

(2003) 10 AHC CK 0182
In the Allahabad High Court
Case No : C.M.W.P. No. 22903 of 2002

State of U.P.

APPELLANT

Vs

Presiding Officer/Labour Court and Another

RESPONDENT

Date of Decision : 10-10-2003

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2004) 4 AWC 3233

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : N. Huda, S.C, for the Appellant; S.N. Dubey, R.N. Sharma, Arun Kumar and I.R. Singh and P.C. Singh, S.C., for the Respondent

Final Decision : Partly Allowed

Judgement

Anjani Kumar, J.—This writ petition was heard by this Court on 10.10.2003 and after hearing learned counsel for the parties, the same was partly allowed for the reasons to be recorded later on. Now here are the reasons for allowing the aforesaid writ petition.

2. The petitioner-State of U. P. have challenged the award passed by the Presiding Officer, Labour Court (4), U. P.. Kanpur, dated 24.7.2001 in Adjudication Case No. 44 of 2001. The following dispute was referred for adjudication to the labour court concerned :

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3. The labour court issued notices to the employers and workman concerned. Parties have changed the pleadings and adduced such evidence, as they desire. After hearing the parties the labour court have answered reference in favour of the workman concerned holding that the termination of services of the workman

concerned with effect from 1.6.1997 is illegal, therefore, workman is entitled for reinstatement with full back wages. It is this award, which is under challenge here.

4. In short the case set up by the workman is that he was appointed on 23.9.1996 as E.C.G. Technician and he was not only interviewed but he was appointed being duly selected and he has continuously worked from 23.9.1996 till 31.5.1997 and on 1.6.1997 his services were terminated without complying with the provisions of Section 6N of U. P. Industrial Disputes Act, 1947. At the time of the termination of his services he was drawing salary Rs. 3,606. It is also stated by the workman that the post on which he was working was permanent in nature, therefore, employers' conduct in terminating his services and thereupon appointing other person, is illegal being contrary to the provisions of Section 6Q of the U. P. Industrial Disputes Act, read with Rule 43 of 1957 Rules.

5. On the other hand the employer set up the case that the workman was never appointed on 23.9.1996 as alleged and he never worked in the year 1996 because the post of E.C.G. Technician was not vacant and since there is no master and servant relationship between the employer and workman, therefore, the question of termination of his services on 1.6.1997 does not arise. It is also stated that the employer namely Medical Superintendent has no power to appoint any person as technician with the employer, therefore, the dispute referred is not an industrial dispute. The service certificate submitted by the workman was not admitted by the employer.

6. The labour court has considered the rival pleadings of the parties and arrived at the conclusion that during the disputed period Sri G. C. Agarwal was Chief Medical Superintendent and the post of E.C.G. Technician is a post concerned with the Cardiology Department and from different other documents it is also clear that the workman was appointed and worked with the employers on the post of E.C.G. Technician created in September, 1995 but since no regular appointment was made, the workman was appointed and worked. It is also clear from the material on record and finding to this effect has also been recorded by the labour court. It is admitted case of the parties that while terminating the service of the workman, provisions of Section 6N of the U. P. Industrial Disputes Act, 1947, have not been complied with. In these circumstances, the labour court answered reference in favour of the workman.

7. In the teeth of the aforesaid pleadings the workman moved an application that the employers be directed to produce the attendance register of the employees working in the E.C.G. Department, cash book, contingency book, stationery and dead stock instrument register and the vouchers which will demonstrate that the workman had worked on the post of Technician during the aforesaid period when his appointment was made on the vacant post. So far as the objection regarding medical department being an industry, the same has been held to be an industry by the Apex Court and the stand taken by the employer that the service certificate issued by Dr. G. C. Agarwal is fictitious, is totally incorrect.

8. Learned counsel for the petitioner could not point out any error so as to warrant any interference with the findings of the labour court and this Court will not sit in appeal over these findings. It is lastly submitted by learned counsel for the petitioner that admittedly from 1.6.1997 the workman has not worked. In these circumstances, the action of the labour court in directing the reinstatement with continuity of service and full back wages, is contrary to the principles of "no work- no pay".

9. I find substance in the argument advanced by learned counsel for the petitioner inasmuch as it is admitted fact that the workman has not worked with effect from 1.6.1997 till the date of award.

10. Learned counsel for the workman contended that on the basis of settled principle that once the labour court finds that the termination is illegal, the labour court has no option but to grant full back wages but in view of a recent decision in Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another, , and other similar cases, the labour court should direct that since the workman had not worked from the date of termination till the date of award, therefore, he is not entitled for wages during the period he did not work. It is within the domain of the labour court as to what amount of back wages should be awarded or blanket direction of payment of full back wages should be followed.

11. In view of the aforesaid principle, I find that the end of Justice would meet if the workman is made entitled for half wages from the date of termination till the date of award and thereafter full back wages till the employers reinstate the workman.

12. In view of the aforesaid discussion the award is modified to the extent that the workman is entitled for half wages from the date of termination till the date of award and thereafter full back wages till the employers reinstate the workman.

13. With the aforesaid modification the writ petition is allowed in part. The award is modified to the extent aforesaid and rest of the award is uphelds.