
(2004) 02 UK CK 0002

In the Uttarakhand High Court

Case No : Writ Petition No. 3469 (S/S) of 2001

State of Uttaranchal

APPELLANT

Vs

Sri Jagpal Singh Tyagi and Another

RESPONDENT

Date of Decision : 24-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 UPLBEC 45

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : N.B. Tewari, C.S.C. and J.P. Joshi, S.C, for the Appellant; Pankaj Minglani, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Tandon, J.—Heard Sri J.P. Joshi, learned Standing Counsel for the petitioner and Sri Pankaj Miglani, learned Counsel for the Respondent No. 1.

2. By means of this writ petition, the petitioner has prayed for the issue a writ, order or direction in the nature of certiorari for quashing the order dated 28.3.2001 passed by the Presiding Officer, Labour Court, Dehradun in dispute No. 1/2001.

3. Brief facts giving rise to the present writ petition are that the Respondent No. 1 namely, Sri Jagpal Singh Tyagi was engaged as Gauge Reader for a short period as per requirement of the Irrigation Research Institute, Roorkee w.e.f. 15.11.1976 to 30.5.1979, 1.6.1979 to 30.3.1980, 1.4.1980 to 3.9.1980, 4.9.1980 to 2.11.1980 and lastly from 3.11.1980 to 28.2.1982 as a daily wager and for some time as a temporary work charge employee. However, after 28.2.1982, the Studies Project was completed and there was no need of services of the petitioner and similar other work charge employees. The services of Respondent No. 1 and others came to end automatically as per terms and conditions of their engagement. Accordingly, services of the Respondent No. 1

alongwith other work charge employees were terminated vide order dated 25.2.1982.

4. Learned Standing Counsel has further submitted that against the order of discontinue of service, the respondent raised an industrial dispute before the Reconciliation Officer, Saharanpur in 1988, who after examination the matter, dismissed the claim of the Respondent No. 1 on 25.1.1990 and no reference was made under the Industrial Disputes Act.

5. Aggrieved by the order dated 25.01.1990, the Respondent No. 1 has preferred a Writ Petition No. 18783/1990 before the Allahabad High Court which was also dismissed. However, the Respondent No. 1 was permitted to make representation or to approach to the Government afresh in this connection. The observations are quoted below :

"Heard Sri Jhingan at length. The State Government was not satisfied to make reference to the Tribunal, hence it rejected the prayer of the petitioner. There is no error in the order. If there exists a legal right of the Petitioner to make representation or approach the Government afresh on further materials it may not be deemed to be curtailed by dismissal of this writ petition.

Dismissed summarily."

6. It has been further submitted by learned Standing Counsel that the State Government referred the dispute to the Labour Court to the following effect:

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7. The claim of the Respondent No. 1 was allowed in Industrial Dispute Case No. 137/1990, by the Respondent No. 2 in favour of the Respondent No. 1 reinstating him in service alongwith 50% back wages and Rs. 1,000/- as cost of the litigation. The observations of the Labour Court are quoted below :

^^eSa ;g vfHkfu.kZ; nsrk gw? fd Isok;kstdksa }kjk vius oknh Jfed txiky flag R;kxh] xst jhMj dh Isok;sa vkns"k fnukad 22-2-82 }kjk fnukad 1-3-82 Is NVuh }kjk lekIr fd;k tkuk vuqfpr o voS/kkfud gS rFkk mls Isok esa iquLFkkZfir fd;k tk, o fiNyh vof/k dk 50 izfr"kr osru o :? 1]000@& okn O;; fn;k tk;A**

8. Aggrieved with the aforesaid award, both the parties have challenged the award before the Allahabad High Court and both the Writ Petitions Bearing Nos. 39013/1996 and 586/1997 filed by the parties were decided by the Allahabad High Court on 29.7.1999. The Writ Petition No. 39013/1996 was dismissed with the following effect:

"Heard learned Counsel for the petitioner and the learned Counsel representing the respondents.

