
(2013) 02 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 56094 of 2010

Shyam Bihari

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2013) 4 UPLBEC 3077

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Akhileshwar Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—In spite of the Court's order, no counter-affidavit has been filed by the respondents. Heard the learned Counsel for the petitioner.

2. The petitioner has filed the present writ petition questioning the validity and legality of the award passed by the Labour Court. The facts in brief leading to the filing of the writ petition is, that the petitioner alleges that he was employed as a "Mate" on 1.1.1985 and continuously discharged his duties without any disruption till 15.8.1988 and that his services were arbitrarily terminated on 16.8.1998 without complying with the provision of Section 6-N of the UP Industrial Disputes Act, 1947 (hereinafter to referred as the Act).

3. The petitioner, being aggrieved by the order of termination, raised an industrial dispute in the year 1991. The Labour Court, by an award dated 8.12.2009, declined to grant the relief of reinstatement and back wages to the petitioner, but granted the relief of Rs. 25,000/- towards compensation and Rs. 1000/- towards cost of litigation. The petitioner, being aggrieved by the award, has filed the present writ petition.

4. The learned Counsel for the petitioner submitted that the Labour Court has given a specific finding that the workman, namely the petitioner, had worked for

more than 240 days in a calendar year in spite of which, the Labour Court did not set aside the order of termination nor had granted reinstatement and back wages. The learned Counsel for the petitioner submitted that the award of the Labour Court is illegal and was liable to set aside.

5. Having heard the learned Counsel for the petitioner at some length, the Court finds from the perusal of the award that undoubtedly the Labour Court has given a finding that the petitioner had worked for more than 240 days in a calendar year and that he had also worked continuously. This finding is based upon adverse inference being drawn against the employer, namely that the best evidence, which were in the possession of the employer, was not produced, namely, the muster roll register, attendance and payment register which could prove beyond a reasonable doubt about the number of days the petitioner had worked. Since the aforesaid records were not produced, the Labour Court rightly drew an adverse inference against the employer. The Court further finds that this Division of the employer was engaged in the erection of Pantoon Bridges across various rivers and, for this purpose, the petitioner was engaged as a "Mate". This fact is culled out from the written statement. For this limited work, the petitioner was engaged and consequently in the absence of any averment being made that the work was still continuing, the Court is of the opinion that if there is any violation of the provision of Section 6-N of the Act, it does not mean that there automatic reinstatement with continuity of service and with full back wages. In order to grant a relief of reinstatement and back wages, the Labour Court is required to consider the length of service, the kind of engagement, whether it is temporary or permanent or whether it is made on a contract or on exigency of service or whether the appointment was in a work charge establishment. All these details are lacking. Consequently, from the averments which have been made in the written statement it is clear that the petitioner was appointed for a limited period of work which is not perennial in nature and which comes to an end upon the completion of the project. Consequently, in this light, and in view of the decision of the Supreme Court in General Manager, Haryana Roadways Vs. Rudhan Singh, , and in view of the decision of the Supreme Court in Kendriya Vidyalaya Sangathan and Another Vs. S.C. Sharma, ; wherein the Supreme Court went a step further and held that back wages is not given as a matter of right and that the workmen has to show that he was not gainfully employed during the intervening period, the Court is of the opinion that the petitioner was only entitled for retrenchment compensation as contemplated u/s 6-N of the UP Industrial Disputes Act. The Labour Court, instead of grating retrenchment compensation has awarded Rs. 25,000/- compensation which the Court does not find any error. In the light of the aforesaid, the writ petition fails and it is accordingly dismissed.