
(2018) 01 AHC CK 0052
In the Allahabad High Court
Case No : 61822 of 2017

Star Rubber Industries And Another	APPELLANT
Vs	
Deputy Labour Commissioner And Others	RESPONDENT

Date of Decision : 31-01-2018

Acts Referred:

[Industrial Dispute Act, 1947](#), Section 33-C(1), Section 6-H (1)

Citation : (2018) 01 AHC CK 0052

Hon'ble Judges : Ram Surat Ram

Bench : Single Bench

Advocate : Surendra Nath Dubey, Sachin Dubey, Ranjeet Kumar Mishra

Final Decision : Dismissed

Judgement

1. Heard Sri Surendra Nath Dubey, for the petitioners and Sri Ranjeet Kumar Mishra, for respondent-5.
2. The writ petition has been filed for quashing the recovery certificate issued by Assistant Labour Commissioner, dated 15.05.2017, for realization of money due under the award of Labour Court dated 20.11.2015, (published on 02.05.2016), passed in Adjudication Case No. 85 of 2011.
3. On the application of Anand (respondent-5), the dispute as to "whether termination of service of Anand as "Machine-Man", dated 03.09.2010 by the employer was proper and legal? If no, the workman would be entitled for what relief/compensation?" was referred for adjudication to Labour Court. The case was registered as Adjudication Case No. 85 of 2011. In this case, Labour Court passed exparte award on 09.12.2011 (published on 29.02.2012). The petitioners filed an application for recall of the award dated 09.12.2011, which was allowed by Labour Court and the petitioners were granted time for filing written statement. The petitioners filed their written statement on 06.03.2014, in which they stated that Anand was engaged as labourer, casually, as and when his services were required due to exigency. He was never engaged continuously for

240 days in any calendar year. He cannot be treated as "workman" nor his nonengagement can be treated as dismissal from service. In spite of the time being granted, the petitioners did not adduce any documentary or oral evidence. Their opportunity of evidence was closed.

4. Anand (respondent-5) filed his written statement, stating therein that he was appointed as "Machine-Man" on the salary of Rs. 2375/- per month on 01.03.1998. Since then he was continuously working with full satisfaction to the employer without any complaint. When he began to demand minimum wages, dearness and bonus etc. then his services was terminated by an oral order dated 03.09.2010. Respondent-5 also filed his replication. Respondent-5 filed documentary evidence and examined himself. After recalling, exparte award, when he was again given time for adducing his evidence then he moved an application that his earlier evidence be read. The petitioners did not cross examined respondent-5 and absented from the Court. Therefore, Labour Court proceeded exparte against the petitioners by order dated 15.05.2015.

5. Labour Court by the award dated 20.11.2015 held that Anand was appointed as "Machine-Man" on 01.03.1998 on the salary of Rs. 2375/- per month, by the petitioners. Since then he was continuously working in the factory of the employer on that post. His services was terminated by an oral order dated 03.09.2010, without following the procedure under law. On these findings, he allowed the claim petition with cost of Rs. 3000/-, set aside the termination of service of Anand (respondent-5) dated 03.09.2010, directed for his reinstatement in service with back-wages and continuity of service.

6. When the petitioners did not comply the award dated 20.11.2015, in spite of notice given to them, respondent-5 filed an application dated 28.11.2016, before Deputy Labour Commissioner for realizing the amount of Rs. 2,68,232/- as the arrears of his wages from 03.09.2010 to 04.09.2016. On this application, a notice was issued to the petitioners on 24.04.2017, asking them to deposit aforesaid amount within fifteen days. In spite of service of notice, the petitioners, did not deposit the aforesaid amount. Respondent-5 then filed an application dated 15.05.2017, for issuing recovery certificate. On which impugned recovery certificate was issued on 15.05.2017. Hence this writ petition has been filed. It may be mentioned that the petitioners filed an application dated 03.06.2017 for recall of the order dated 15.05.2015, proceeding exapрте against the petitioners and award dated 20.11.2015, before Labour Court, stating therein that he was suffering from mental depression as such he could not appear before Labour Court on 15.05.2015 and on subsequent dates. Respondent-5 filed an objection and denied the allegations made in recall application. Labour Court by order dated 20.12.2017, held that no evidence relating to mental depression of petitioner-2 was filed. There was no reason for the petitioners of their absence in the case from January 2015. The recall application was highly time barred. On these findings, he rejected the application.

