
(2004) 11 AHC CK 0171
In the Allahabad High Court
Case No : C.M.W.P. No. 22608 of 1988

Prem Dayal

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 17-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes (Amendment) Act, 1978 — Section 2A
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : (2005) 5 AWC 4810 : (2005) 1 ESC 78

Hon'ble Judges : V.C. Misra, J

Bench : Single Bench

Advocate : S.C. Tripathi, for the Appellant; S.D. Dubey, B.D. Shukla and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

V.C. Misra, J.—Heard Sri S.C. Tripathi, learned Counsel for the petitioner and Sri S.D. Dubey, learned Counsel for the respondents.

2. This writ petition has been filed by the petitioner-workman for quashing the award dated 30.6.1998 (Annexure-2 to the writ petition) passed by the respondent No. 1-Labour Court, Agra published on 13.9.1988 with a prayer for being reinstatement in service with full back wages.

3. The facts of the case in brief are that the petitioner was an employee in the establishment of the respondent No. 2 M/s Guru Charan Industrial Works, District Mainpuri (for short "the employers") and he left the services on leave from 25.8.1976 to 30.8.1976. Thereafter the petitioner again unauthorisedly absented himself from the service w.e.f. 31.8.1976 without submitting any application for leave. The respondent No. 2 after waiting for 15 days time treated the petitioner-workman to have abandoned his service and lost his lien on the basis of the provisions of Clause 10 (j) of the Industrial Employment (Standing Orders) Rules, 1946 (hereinafter referred to as "the Model Standing Orders"). The

petitioner being aggrieved raised industrial dispute and the matter was referred for conciliation before the State Government. The conciliation proceedings having failed, the State Government referred the matter for adjudication before the respondent No. 1-Labour Court, Agra u/s 4-K of the U.P. Industrial Disputes Act, 1947 vide its order dated 30.11.1983 for deciding the question which is as under :

"Whether the retrenchment of the petitioner by the employer on 15.12.1976 was valid and if not then what benefits should be awarded to the concerned workman."

4. The case of the petitioner, according to the written statement, is that he was a permanent employee in the establishment of the respondent No. 2 and on his being detained in prison under D.I.R. in the month of August, 1976, he could not join his services and sent application for leave. He remained on leave till 14.12.1976 and when he wanted to join his duty on 15th December, 1976, he was not allowed to work by the employers without issuing any charge-sheet or initiating any domestic inquiry.

5. The respondent No. 2 -employers have contended in their written statement filed on 5.5.1984 before the Labour Court that the alleged dispute was not a industrial dispute but was a individual one and no cause of action accrued on 15.12.1976, as alleged by the petitioner-workman, and the services of the petitioner were not terminated on this date. Since the services of the petitioner had already come to an end on 15.9.1976, the date from which the petitioner-workman unauthorizedly abandoned his job, there existed no relationship of master and servant between the employers and the petitioner-workman since then. Since the conciliation proceedings had been moved on 28.7.1981 after considerable delay the industrial dispute before the labour Court was not maintainable. It has also been stated in the written statement that the petitioner-workman was offered employment during the conciliation proceedings but he refused to accept the same and even then the management was still prepared to provide work to the petitioner workman. It has been further stated by the respondent No. 2 that the reference made by the State Government was bad in law, as they had not terminated the services of the petitioner-workman on 15.12.1976.

6. The petitioner had stated in his rejoinder affidavit filed before the Labour Court that the employer's objection in respect of the reference, that the same was bad in law, could not be considered by the Labour Court, as it was not an appellate authority to the Government Orders of reference made u/s 4-K of the U.P. Industrial Disputes Act, 1947 was not maintainable as the respondent No. 2-employers had not proceeded with any domestic inquiry against him.

7. After considering the entire pleadings filed by the parties available on the record, oral and documentary evidence adduced by the parties in support of their contentions and after hearing respective learned representatives of the parties,

the Labour Court passed the impugned award dated 30.6.1988 (Annexure 2 to the writ petition) in favour of the respondent No. 2-employers holding that there existed no industrial dispute as there was no relationship of master and servant between the parties Immediately before the alleged termination of the services of the petitioner on 15.12.1976 and the reference was bad in law, as the workman had lost his lien of service on 15.9.1976 due to his unauthorized absence from the duty without leave from 31.8.1976, in view of the provisions of Clause 10 (j) of the Model Standing Orders. Therefore, the petitioner workman was not entitled to any relief from the employers.

