
(1999) 12 AHC CK 0071
In the Allahabad High Court
Case No : C.M.W.P. No. 6 of 1999

Rajan Upadhyaya

APPELLANT

Vs

Labour Court, Varanasi and others

RESPONDENT

Date of Decision : 21-12-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2000) 1 AWC 690 : (2000) 84 FLR 704

Hon'ble Judges : M.C. Jain, J

Bench : Single Bench

Advocate : C.K. Parekh, for the Appellant;

Final Decision : Dismissed

Judgement

M. C. Jain, J

1. The petitioner Rajan Upadhyay Is aggrieved by an order dated 29.9.1998 passed by respondent No. 1 u/s 33C(2) of the Industrial Disputes Act and seeks its quashing in so far as it relates to refusal to pay to him the salary as per the pay scale applicable to the regularly appointed class IV employees and directs for the adjustment of the payment already made to him. Mandamus is also sought against the respondents to pay salary/wages to him like similarly situated persons as regularly appointed class IV employees and not to terminate his services treating him as temporary employee.

2. A brief resume of the relevant facts may be set forth The petitioner was a daily wager as Class IV employee of respondent Nos. 2 to 4 and worked as such from 10.10.1986 to 25.11.1989. He was a handicapped person and was demanding pay scale according to Government Orders as well as also payment for holidays and over time together with bonus. He was illegally terminated on 26.11.1989. The conciliation proceedings failed and the dispute was referred by the State Government under the U. P. Industrial Disputes Act to the labour court. There he [petitioner] also filed an application in the form of written statement on

2.3.1995. The respondents did not appear there despite notice and an ex parte award was made in his favour by the labour court on 1.5.1995. The employer/respondents made a belated restoration application before the labour court which was rejected on 5.11.1996. Thereafter the Deputy Labour Commissioner in order to implement the award passed an order on 10.12.1996. The petitioner was allowed to Join after much persuasion and under the order of the Chief Engineer payment was also made of some arrears regarding wages of the petitioner. However, further payment of Rs. 21,708 specially of bonus and the arrears of wages from 1.1.1996 along with other allowances was not made wherefor the petitioner filed an application u/s 33C(2) of the Industrial Disputes Act before the labour court on 4.9.1996 which was registered as Misc. Case No. 73 of 1996. Thereon the labour court passed the impugned order which is Annexure-7 to the writ petition that he would be entitled to get payment as daily wager according to the rates prescribed by the Government orders for the relevant period and that the over-payment made to him could be adjusted towards the actual payment due to him as daily wager. This, according to the labour court, was the real purport of the award earlier given in favour of the petitioner which had been wrongly interpreted by the Deputy Labour Commissioner while executing it. resulting in over payment to the petitioner.

3. The contention of the petitioner is that the labour court has wrongly interpreted its earlier award by denying to him the salary and allowances of a regular Class IV employee to which he is entitled. It is also his case that similarly situated persons have been directed to be paid the same pay scale as is applicable to regular Class IV employees, by the Lucknow Bench of the High Court in Writ Petition No. 1219 (SS) of 1997, Jai Narain v. State of U. P., by order dated 13.10.1997 and another order dated 6.11.1996 passed in Writ Petition No. 6851 (SS) of 1996, Ramesh Chand and others v. State of U.P. and others, copies of which are Annexures-8 and 9 to the writ petition.

4. Respondent Nos. 2 to 4 did not file any counter-affidavit despite time having been given in this behalf. With the agreement of the learned counsel for the petitioner and learned standing counsel appearing for the respondents, the matter has finally been heard at the admission stage itself.

5. The own case of the petitioner before the labour court in the form of his written statement was that he was a daily wager and had served from 10.10.1986 to 25.11.1989 and that he had illegally been terminated on 26.11.1989 as he was demanding salary and allowances as applicable to regular employees. The question for decision before the labour court was as to whether the termination of the petitioner was legal or otherwise and to what relief he was entitled. Indeed, the award was made in his favour and his termination with effect from 26.11.1989 was set aside, meaning thereby that he was to be deemed in service as before and became entitled for payment of his dues in the similar way as he was getting earlier to his termination.

6. The legal position is settled that if a claim, in the nature of an execution

application relating to an industrial award or settlement, is made, then Section 33C(2) of the Industrial Disputes Act is available. u/s 33C(2) of the Industrial Disputes Act, the labour court was legally empowered and duty-bound to decide the question as to what payments the petitioner was entitled consequent to the passing of award in his favour, as a controversy had arisen between the employer and the employee regarding the computation of the same in terms of the award. The labour court rightly accepted the plea of the employer that under the award, the petitioner could only be paid as daily wager according to the rates amended from time to time. If any overpayment had been made to the petitioner on the wrong interpretation of the award, he could not claim the benefit of the same.

7. The orders passed by the Lucknow Bench of the High Court in other matters (Annexures-7 and 8 to the writ petition) also do not advance the case of the petitioner any farther. Annexure-7 only indicates that proposals were in process in the Government for payment of minimum of pay scale to Class IV daily wagers. Annexure-8 was an interim order "in personam" in respect of certain others and the present petitioner was not a party in that writ petition. Here in this writ petition, the controversy centres around the interpretation of the award given by the labour court in favour of the petitioner.

8. Therefore, the situation boils down to this that the petitioner can only be paid as daily wager according to the rates prescribed from time to time till he is absorbed as a regular Class IV employee according to service rules. Nor can a mandamus be issued against his termination, which again has to be governed by service rules and his service conditions.

9. The writ petition is wholly unmerited and is hereby dismissed.