7. The counsel for the petitioners submitted that Vinay son of Ghasite was not a

"workman" in Adjudication Case No. 85 of 2011, before Labour Court, rather Anand son of Hanuman was "workman" in that case. In pursuance of award dated 20.11.2015 passed in Adjudication Case No. 85 of 2011, recovery certificate has been issued for realization of dues of Vinay son of Ghasite, which is illegal. Factory of the petitioners has been closed since April 2015 as such respondent-5 could neither be reinstated in service nor can be paid any wage. He further submitted that Assistant Labour Commissioner has no jurisdiction to realize the amount of wages, subsequent to the award. The order of Assistant Labour Commissioner is exparte. He relied upon judgments of this Court in U.P. State Electricity Board Vs. Presiding Officer Labour Court, 2009 (123) FLR 340, Jai Prakash Ahirwar Vs. State of U.P., 2012 (133) FLR 711 and Sadhan Sahakari Samiti Ltd. Vs. Presiding Officer Labour Court, 2013 (137) FLR 835, in which it has been held that question of employment in pursuance of award is disputed and rate of wages is disputed, then such an issue cannot be adjudicated by the Authority under Section 6-H (1) of U.P. Industrial Dispute Act, 1947 (hereinafter referred to as the Act).

8. I have considered the arguments of the counsel for the parties and examined the record. Section 6-H of the Act is quoted below:- "Section 6-H. (1)- Where any money is due to the workmen from an employer under the provisions of Section 6-H to 6-R 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 the 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 rule 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 sub-section (1).

9. The meaning of phrases " money due" and "benefit in terms of money" as used under Section 6-H (1) and (2) of the Act, came for consideration before Division bench of this Court in Regional Conciliation Officer and others vs. Kays Construction Co.Pvt. Ltd.. and another, 1962 (4) FLR 479(DB) in which this Court has held that we are of the opinion that in view of judicial pronouncements and particularly in view of the words used in the Section 6H of the Industrial Disputes Act it could not legitimately be contended that the State Government or its delegate had no power to feel "satisfied" in regard to the money due to a workman for the purpose of issuing a certificate by resorting to simple

arithmetical calculation. In this particular case all that was done was that resort was taken to simple arithmetic in order to work out the actual sum payable to each workman who was mentioned in the annexure attached to the industrial tribunal's award. There was no determination of any question of rights or any benefits as contemplated by Sub-section (2) of the section.

10. This judgment has been challenged in Supreme Court in *Kays Construction Co. (P) Ltd. v. State of U.P.*, AIR 1965 SC 1488, in which it has been held that the contrast between "money due" on the one hand and a "benefit" which is not "money due" but which can become so after the money equivalent is determined on the other, marks out the areas of the operation of the two sub-sections. If the word "benefit" were taken to cover a case of mere arithmetical calculation of wages, the first sub-section would hardly have any play. Every case of calculation, however, simple, would have to go first before a Tribunal. In our judgment, a case such as the present, where the money due is back wages for the period of unemployment is covered by the first sub-section and not the second. No doubt some calculation enters the determination of the amount for which the certificate will eventually issue but this calculation is not of the type mentioned in the second sub-section and cannot be made to fit in the elaborate phrase "benefit which is capable of being computed in terms of money". The contrast in the two sub-sections between "money due" under the first sub-section and the necessity of reckoning the benefit in terms of money before the benefit becomes "money due" under the second sub-section shows that mere arithmetical calculations of the amount due are not required to be dealt with under the elaborate procedure of the second sub-section. The appellant no doubt conjured up a number of obstructions in the way of this simple calculation. These objections dealt with the "amount due" and they are being investigated because the State Government must first satisfy itself that the amount claimed is in fact due. But the anti-thesis between "money due" and a "benefit which must be computed in terms of money" still remains, for the inquiry being made is not of the kind contemplated by the second sub-section but is one for the satisfaction of the State Government under the first subsection. It is verification of the claim to money within the first sub-section and not determination in terms of money of the value of a benefit.

