
(2010) 07 AHC CK 0066
In the Allahabad High Court
Case No : Special Appeal No. 892 of 1999

S.R. Paper Cones, Ghaziabad	Vs	APPELLANT
Addl. Labour Commissioner, Ghaziabad, U.P. and Others		RESPONDENT

Date of Decision : 15-07-2010

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6(4)

Citation : (2010) 127 FLR 700 : (2011) 2 LLJ 747

Hon'ble Judges : Ferdino Inacio Rebello, C.J.; Amreshwar Pratap Sahi, J

Bench : Division Bench

Advocate : V.R. Agarwal, for the Appellant; C.S.C., for the Respondent

Judgement

Ferdino Inacio Rebello, C.J. and Amreshwar Pratap Sahi, J.—In spite of service of the appeal on the learned Counsel for Respondent No. 3, No. appearance has been filed.

The Appellants, original Petitioners, are aggrieved by order dated August 6.1999 passed by the learned single Judge, whereby the learned Judge, in order to do complete justice between the parties, directed that fresh reference shall be treated by the Labour Court as an order for reconsideration under Sub-section (4) of Section 6 of the Uttar Pradesh Industrial Disputes Act, 1947 and will be decided on the evidence already on record, after hearing both the parties.

2. It is the submission on behalf of the Appellants that considering the provisions of Sub-section (4) of Section 6 of the Uttar Pradesh Industrial Disputes Act, 1947 (hereinafter referred to as the "State Act"), the learned Judge could not have issued aforesaid directions.

3. A few facts may be set out. A reference was made on April 13, 1992. The reference pertains to the termination of services of Respondent No. 3. An award came to be passed by the Labour Court on March 2, 1995, whereby the reference was answered against the Respondent No. 3. The appropriate Government, which is the State Government in the present case, refused to publish the award,

against which the Appellants herein filed a writ petition challenging the act of the State Government refusing to publish the award. The said petition was dismissed. It is to be noted that the Respondent workman did not challenge the said award.

4. From the averments made in the writ petition, it appears that subsequent to that, the Labour Court once again raised the same industrial dispute and took the matter into conciliation. The Appellants herein raised objections about the maintainability of the said proceedings. In spite of that, the second reference order came to be passed. That was the subject matter of challenge before this Court in respect of which the present appeal arises. The learned Judge disposed of the petition in terms of what has been stated above.

5. In appeal, the order of the learned single Judge was stayed. The question for our consideration is whether it was open to the State Government to make the second reference?

6. The issue is covered by Section 6(4) of the State Act, which reads as under:

(6. Awards and action to be taken thereon.-

(1).....

(4) Before publication of an award of a Labour Court or Tribunal under Sub-section (3), if the State Government is of the opinion that,-

(a) the adjudicating authority has unreasonably refused permission to any party to adduce evidence; or

(b) any party was prevented by any other sufficient cause from adducing evidence; or

(c) new and important material fact or evidence has come to notice, which after the exercise of due diligence, was not within the knowledge of, or could not be produced by, the party at the time when the award was made; or

(d) the award is likely to disturb the industrial peace; or

(e) the award is likely to affect prejudicially the national or State economy; or

(f) the award is likely to interfere with the principles of social justice; or

(g) the award has left undetermined any of the matters referred for adjudication, or where it determines any matter not referred for adjudication and such matter cannot be separated without affecting the determination of the matters referred; or

(h) the award is so indefinite as to be incapable of being enforced; or

(i) illegality of the award is apparent upon the face of it, it may, after giving the parties reasonable opportunity of being heard, for reasons to be recorded, remit the award for reconsideration of the adjudicating authority, and that authority

shall, after reconsideration, submit its award to the State Government, and the State Government shall publish the award in the manner provided in Sub-section (3).

7. Thus, it would be clear that in the circumstances set out therein, it is open to the State Government not to publish the award. However, what is relevant is that the same reference can be remitted for reconsideration. The question, therefore, of a second reference does not arise in view of the express language of Section 6 (4) of the State Act. In the instant case, factually, the State Government has made a second reference. That reference is based on initiation of conciliation proceedings afresh. It is not possible for us to go into the issue as to why the State Government did not publish the reference in view of the earlier order passed by this Court. This Court, however, can judicially review insofar as the second reference is concerned considering that there was No. power to the State Government to make the reference.

8. In the light of the above, in our opinion, the second reference, as made, is without jurisdiction. Once a reference is made, it is not open to this Court to amend the reference. The power to amend the reference is with the appropriate Government which, in the present case, is the State. Apart from that, the learned single Judge himself arrived at a finding that the entire exercise was without jurisdiction. After having so held, it was not open for the learned single Judge to direct that fresh reference shall be treated as an order for reconsideration by the Labour Court.

9. In view of the above, the impugned order of the learned single Judge, to the extent it directs that the fresh reference be treated as an order for reconsideration under Sub-section (4) of Section 6 of the State Act, is set aside.

10. The appeal stands disposed of accordingly.