

(2004) 12 AHC CK 0007

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2523 of 1986

Sidh Nath Pandey

APPELLANT

Vs

Labour Court and Associated Traders and Engineers Ltd.

RESPONDENT

Date of Decision : 03-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : (2005) 6 AWC 5561

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

Bench : Single Bench

Advocate : K.P. Agrawal, B.N Singh and Anita Singh, for the Appellant; Prabodh Gaur and S.C., for the Respondent

Final Decision : Dismissed

Judgement

V.C. Misra, J.

Shri K.P. Agarwal Senior Advocate learned counsel for petitioner and Shri Probodh Gaur learned counsel for respondent No. 2 and learned standing counsel on behalf of respondent No. 1, are present.

1. This writ petition has been Filed by the petitioner-workman challenging the impugned award dated 31.5.1986 (annexure-11 to the writ petition) passed in favour of the employer-respondent No. 2.

2 The facts of the case in brief are that; the petitioner was a permanent employee of the respondent No. 2, having its registered head office at Delhi along with large number of branches all over India. The petitioner was recruited and appointed at Delhi and an agreement writing had been entered into between the petitioner (and respondent No. 2 wherein the terms and conditions of the service had been enumerated. During the course of service he was posted as Gate-man at Kanpur and later on was promoted as a clerk. He desired for being promoted as loading incharge, but since there was no vacancy at Kanpur

on the said post of loading incharge, he was posted at Ludhiyana on promotion as loading incharge, vide order dated 22.1.1979 issued by respondent No. 2. The petitioner, failed to join his duty at Ludhiyana inspite of repealed notices issued to him in the month of June 1979 and August 1979, Since, the petitioner did not report on duty at Ludhiyana, the respondent No. 2 employer treating, his absence as abandonment of his employment, terminated his services with effect from 20.11.1979. This termination order gave rise to the industrial dispute. The State Government referred the dispute u/s 4-K of the U.P. Industrial Disputes Act 1947 (hereinafter referred to as the "Act" for adjudication to respondent No. 1. An adjudication case No. 60 of 1981 was registered. On the basis of the pleadings and arguments of the parties, the respondent No. 1 labour Court, arrived at a conclusion that, no illegality had been committed in passing of the termination of the services of the petitioner on the ground of abandonment of service 1 by the petitioner since, he did not join his services at Ludhiyana on transfer against the promoted post on his sweet will without assigning any reason. It has also been found by the labour Court and mentioned in the award that the petitioner knowingly with full consent, had signed the appointment letter/ agreements with the terms and conditions stipulated therein, one of which was regarding posting on transfer throughout India from one place to another place. After the petitioner did not join on "the transferred post, the respondent No. 2 employer waited for 10 months and meanwhile asked him repeatedly to join his transferred posting, but the petitioner did not heed to the same and the employer respondent having no other option terminated the services of the petitioner. In doing so, the respondent No. 2 committed no illegality.

3. The learned counsel for the petitioner has submitted that a bare reading of the order of removal shows that due to the alleged unauthorized absence which amounts to misconduct the petitioner's name has been removed from the rolls of the company on the assumption that he had abandoned his services. Under the said circumstances, the respondent No. 2 should have instead of terminating the services of the petitioner on the ground of abandonment, should have served a charge sheet and instituted domestic inquiry after giving the petitioner full opportunity of hearing. Since, both the conditions were not complied with the termination order was wrong, bad and illegal and the same could not be sustained, which the Labour Court respondent No. 1 failed to appreciate has further submitted that even if it was a case of abandonment of services, even then, it could not be presumed unless and until pleaded and substantiated before the labour Court and in any case, a charge sheet was required to be served which had not been done. It has been further submitted that the respondent No. 2 had no power to transfer of. employee from Kanpur to Ludhiyana even inspite of the facts that such conditions of service had been so expressed in the appointment letter or in the standing order laying down the conditions of service.

4. Learned counsel for the petitioner in support of his case has relied upon the Judgments reported in Kundan Sugar Mills Vs. Ziyauddin and Others, , Manager, Pyarchand Kesarimal Ponwal Bidi Factory Vs. Omkar Laxman Thange and

Others, , The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, , The State Bank of India Vs. Shri N. Sundara Money, , Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, ,and 1993. Indian Factories & Labour Report, page 1111.

5. Learned counsel for the respondent No. 2 Has also relied upon the Judgment passed in. the case of Kundan Sugar Mills reported in AIR 1960 S.C., page 65, wherein it has been held that the employer was authorized to transfer its workmen from one establishment to other establishment in terms of the written agreement between the employer and the workman.

6. I have looked; into the record of the case and heard learned counsel for the parties at length and find that, the petitioner on his own defaulted in joining his duty at Ludhiana in pursuance of the order of transfer passed by the respondent No. 2, who had full authority to transfer the employee in terms of the written agreement entered into between the respondent No. 2 and the petitioner. More so, despite: repeated opportunities and notices issued by the respondent No. 2 to the petitioner to come and join on his transferred posting the petitioner failed to join. The respondent No. 2 having waited for almost 10 long months, rightly dispensed with the services of the petitioner. The decisions of the cases relied upon and cited by the petitioner do not apply to the facts of the present case of abandon merit of services. I further find that, after through examination and critical scrutiny of the pleadings and relevant material and evidence brought on record, the respondent No. 1 has arrived at a well reasoned dated 31.5.1985 (annexure-II to) the writ petition) The petitioner has not been able to demonstrate before this Court that the findings of fact in the impugned award suffers from any illegality or error apparent on the face of the record. More so, the said findings of fact arrived at the respondent on the basis of which the impugned award has been passed being based on relevant material on record is not open to challenge before this Court while exercising its special and Extra ordinary jurisdiction under Article 226 of the Constitution of India.

With these observations, the writ petition is dismissed. No order as to costs.