11. Supreme Court again in *Fabril Gasosa v. Labour Commr.*, (1997) 3 SCC 150, held that thus, where the amount due to the workmen, flowing from the obligations under a settlement, is predetermined and ascertained or can be arrived at by any arithmetical calculation or simpliciter verification and the only inquiry that is required to be made is whether it is due to the workmen or not, recourse to the summary proceedings under Section 33-C(1) of the Industrial Dispute Act, 1947 is not only appropriate but also desirable to prevent harassment to the workmen. Sub-section (1) of Section 33-C entitles the workmen to apply to the appropriate Government for issuance of a certificate of recovery for any money due to them under an award or a settlement or under the provisions of Chapter V-A and the Government, if satisfied, that a specific

sum is due to the workmen, is obliged to issue a certificate for the recovery of the amount due. After the requisite certificate is issued by the Government to the Collector, the Collector is under a statutory duty to recover the amounts due under the certificate issued to him. The procedure is aimed at providing a speedy, cheap and summary manner of recovery of the amount due, which the employer has wrongfully withheld. It, therefore, follows that where money due is on the basis of some amount predetermined like the VDA, the rate of which stands determined in terms of the settlement, an award or under Chapter V-A or V-B, and the period for which the arrears are claimed is also known, the case would be covered by sub-section (1) as only a calculation of the amount is required to be made.

12. It is not a case of the petitioners that after award dated 20.11.2015, respondent-5 was reinstated in service on a different terms and condition. Thus award for payment of arrears of wages at the rate which was paid on the date of termination of service, remained unchanged. Under provisions of U.P. Industrial Disputes Act, 1947, terms and conditions of service cannot be changed without prior notice to workman. Arrears of wages subsequent to the award at the same rate is merely an arithmetical calculation and can be done by the authority, exercising powers under Section 6-H (1) of the Act and does not required adjudication by Labour Court. Recovery Certificate issued by Assistant Labour Commissioner in respect of arrears of wages, subsequent to the award, cannot be said without jurisdiction. In view of the aforementioned cases of Supreme Court, judgments of this Court has no binding precedent. Award for the reinstatement includes payment of salary after reinstatement. Division Bench of this Court in Kays Construction Pvt. Ltd."s case has specifically held that "Wages" which a workman gets could not, in our judgment, be equated with "benefit." Any calculations, obviously arithmetical. In regard to wages could not be the determination of the money equivalent to a benefit which a workman enjoys or has apart from his wages.

13. So far as argument that Vinay son of Ghasite was not a "workman" in Adjudication Case No. 85 of 2011, before Labour Court, rather Anand son of Hanuman was "workman" in that case and in pursuance of award dated 20.11.2015 passed in Adjudication Case No. 85 of 2011, recovery certificate has been issued for realization of dues of Vinay son of Ghasite, is concerned, Anand son of Hanuman and Vinay son of Ghasite were terminated from service by the petitioners at the same time. They both referred the dispute for adjudication of Labour Court, where Adjudication Case No. 85 of 2011 was registered in the reference of Anand, while Adjudication Case No. 84 of 2011 was registered in the reference of Vinay. Award of the Labour Court in both the cases were of the same time, which have not been complied with by the petitioners as such both of them filed their separate application before Assistant Labour Commissioner under Section 6-H (1) of the Act, for issue of recovery certificate. Office of Assistant Labour Commissioner has committed clerical mistake in Recovery Certificate in respect of names of Anand and Vinay, which has been exchanged. This was

merely clerical mistake. On this ground, recovery certificate cannot be quashed.

14. In view of the aforesaid discussion, the writ petition has no merit and is dismissed.