fact, granted whole interim relief which ought not to have been passed. In the facts and circumstances of the present case, when the Tribunal had fixed 5.4.1989 for hearing the matter continuously, it was not necessary to pass such an interim order. But it could have protected the interest of the workman by making retirement of the workman subject to the result of the dispute or could have asked the employer to secure part of the salary by some or other means. In the present case, the

interim order runs as under:

Parties present. They were heard on the application of the workman at 16D and the reply of the employers at 17D. The hearing of this case shall be held continuously from 5th onward till end. The employer shall not superannuate the workman till the proceedings of the case conclude.

The Tribunal had passed the interim order on the belief that the hearing would be completed shortly within 5th April, 1989 but the Tribunal could have secured few months salary protecting the interest of the workman.

8. But the fact remains that though there was no order of stay operating on the held for disposal of the dispute, the Petitioner had made no endeavour to get the said dispute decided and on the other hand, it appears that the Petitioner obtained adjournment on "15" occasions in between the year 1989 and 1992 on its own and had obtained adjournment through mutual consent on "9" occasions within the same period. Whereas the Respondent had taken adjournment only on five occasions. Therefore, the Petitioner himself is guilty of laches for not getting the dispute decided within a reasonable time. It also appears that the Petitioner had obtained adjournment on 4th April, 1989 and the date was fixed on 5.4.1989. In view of the conduct of the Petitioner itself, the workman is continuing to receive his pay even till today and the same position has been protected and secured by the Petitioner himself by an interim order, in the present writ petition. Despite the interim order, the Petitioner could have taken steps for getting the dispute decided on 5.4.1989 onwards continuously. In that view of the matter, considering the conduct of the Petitioner, I am not inclined to interfere with the interim order at this belated stage. But, however, the learned labour court is directed to make all endeavour to dispose of the said adjudication case as early as possible, preferably within a period of three months from the date a certified copy of this order is produced before it fixing a suitable date and continuing with hearing on successive and consecutive dates untill hearing is concluded. Learned counsel for both the parties have submitted that their respective client undertakes before the court that none of them will seek any adjournment on any ground whatsoever.

9. In view of the above direction, this writ petition is disposed of. There will be, however, no order as to costs.

Let a copy of this order be given to the learned counsel for the Petitioner on payment of usual charges within a week.