

(2005) 10 AHC CK 0054
In the Allahabad High Court
Case No : Special Appeal No. 1100 of 2005

Smt. Kiran Devi and Smt. Chandra Devi	APPELLANT
Vs	
Kesarwani Zarda Bhandar and State of U.P.	RESPONDENT

Date of Decision : 17-10-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 17A, 19, 19(3), 19(6), 23
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6A, 6C, 6H, 6H(1), 6H(2)

Citation : (2006) 5 AWC 4366 : (2006) 108 FLR 421 : (2006) 2 LLJ 409

Hon'ble Judges : Ajoy Nath Ray, C.J.; Ashok Bhushan, J

Bench : Division Bench

Advocate : Anand Kumar Sinha, for the Appellant; U.C. Kesarwani and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Ajoy Nath Ray, C.J. and Ashok Bhushan, J.—This is an appeal preferred by the workmen who were respondents to the writ petition which succeeded in the court below. The writ petition was filed by the employer Company.

2. The facts are short and simple. The appellants were terminated by the employer in 1995 and an industrial dispute being raised, the appellants succeeded in obtaining an industrial award in their favour dated 29th September, 1999 published on 31st October, 2000 to the effect that they would be reinstated in service and while such reinstatement they would be paid arrears of wages as per the Minimum Wages Act.

3. Reinstatement did not follow forthwith; as such an application was made u/s 6-H(1) of the U.P. Industrial Disputes Act, 1947 for payment of arrears of wages as per award. A recovery certificate was issued on 24th of November, 2001 and substantial payments were received by the workmen in December, 2002. It should be mentioned that the writ petition had been filed by the employer challenging the award published on 31st October, 2000 but the same was dismissed on the (sic) 5th of March, 2002.

4. Although some payments of arrears of wages were received in December, 2002, the appellants still not being reinstated, they filed a second application under the said Section 6-H (1), this time claiming arrears of wages for the period from January 2001 to July 2002. The workmen were again successful in the sense that a recovery certificate dated 26.2.2004 was again issued in their favour as well as a favourable order dated 30th April, 2004 passed by the Additional Labour Commissioner.

5. These two instruments were challenged in the writ petition the and by an order dated the 8th of August, 2005 the Hon"ble Single Judge disposing of the writ petition, has set aside and quashed these two instruments standing in favour of the appellants.

6. On 12th January, 2003 the appellants have been reinstated in service and therefore, the question of payment of arrears of wages will probably come to an end with this litigation. In the impugned order the Hon"ble Single Judge has found in favour of the employer on the following two grounds :-

(i) His Lordship has opined that the award having been implemented and recovery in pursuance thereof having once been satisfied as is admitted by the parties, u/s 6-H (1) of the U.P. Industrial Disputes Act, no subsequent application could lie for execution of the award again u/s 6-H (1) for disputed claims; and

(ii) That under the provisions of Section 6-C of the U.P. Industrial Disputes Act, 1947, the period of operation of the award came to an end on expiry of one year from the date when it became enforceable and as such an application for enforcement made after such period of one year, could not in any event succeed.

7. So far as the first point is concerned, we have no hesitation in our mind that toe successive applications u/s 6-H (1) of the U.P. Act will lie provided the award permits such applications to be made from time to time. The provisions of Section 6-H (1) and 6-H (2) of the U.P. Industrial Disputes Act, 1947 are set out below :-

"6-H. Recovery of money due from an employer,____(1) Where any money is due to a workman from an employer under the provisions of Sections 6J to 6R or under a settlement or award, or under an award given by an adjudicator or the State Industrial Tribunal appointed or constituted under this Act, before the commencement of the Uttar Pradesh Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, the workman may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due to him, and if the State Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same as if it were an arrear of land revenue.

(2) Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under

this Act, be determined by such Labour Court as may be specified in this behalf by the State Government, and the amount so determined may be recovered as provided for in subsection (1). "

8. Before the Additional Labour Commissioner the parties had raised the disputed fact as to whether it was the employer who was in default in not offering employment and back wages to the employees or whether it was the employees who did not join service in spite of the employer being willing to take them in service pursuant to the award. The dispute before the labour authority has gone in favour of the appellants-employees. It was opined that no intimation had been duly sent to the employees and thus they could not join the service. On these disputed facts, the writ court after cannot enter once again and sit in appeal; as such, after such findings of fact as between the parties, and the second award for arrears of wages could not be set aside because there were disputed facts. These were not disputed facts before the writ court but these were disputed facts on which a decision had already once been given after both the parties had been duly heard.

9. It was also urged very straneously before us that the second application for arrears of wages could not be maintained at all u/s 6-H(1) but that, if at all, such application could not be maintained u/s 6-H(2). An Allahabad case of Hindustan Aluminium Corporation Limited. Mirzapur v. Murari Singh and Ors. reported in 1979 Lab. I. C. 477 was relied upon. In that case the award did not grant arrears of wages at all. Under these circumstances a sum of Rs. 19560.48 was computed as the same payable for the period during which the employee was "unjustifiably kept out of employment" (see end of the paragraph 3 of the judgment). Under these facts it was found that the application u/s 6-H (2) was; a proper application.

10. Reliance was also placed on the case of Kays Construction Co. (P) Ltd. Vs. State of Uttar Pradesh and Others, alternatively reported at Kays Construction Co. (P) Ltd. Vs. State of Uttar Pradesh and Others,

11. It was explained by Justice Hidayatullah as is Lordship then was, in that case that sub-section (2) of Section 6-H referred to cases where some benefit had to be computed in terms of money and that computation had not already come in the award itself. His Lordship gave an instance of the award giving entitlement of free quarters to the workers which the employer did not abide by. In such a case the benefits which had not been extended, would have to be put in terms of money and this may require an exercise which is different from a(sic) arithmetical calculation.

