

(2009) 02 AHC CK 0028
In the Allahabad High Court

Rajendra Prasad Mishra

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 03-02-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 25H
Industrial Disputes Act, 1947 — Section 25H
Industrial Disputes Act, 1947 — Section 25H

Citation : (2009) 121 FLR 190 : (2009) 3 LLJ 511

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—Heard Sri P.K. Sinha, the learned Counsel for the petitioner and Sri Sandeep Agarwal holding brief of Sri N. Das, the learned Counsel for the respondent No. 2.

2. The services of the petitioner was terminated. A dispute was raised before the Industrial Tribunal with regard to the validity and legality of the order of termination dated September 28, 1999. The Industrial Tribunal in its award found that the order of termination of the services of the workman was legal and that the management was justified in terminating the services of the workman. The Tribunal consequently declined to grant any relief to the workman. The petitioner, being aggrieved, has filed the present writ petition.

3. A perusal of the award indicates that a stand was taken by the workman that he had worked for more than 240 days in a calender year and therefore, he was entitled for retrenchment compensation which admittedly was not paid to him. The Tribunal found that the workman was unable to prove that he had completed 240 days of continuous service in a calender year and therefore, the petitioner was not entitled for retrenchment compensation.

4. The learned Counsel for the petitioner submitted, before the Court, that quite

apart from the aforesaid finding, the petitioner had also raised a plea that the provisions of Section 25H of the Industrial Disputes Act was also violated and that juniors to the petitioner had been re-employed and therefore, the Labour Court should have decided this incidental question and should have reinstated the workman. In support of his submission, the learned Counsel for the petitioner has relied upon a decision of the Supreme Court in Central Bank of India Vs. S. Satyam and others,

5. In my opinion, the main dispute which was referred to the Tribunal was with regard to the validity and legality of order of termination. The Tribunal's jurisdiction was confined to the scope of validity and legality of the order of termination passed by the management against the petitioner. The question of reinstatement can only arise provided the order of termination was found to be illegal. The Tribunal has found that the order of termination was legal and valid and consequently declined to grant the relief of reinstatement. In the present case the submission that the provisions of Section 25H has been violated is immaterial and does not come within the scope of the reference order. The relief of re-employment u/s 25H is totally distinct and different from the incidental relief of reinstatement in the reference order. Consequently, the plea of the petitioner that there had been a violation of Section 25H of the Industrial Dispute Act was irrelevant to the main controversy and that this question could have been considered as a mitigating circumstance while granting relief of reinstatement but, could not be considered in isolation since the claim of re-employment was not the main issue and was only dependent on the validity and legality of the order of termination. In view of this, the Court finds that there is no error in the impugned award.

The writ petition is dismissed.