

(2011) 01 AHC CK 0058

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11986 of 1998

State of U.P.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 6

Citation : (2011) 3 ADJ 242 : (2011) 129 FLR 95 : (2011) LLR 516

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

Bench : Single Bench

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. This writ petition is directed against award dated 27.10.1993 given by presiding officer labour Court (I) U.P. Kanpur in Adjudication case No. 67 of 1991. The matter which was referred to the labour Court was as to whether action of Petitioner employer terminating the services of its workman Atar Singh Respondent No. 2 in this writ petition w.e.f. 1.4.1990 was just and valid or not.

3. The workman contended that he was appointed as tree planter in November 1988 and worked on the said post until 31.3.1990 however w.e.f. 1.4.1990 his services were terminated without any notice or retrenchment compensation. The employer pleaded that the workman was engaged on daily wages basis from time to time, that he had never worked continuously and that since September 1989 he had not worked with the Petitioner. The workman admitted that since September 1989 till March 1990 he had not been paid any wages. Towards concluding portion of para 10 of the award the labour Court held that the employer could not prove that from 1.10.1989 till 31.3.1990 no work was taken from the workman while the workman had stated on oath that for the said period he had worked hence his version was bound to be believed. Ultimately, labour Court held that the workman was entitled to reinstatement with full back wages

from 1.4.1990 till date of reinstatement. It was further directed that back wages @ Rs. 18 per day should be paid.

4. In this writ petition on 23.4.1998 an interim order was passed to the effect that in case the Petitioner paid to the workman his wages @ wages last drawn from the date of filing of the writ petition then the award of the labour Court should remain in abeyance.

5. Supreme Court in *The Range Forest Officer Vs. S.T. Hadimani*, has held in para 3 as follows:

For the view we are taking, it is not necessary to go into the question as to whether the Appellant is an "industry" or not, though reliance is placed on the decision of this Court in *State of Gujarat and Others Vs. Pratamsingh Narsinh Parmar*, In our opinion the Tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the Respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the Appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside.

Same view has been reiterated in *Sita Ram and Others Vs. Moti Lal Nehru Farmers Training Institute*,

6. Moreover Supreme Court in several authorities including the following has held that if the only defect in the termination order is non payment of retrenchment compensation as required by Section 25F of Industrial Dispute Act (or Section 6 N of U.P.I.D. Act) then it is not always necessary to direct reinstatement with full back wages and that in such situation more often than not proper relief may be to award consolidated damages/compensation particularly when the employer is Government or Governmental agency and relevant rules have not been followed before appointment.

Nagar Mahapalika (Now Municipal Corpn.) Vs. State of U.P. and Others,

Haryana State Electronics Development Corporation Ltd. Vs. Mamni,

Sita Ram and Others Vs. Moti Lal Nehru Farmers Training Institute,

Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another,

7. In *Senior Superintendent, Telegraph (Traffic) Bhopal v. Santosh Kumar Seal and Ors.* AIR 2010 SC 2140, it has been held that if daily wagers had worked for 2 or 3 years and their services were terminated without payment of

retrenchment compensation then consolidated damages should be awarded to them (Rs. 40,000/- to each of the workman was awarded in the said case). It has also been held that daily wager does not hold a post and cannot be equated with permanent employee. This view has been reiterated in *Incharge Officer v. Shankar Shetty* JT 2010 (9) 262.

8. Under interim order granted in this writ petition the Petitioner must have received about Rs. 78,000/-without any work as idle wages @ Rs. 540/- per month.. The said amount is more than sufficient compensation.

9. Accordingly, writ petition is allowed impugned award is set aside. However, it is directed that the amount paid to the Petitioner under the impugned award and the interim order passed in this writ petition shall be treated to be compensation paid to the workman and shall not be refundable.