12. If these principles are applied to our case, we find that the second application was correctly-made u/s 6-H (1) because the payment of wages was to be made on the basis of Minimum Wages Act and such payment would have to be made until reinstatement actually occurred. For finding out the amount of money due one would require information only on two counts, namely, the minimum wages

prescribed under the Minimum Wages Act and the number of months for which the to be reinstated employee had not been paid such minimum wages. With these two simple bits of the information the recovery could be ordered u/s 6-H (1) on a mere arithmetical computation. Any question of assessment, any question of turning into money value what was not itself already computed in figures, never arose. It was all along, so to speak, like a liquidated claim in the civil court, and it was never, so to speak, lassussing like a situation of assessing unliquidated damages by a civil court.

13. The appellants gave to us the case of Executive Engineer, Electricity Distribution Division-1. U.P. State Electricity Board, Mathura v. Kailash Chandra Gautam and Ors. reported in (1990)(2) UPLBEC 879. That was also a claim for arrears of wages and Section 6-H(1) was found to be applicable.

14. On these bases we are of the respectful opinion that the first point on which the learned Single Judge allowed the writ petition is not sustainable. Regarding the application of the workmen being made after the period of one year, the industrial law in this regard, although well settled, needs to be stated by us in brief so that in future these simple matters might be dealt with simply.

15. u/s 6-C of the U.P. Industrial Disputes Act an award is stated to remain in operation in the first instance for a period of one year. The said Section 6-C is set out below :-

"6-C. Award of Labour Court or Tribunal or arbitration and its operation, -- An award shall in the first instance remain in operation for a period of one year or such shorter period as may be specified therein:

Provided that the State Government may extend the period of operation of an award from time to time, if it thinks fit:

Provided further that where the State Government whether of its own motion or on the application of any party bound by the award, considers the since the award was made there has been a material change in the circumstances on which it was based, the State Government may, after such enquiry as it may think fit, shorten the period of operation of the award.

16. u/s 6A of the said Act it is provided that an award shall become enforceable on the expiry of thirty days from the date of its publication.

17. We have this position before us, therefore, that an industrial award becomes enforceable on the expiry of thirty days after its publication but it remains (sic) in operation for a period of one year only.

18. It is a serious and than an elementary mistake to conclude from this that after a period of one year the enforceability of the award lapses and that it cannot be enforced any more u/s 6-H (1) of 6-H (2) unless the State Government extends the period of operation of the award u/s 6-C.

19. The period of operation of an award is mentioned in the Industrial Disputes

Act, 1947 i.e. the Central Act in Section 19. The said section is not set out in full but Section 19(3) and Section 19(6) are set out below :-

19. Period of operation of settlements and awards,_____

(1)...

(2)...

(3) An award shall; subject to the provisions of this section, remain in operation for a period of, one year (from the date on which the award becomes enforceable u/s 17A).

(4)...

(5)...

(6) Notwithstanding the expiry of the period of operation under subsection (3), the award shall continue to be" binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award. "

20. It has been held in numerous cases that even after lapse of one year and even after the service of notice by the as employer seeking to treat an award as at an end, the award does not really came to an end. We need not consider here whether Sub-section (6) of Section 19 of the Central Act is also applicable in Uttar Pradesh; there being as argued inconsistency between it and the provisions of the U.P. Act or 1947. We now merely observe here that the lapse of one year does not kill the award even though it might not remain " in operation" after that period. The case of South Indian Bank Ltd. Vs. A.R. Chacko, and the case of Life Insurance Corporation of India Vs. D.J. Bahadur and Others, make it amply clear that even after the operational period of one year the award remains binding between the parties.

21. There are clear indications in these cases that even after the period of one year the award would remain as binding as a contract between the employer and the employees . We may respectfully opine that such award after the operational period of one year would remain binding as a contract with the seal of the labour authority imprinted upon it. On the basis of such imprinting the award can be enforced even outside the period of its operation even though the State Government has not yet extended such period of operation. No doubt in every case, the award itself must be looked into and it has to be seen whether it is in its forms executable on the date it is sought to be executed. All that we lay down is that the period of one year mentioned in Section 6-C above, is a matter of practically no importance when the question of enforceability of the award is raised. One should always bear in mind that whether the award is in" operation or not is a question totally different from whether the "award is still enforceable or not. If one makes a reference to Section 23(c) of the Central Act, 1947 or to

Section 6S(1)(f) and 6S(2) (f) of the U.P. Act 1947 one will see immediately that during the operational period of an award industrial actions are ruled out on the very same points which are covered by the award. This is the region where the operational nature of the award is of aft importance.

22. When enforceability of an award becomes an issue in an application u/s 6-H of the U.P. Act, 1947 one has no concern with the operational nature of the award. There, quasi judicial functions are performed, and recovery certificates and orders passed in same manner as those are, passed by the executing courts in ordinary civil courts of law. These are different aspects than the aspects of industrial action like strike or lock out. It would be a complete confusion to treat the operational nature or period of an award as having any bearing on its enforceability or executability.

23. On the simple basis we are of clear but respectful opinion that the Hon''ble Judge has erred on the second point also in allowing the writ petition. We have to put it on record that the has points of lapse of one year was not taken in the writ petition was nor it argued in the court below; it was found in the judgment only and it came as a short of surprise to the parties but the respondent has not given up this point and made submissions in support of this also; but on those submissions we have no hesitation in (sic). As such the appeal is allowed and the impugned order is set aside. The writ petition is dismissed.