8. Being aggrieved the petitioner workman filed the present writ petition. Counter and rejoinder affidavits have been exchanged between the parties.

9. The petitioner-workman has challenged the said award dated 30.6.1988 (Annexure 2 to the writ petition), *infer alia*, on the grounds that the conciliation proceedings having started on 28.7.1981, the petitioner workman had a right to raise industrial dispute, in terms of the provisions of Section 2-A of the U.P. Industrial Disputes Act which was inserted by the U.P. Act No. 34 of 1978 which came in effect in the year 1978 and that the Labour Court-respondent No. 1 had erred in exercising of jurisdiction in not considering the absence from duty without calling for any explanation and treated it to be a misconduct and as also no domestic inquiry, as required by the Model Standing Orders, was held nor any charge-sheet had been served upon him in that regard and further inspite of the fact that the respondent No. 2-employers had their own certified Standing Orders, but they never filed the same before the Labour Court, and instead of relying on the same, the respondent No. 2 had relied upon the Model Standing Orders and the respondent No. 1-Labour Court has also decided the whole matter on the basis of the said Model Standing Orders.

10. Learned Counsel for the petitioner in support of his contentions has relied upon the decisions of Apex Court rendered in *D.K. Yadav Vs. J.M.A. Industries Ltd.*, and in *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, . Learned Counsel for the petitioner submitted that no opportunity of hearing had been afforded to the petitioner-workman nor any inquiry was held with regard to automatic loss of his lien on the post on the expiry of 8 days after being absent from duty as required under the provisions of the Model Standing Orders and the same was in the violation of the principles of natural justice and hence the order of termination was liable to be set aside. In *Ajaib Singh (supra)* it has been held that the relief under the Industrial Disputes Act cannot be denied due to delay, since the Limitation Act, 1963 or principles thereof are not applicable to the proceedings under the Industrial Disputes Act and no reference to the labour Court could be generally questioned on the ground of delay alone. It has been further held that at the most the Labour Court dealing with the case could appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal.

11. The employer-respondent No. 2 in their counter affidavit while denying the averments of the petitioner made in the writ petition, have stated that the petitioner-workman resorted the conciliation proceedings at a very late stage and the State Government was not justified in making the reference to the Labour Court, as there existed no industrial dispute on the date of alleged termination of service of the petitioner-workman but at the most the same could be treated as an individual dispute in absence of espousal by the concerned Union. It has been further stated that since the petitioner workman unauthorisedly absented himself without submitting any application for leave from 31.8.1976, the respondent No. 2 had kept waiting for 15 days and treated the petitioner-workman to have abandoned his job and had lost his lien, in view of the provisions of Clause 10 (j) of the Model Standing Orders, which provides leave of absence of the workman in an industrial establishment. In this regard it is relevant to quote Clause 10 (j) of the Model Standing Orders, which reads as under :

"10. (j) In the event of a workman remaining absent in excess of the period of leave originally granted or subsequently extended he shall lose his lien on his appointment unless, (1) he returns within eight days of the expiry of the period of leave, and (2) gives explanation to the satisfaction of the employer of his inability to return immediately after the expiry of the period. In case a workman loses his lien on his appointment he shall be entitled to be kept on the list of substitutes."

12. It has been further stated that no Certified Standing Orders was applicable to the respondent No. 2 but the Model Standing Orders under which the employers took the action against the petitioner were applicable and the Labour Court had correctly held the applicability of the provisions of Clause 10 (j) of the Model Standing Orders. It has been further submitted on behalf of the respondent No. 2 that since Section 2-A of the Act No. 34 of 1978 was inserted in U.P. Industrial Disputes Act, 1947 and the alleged dispute had arisen in September, 1976, incorporation of Section 2-A of the Act No. 34 of 1978 could not be made applicable with retrospective effect.

