

(2011) 01 AHC CK 0043

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 31276 of 1993

State of U.P.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 13-01-2011

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2011) 2 ADJ 718 : (2011) 3 AWC 2777 : (2011) 128 FLR 876

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Judgement

S.U. Khan, J.—In spite of sufficient service no one has appeared on behalf of workman-Respondent No. 2 Dushyant Kumar.

2. Heard Shri S.P. Mishra, learned standing counsel for the State Petitioner. This writ petition is directed against award dated 24.3.1992 given by Presiding officer, Labour Court, U.P., Lucknow in adjudication case No. 202 of 1990. The matter which was referred to the Labour Court was as to whether the action of Petitioner-employer in terminating the services of its workman-Respondent No. 2 with effect from 1.1.1989 was just and valid or not. The workman asserted that he was working under Executive Engineer, Irrigation, Construction division-2, Phool bagh, Kanpur Petitioner No. 2. In the impugned award it is mentioned that the Petitioners who were opposite parties before the Labour Court did not file any written statement. It is further mentioned that Executive Engineer had authorised Shri Mohammad Hassan, a clerk to do pairvi however, the reply/written statement was filed by one, Ashok Kumar Khare, Assistant Engineer, II, Irrigation Construction, Khand-II, Kanpur.

3. The case of the workman was that he had worked without any break from 1.4.1985 to 31.12.1988 on the post of Tractor-driver. The employer-Petitioner contended that in no year Respondent No. 2 had worked for more than 240 days and he was muster-roll employee appointed as and when required. Petitioners were required to file log book of the tractor which they could not do. The

statement on oath of the workman was accepted. The burden to prove the fact that he had worked for 240 days or more in a year lies upon the workman. In the instant case no serious effort was made by the workman to discharge this burden. Pay slips etc. were not filed. Labour Court wrongly placed the burden to disprove the said fact upon Petitioner employer. In view of Supreme Court authorities reported in *The Range Forest Officer Vs. S.T. Hadimani*, and *Sita Ram and Others Vs. Moti Lal Nehru Farmers Training Institute*, the burden lies upon the workman and affidavit or oral evidence of workman is not sufficient to prove this fact.

4. Ultimately the labour Court directed reinstatement of the workman with full back wages on the ground that termination order was hit by Section 6-N of U.P. Industrial Disputes Act as no retrenchment compensation had been paid.

5. In this writ petition an interim order was passed on 2.9.1993 staying the operation of the impugned award on the condition that Petitioners reinstate Respondent No. 2 within four weeks and pay 1/4th back wages.

6. Learned standing counsel through order dated 12.10.2010 was directed to ascertain the position of reinstatement of the workman-Respondent No. 2. Today Shri S.P. Misra, learned standing counsel appearing for the Petitioner states that the workman-Respondent No. 2 was reinstated pursuant to the interim order dated 2.9.1993 passed in this writ petition and is working since then. Learned standing counsel further states that 1/4th back wages have also been paid to the workman-Respondent No. 2. Shri Mishra further states that the authority concerned has intimated him that it has got no objection to the continuance of Respondent No. 2 in service until he attains the age of superannuation or his services are terminated on the ground of mis-conduct. In view of this it is not necessary to analyse minutely as to whether the order of reinstatement was rightly passed or not. However, in my opinion there was absolutely no occasion to direct payment of back wages. Workman-Respondent No. 2 could not show that he was not gainfully employed anywhere else during the period when he was not in employment of the Petitioner. Even the order of reinstatement cannot be described as being perfectly legal. However, as the employer has reinstated the workman and agreed for his continuance on the job hence no final opinion in this regard is being expressed. This aspect has been discussed for the reason that it will affect the back wages.

7. Accordingly, it is directed that no further back wages under the impugned award (apart from 1/4th back wages already paid to the workman-Respondent No. 2 under interim order dated 2.9.1993 passed in this writ petition) shall be payable to the workman-Respondent No. 2. However, as agreed by the learned counsel for the Petitioner, Respondent No. 2 shall be permitted to work until he attains the age of superannuation or his services are terminated on the ground of mis-conduct.

8. Impugned award is modified accordingly. Writ petition is disposed of.