

(2004) 12 AHC CK 0005
In the Allahabad High Court

State of U.P.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 16-12-2004

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 17B, 6N

Citation : (2005) 5 AWC 3924 : (2005) 104 FLR 983 : (2003) 1 UPLBEC 68

Hon'ble Judges : V.C. Misra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.C. Misra, J.—Heard Sri R.K. Awasthi learned standing Counsel on behalf of the petitioner and Sri D.P. Singh learned Counsel for the workman-respondent No. 2.

The present writ petition is directed against the award passed by the Presiding Officer, Labour Court dated 28.5.1997, which was published on notice board on 27.10.1997 by which the workman was reinstated along with continuity in service with minimum pay scale from the date of termination of service, i.e., 1.9.1989 till date of reinstatement. It was further directed that other benefit for which the workman was entitled from time to time shall also be paid to him.

2. The facts of the case in brief are that the workman-respondent No. 2 had been working with the petitioner since 1.7.1986. His services were terminated with effect from 1.9.1989. An industrial dispute was raised and Adjudication Case No. 203/1992 was registered, before the labour Court-respondent No. 1. The workman filed his written statement stating therein that he has been working since 1.7.1986 till 31.8.1989 as a muster roll employee continuously but without any reason his services were terminated with effect from 1.9.1989 without giving any retrenchment allowance hence, the termination order in utter violation of Section 6-N of the U.P. Industrial Disputes Act (hereinafter referred to as the Act). Learned Counsel for the petitioner has submitted that juniors to workman are working in the department and even some of them have been regularized

and also by making fresh appointments, the employer is taking work but the workman has been wrongly deprived of work while the duty discharged by him was of a permanent nature hence, he should be reinstated.

On behalf of the petitioner, a written statement (Annexure-3 to the writ petition) was also filed before respondent No. 1, denying the allegations made by the workman. It has been averred that the department of the petitioner is not an Industry and no industrial dispute arose between the petitioner and the respondent-workman was not engaged against any regular post but in fact he was working as daily wage work charge employee for specific work and after completion of work, his engagement has come to an end automatically. The petitioner-employer raised a preliminary issue to the extent that it did not fall under the definition of Industry and therefore, the Act was not applicable. However, after hearing the parties, the labour Court proceeded with the matter treating the petitioner as an industry.

3. Documentary evidence was filed on behalf of the parties and oral evidence was led, the respondent No. 1 workman required the petitioner to file certain documents such as the attendance register, pay register, payment bills of work-charge employee and other documents which were admittedly not produced before the Labour Court except for some of the payment bills. Respondent No. 2-workman Tiled experience certificate which had been challenged by the petitioner as having forged signature, though in the case P.W. Case 34/1991 filed by the workman under the provisions of Payment of Wages Act the concerned Executive Engineer on behalf of the petitioner had accepted Senior Assistant, had confirmed the signature and admitted the authenticity of the said experience certificate.

4. In this writ petition an interim order dated 2.4.1999 has been passed by this Court wherein the petitioner was directed to comply with the provisions of Section 17-B of the Industrial Disputes Act which admittedly they have not complied with. However, they have deposited the same amount towards back wages and have filed the photostat copies of the certificate regarding deposits made before the labour Court.

5. The labour Court after hearing the parties and looking into the record held that the petitioner-employer had since accepted the fact that prior to the termination of the services of the workman-respondent No 2 no notice whatsoever was sent nor any retrenchment compensation was paid in compliance of the provisions of Section 6-N of the Industrial Disputes Act the termination of the services of the workman-respondent No. 2 was wrong, bad and illegal.

6. I have looked into the record of the case and find that, after thorough examination and critical scrutiny of the pleadings and relevant material and evidence available on record the respondent No. 1 has passed a well reasoned award dated 25.5.1997 (Annexure-1 to the writ petition) on the basis of the

findings of fact arrived at by it. The petitioner has not been able to demonstrate before this Court that the findings of fact recorded in the impugned award suffers from any illegality, perversity or any manifest error apparent on the face of the record. More so, the said findings of fact, arrived at by the respondent on the basis of which the impugned award has been passed, being based on relevant material on record, is not open to challenge before this Court while exercising its special and extra-ordinary jurisdiction under Article 226 of the Constitution of India.

7. Under the above said facts and circumstances of the case, I do not find that any illegality has been committed by the respondent No. 1 in passing the impugned award dated 25.5.1997 (Annexuie-1 to the writ petition). However, looking into the facts and circumstances of the case and also since, there is no averment made by, the workman that he was not gainfully employed anywhere else nor there is any such finding to this effect that the workman-respondent No. 2 was not gainfully employed at any other place during the period he was not permitted to work he shall not be entitled to full back wages. The impugned award dated 25.5.1997 (Annexure-1 to the writ petition) is modified to the extent that 50% of the back wages shall be payable to the workman-respondent No. 2 from the date of the termination till the date of the passing of the award.

With the above said observations the writ petition is dismissed. No order as to costs.