13. Learned Counsel appearing for the respondents, submitted that since the petitioner workman had himself admitted and stated before the labour Court that he was on leave from 25.8.1976 to 30.6.1976 but he did not submit any application for the leave from 31.8.1976 onwards and in his cross-examination, he accepted that he did not know the date on which the employers had terminated his services. Thus, it would be deemed that the petitioner-workman remained absent from duty without submitting any application for leave and he had himself abandoned his employment and lost his lien. In support of his contention, the learned Counsel for the respondents relied upon the following decisions rendered in the cases, namely, Travancore Rayons Ltd. Vs. Travancore Rayons Employees' Union, ; National Textiles Corporation. U.P. Ltd. v. S.N. Shukla and Ors. (1979) 39 FLR 101 ;Jagdeo Pandey v. Labour Court and Anr. (1987) 55 FLR 421; Shree Gopal Paper Mills Ltd. v. State of Haryana and Ors.

1968 (1) Lab IC 1259 and The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, .

14. I have looked into the matter in detail. It is admitted case of the petitioner workman that he had been away from the duty w.e.f. 31.8.1976 without any sanctioned leave and absented himself till 15.9.1976. It is also an admitted fact that the provisions of Section 2-A of the U.P. Industrial Disputes Act were inserted by the Act No. 34 of 1978, which reads as under :

"2-A. Dismissal etc. of an individual workman to be deemed to be an industrial dispute.--Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman any dispute or difference between that workman and his employer connected with or missing out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

15. It is settled law that Section 2-A of the Act would not apply with retrospective effect. In National Textiles Corporation (supra) this Court has held that when services of an individual workman terminated by way of discharge prior to introduction of Section 2-A, applicability of Section 2-A being not retrospective no remedy could be had by employee concerned under Central or State Industrial Disputes Act. It has also been held that even by introducing Section 2-A in the Act no relief can be given to employees, whose services had been terminated prior to the introduction of the said provision. In the case in hand, since the petitioner-workman had been admittedly removed from service w.e.f. 15.9.1976, it will not be open to the petitioner to seek the aid of Section 2-A of the Act No. 34 of 1978 and raise an Industrial dispute. In the present case, the dispute remained one between an individual employee and the employer and had not transformed into an industrial dispute. Accordingly, the Labour Court has rightly concluded that there was no industrial dispute in the year 1976 and the same would be an individual dispute, Moreso, in my view since the version of the petitioner-workman that his services were terminated on 15.12.1976 could not be proved and there existed no relationship of master and servant between the parties after 15.9.1976, the reference made by the State Government for industrial dispute relating to the period 15.12.1976, was bad in law.

16. No doubt, it is beyond the jurisdiction of the Labour Court to examine the existence of an industrial dispute but it would be wholly within its competence to determine whether it could be raised by the petitioner alone, as an industrial dispute, though it is entirely within the domain of the State Government to arrive at an opinion that industrial dispute existed and is within its competence to refer such dispute in exercising its power conferred u/s 4-K of the U.P. Industrial Disputes Act, 1947 for adjudication to the Labour Court. The Labour Court is not competent to examine the material on which the reference has been made or to consider the illegality or validity of the reference, since it cannot sit in appeal over a decision of the State Government. The decisions on which the reliance

was placed by the learned Counsel for the petitioner-workmen do not help the petitioner and the facts of those cases are different to the facts of the present case. On the contrary, the decisions rendered in Travancore Rayons Ltd (supra); National Textiles Corporation, (supra) and Jagdeo Pandey (supra), relied upon by the learned Counsel for the respondents squarely apply to the facts and circumstances of the instant case.

17. Such being the position, I find, that after thorough examination and critical scrutiny of the pleadings and the material available on the record and the relevant evidence adduced by the parties the Labour Court, Agra has arrived at a well reasoned award dated 30.6.1998 (Annexure-2 to the writ petition) on the basis of findings of fact. The petitioner has not been able to demonstrate before this Court that the findings of fact recorded in the impugned award by the Labour Court respondent No. 1 suffers from any illegality or perversity or error apparent on the face of the record or contrary to the provisions of law resulting in miscarriage of justice. Moreso, the said findings of fact arrived at by the respondent No. 1, being based on relevant material on record, are not open to challenge before this Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India. Thus, I do not find any illegality or infirmity having been committed by the respondent No. 1 Labour Court while passing the impugned award dated 30.6.1998 (Annexure 2 to the writ petition) which warrants interference in this writ petition.

18. In view of the above said facts and circumstances of the case, settled law and observations made herein above, the writ petition is dismissed.

There will be no order as to costs.