
(2010) 10 AHC CK 0340

In the Allahabad High Court

Case No : W.C. No"s. 205, 206, 207, 209 and 210 of 1997

State of U.P. and Another

APPELLANT

Vs

Kunwar Pal Singh and Another

RESPONDENT

Date of Decision : 20-10-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(C)(2)

Citation : (2011) LLR 171

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sibghat Ullah Khan, J.—Inspite of sufficient service no one has appeared on behalf of respondent No. 1-workman in each writ petition

2. heard Shri S.P. Mishra, learned standing counsel for the petitioners-State and Forest Range Officer, Sardhana. Meerut

3. These writ petitions are directed against the orders dated 19.9.1996 passed by Presiding Officer (1st), Uttar Pradesh. Meerut in Misc case nos 49, 161, 158,160, 159 all of 1994 respectively The cases were instituted u/s 33C(2) of Industrial Disputes Act.

4. The case of the respondent No 1 in the first writ petition was that he was appointed by petitioners as cattle guard in January 1988 and as tractor driver with effect from 1.4.1992 and that other regular employees were being paid Rs. 2,000 per month while he was being paid only Rs. 750 per month even though he was performing the same duties as those employees who were being paid Rs. 2.000 per month. The difference of Rs. 1250 per month from 1.4.1992 to 28.2.1994 was claimed alongwith bonus at the rate of 8.33% The total amount claimed was Rs 31.000 and odd Petitioners employers contended that respondent No 1 was working on daily wages basis at the rate of Rs. 25 per day The I about court through order dated 19.9.1996 allowed the claim of respondent no. 1 in its

entirety.

5. Respondent no. 1 workman in the second writ petition claimed that he was engaged by the petitioners employers on 1.7.1981 and remained in their service till 31.8.1992. He also claimed that he worked like regular employees however he was paid lesser amount. He claimed Rs. 1,14,174,85

6 Workman-respondent no. 1 in the third writ petition took up the case before the Labour court that he worked as mall with effect from 1.1.1984 to 31.8.1992 and claimed Rs. 1,69,978.14 as difference in his actual pay and the pay of similar regular employees.

7. The workman-respondent no. 1 in the fourth writ petition claimed that he had worked with the petitioners-employer from 1.1.1980 to 31.1.1994. He claimed an amount of Rs. 1,52,062.08 in the same manner.

8. Workman-respondent no. 1 in the fifth writ petition claimed that he had worked with the petitioner from 1.1.1988 to 31.1.1994. He claimed Rs. 90,253.08 in the same manner.

9. All the cases were decided by the Labour court on 19.9.1996. In all the cases the workmen contended that they were performing the same duties which were being performed by regular employees hence they must be paid the salaries of regular employees alongwith proportionate bonus. In each case the petitioners-employer contended that respondent no. 1 had been employed on daily wages basis and was paid the wages admissible and payable to daily wagers. The Labour court in each and every impugned order held that the workmen were performing the same duties as were being performed by regular employees hence on the principles of equal pay for equal work they were entitled for the same salary as was being paid to the regular employees. The Labour court exceeded its jurisdiction in granting the relief claimed by the workman-respondent No. 1 in each writ petition u/s 33C(2) of I.D. Act. Under the said section no determination can for the first time be made. The said section is in the nature of execution. In order to invoke the said section either there must be prior determination in the form of award etc. or the amount claimed must be payable almost undisputedly.

10. There is no law that a daily wager must be paid same salary as regular employees. Claimants had not shown that what was the nature of their duties and of regular employees. The Labour court also did not record that what was the nature of duty and work performed by regular employees and the daily wager-applicants. Other factors necessary for invoking the principle of equal pay for equal work were also neither alleged nor proved by the workmen. In any case it is purely a question of determination as to whether a daily wager is performing the same duties as are being performed by the regular employees. If every daily wager is granted same wages which are being paid to regular employees, then there will not be any necessity to engage any daily wager.

11. For the proposition that u/s 33C(2) of I.D. Act prior determination must be there or the amount must almost undisputedly be payable reference may be made to the following authorities:

1. Hamdard (Wakf) Laboratories Vs. Deputy Labour Commr. and Others, ,
2. Ghaziabad Development Authority and Another Vs. Ashok Kumar and Another, ,
3. U.P. State Road Transport Corporation Vs. Shri Birendra Bhandari, .
4. Union of India (UOI) and Another Vs. Kankuben (Dead) by LRs. and Others etc. etc., .

12. Accordingly, all the writ petitions are allowed. Impugned orders are set aside, in these writ petitions interim orders were granted on 6.1.1997 staying the realisation in pursuance of the impugned orders on the condition that petitioners deposit 50% of the amount and the deposited amount was directed to be paid to the workman-respondent No. 1 in each petition on furnishing security. The said amount shall at once be returned by the workmen to the petitioner-employer and in case any workman has not withdrawn the amount then the Labour court shall return the same to the petitioner.