
(2010) 07 UK CK 0114
In the Uttarakhand High Court

State of Uttarakhand and Another

APPELLANT

Vs

The Presiding Officer and Another

RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K, 6(N), 6H(1)

Citation : (2010) 07 UK CK 0114

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Mr. Subhash Upadhyaya, the learned Brief Holder for the petitioner and Mr. Gopal Narain, the learned Counsel for the respondent No. 2 workman.

2. The present case has a chequered history and the brief facts which can be stated is, that the respondent No. 2 workman was initially employed on Muster Roll and his services was dispensed with by an order dated 01.11.1989. The respondent No. 2 workman, being aggrieved by his illegal termination, raised an industrial dispute which was referred to the labour court for adjudication. The labour court, eventually, gave an award dated 17th December, 1998 holding that the termination order was in violation of Section 6(N) of the U.P. Industrial Disputes Act (hereinafter referred to as I.D. Act) and, accordingly, directed the reinstatement of the workman. Instead of granting backwages, the labour court awarded a compensation of Rs. 5000/-. The labour court also held that upon reinstatement, the workman would be given the benefit of G.O. dated 24th September, 1997.

3. At this stage, it is necessary to highlight the Government Order dated 24th September, 1997 which stipulated that Muster Roll employees, who had been working continuously and whose services were dispensed with, were liable to be given the basic pay scale and benefits as given to workcharge employees.

4. The aforesaid award of the labour court was challenged by the petitioner by means of a writ petition, which was dismissed by a judgment dated 23rd September, 2003 and the award of the labour court was affirmed. Based on the aforesaid, the workman was reinstated, but he received the wages of a Muster Roll employee. Thereafter, the workman raised a demand that he should be entitled to be given wages as per the award dated 17th December, 1998 in terms of the Government Order dated 24th September, 1997. Since the same was not given by the employer, the workman filed an application u/s 6-H(1) of the I.D. Act. for compensation of wages. But, the respondents disputed the payment of wages as per the Government Order dated 24th September, 1997 on the ground that the benefit was only available to a regular employee and was not available to an adhoc employee. The Deputy Labour Commissioner, however, calculated the difference of wages amounting to Rs. 1,81,433/- and allowed the application of the workman. The petitioner, being aggrieved, has filed the present writ petition.

5. An interim order dated 27.03.2006 was passed in the present writ petition directing the petitioner to deposit the entire amount before this Court. Subsequently, the order dated 27th March, 2006 was modified and the workman was allowed to withdraw a sum of Rupees One Lakh. The learned Counsel for the respondent No. 2 workman submitted that Rupees one lakh has been withdrawn by the workman and only a sum of Rs. 81,433/- is deposited before the Court.

6. Upon hearing the learned Counsel for the parties, this Court is of the opinion that the question as to whether the workman is entitled to be given the benefit of the Government Order dated 24th September, 1997 and the question as to what is the exact rate of wages is a disputed question of fact which cannot be adjudicated in summary proceedings u/s 6-H(1) of the I.D. Act. In U.P. Awas Evam Vikas Parishad and Another Vs. State of U.P. and Others, the Allahabad High Court held that arrears of wages for post award period cannot be adjudicated in proceedings u/s 6-H(1) of the I.D. Act. In view of the aforesaid, the calculation of arrears of wages for the post award period by the Deputy Labour Commissioner cannot be sustained and is quashed. The writ petition is allowed. It would be open to the workman to get the amount calculated either by raising a reference u/s 4-K of the I.D. Act or by moving an application u/s 6-H(1) of the I.D. Act.

7. In view of the aforesaid, the impugned order cannot be sustained and is quashed. The writ petition is allowed. The amount so already withdrawn will not be recovered from the workman and the balance amount which is deposited before this Court can be withdrawn upon an application being filed before the Registrar General of this Court.