Learned Counsel for the petitioner has argued that since the State Government has rejected the application for referring the dispute to the Labour Court on an earlier occasion, therefore, the second application on the same facts for referring the dispute to the Labour Court could not have been allowed by the State Government and the reference was bad for that reason. However, no authority has been cited in support of the contention that once the State Government has rejected an application for making reference, the second application cannot be entertained for the same purpose by the State Government. It has been held that the principles of res-judicata do not have been any application to the Labour Court dispute.

Learned Counsel for the petitioner has relied upon the decision of this Court in the case of Indian Oxygen Limited v. State of U.P. and Ors. (1992) 2 UPLBEC 532.

In view of the facts stated above, this writ petition has no merits and is accordingly dismissed.

There will be no order as to costs."

9. In another Writ Petition No. 586/1997 filed by the Respondent No. 1 Jagpal Singh Tyagi following order was passed :

"By the impugned award, the Labour Court has refused half of the back wages to the petitioner while reinstating him. According to the learned Counsel for the petitioner full back wages should have been awarded. The award does not give any reason for refusing 50% of the back wages. Prima-facie the termination is of the year 1982, while reference was made by the State Government by order dated 24.7.1990. But the crucial question is whether the workman was responsible in any manner for the delay, Normally full back wages are not awarded when delay has been caused from the side of the workman. There are some stray observations in the impugned award, that the conciliation proceeding was going on since 1985. However, in absence of specific finding, it is not possible to decide this question in this writ petition. This case is remanded to the Labour Court only to the extent to which 50% back wages have been refused. The Labour Court will examine the matter to find out whether the workman was responsible for the delay/or if workman was not responsible there would be no justification for refusing balance 50% back wages. The Labour Court will decide this question within three months from the date of production of certified copy of this order before the Labour Court by petitioner, after hearing both parties.

With these directions, this writ petition is finally disposed of."

10. Thus, the reinstatement of the employee concerned became final. The Respondent No. 1 was reinstated. However, the Labour Court, after remand of the matter on 28.3.2001 awarded full back wages. The findings of the Labour Court to that effect are quoted below :

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i=kpkj gksrs jgsA Isok;kstd i{k ds }kjk gh nkf[ky izn"kZ bZ&19 Is izdV gksrk gS fd vfUre fu.kZ; izeq[k vfHk;Urk ds 12-5-88 ds i= Is gqv k Fkk ftldk mYys[k fiNys izLrj esa vk pqdk gSA blds vykok oknh Jfed us vafre izkFkZuk&i= 10-5-88 dks fn;k Fkk ftl ij Isok;kstd dk;kZy; dh izkfIr vafdr gS ?izn"kZ Mcyq&21?A vr% ;g Li"V gS fd Isok lekfiR ds ckn Is gh oknh Jfed Isok;kstd i{k dks izkFkZuk&i= nsrk jgk o mldh Isok esa iquLFkkZiuk dk iz'u fopkjk/khu jgkA vr% oknh Jfed dks o"kZ 1988 Is fookn mBkus esa gq, foyEc ds fy, m?kjk;k h ugha Bgjk;k tk ldrkA**

11. The Labour Court, therefore, has recorded a finding that the delay was not due to the fault of the employee concerned. I find no illegality in the findings recorded by the Labour Court.

12. So far as back wages are concerned, the learned Standing Counsel has submitted that the Respondent No. 1, in the earlier award dated 19.3.1996, has admittedly received Rs. 1,21,245/- in full and final satisfaction and has given in writing that he has nothing to be received further more from the Department. Ignoring these facts the Labour Court has awarded full wages w.e.f. 1.3.1982 till the date of reinstatement as well as the cost of litigation in favour of the respondent.

13. On the other hand, a counter affidavit has been filed by the Respondent No. 1 in this Court, in which it has been stated that the Respondent No. 1 has worked with the petitioner from 15.11.1976 to 28.2.1982. The respondent has worked with the petitioner as a work charge employee from the period 1.6.1979 to 30.3.1980 and thereafter the petitioner has illegally terminated his services without giving any notice. It has been admitted by the Respondent No. 1 that the respondent has received a sum of Rs. 1,21,245/- for the period 18.7.1996 to 1.11.1999 in connection with the award, which was published on 17.7.1996. However, as per the award published on 17.7.1996, 50% amount was to be paid from 1.3.1982 to 1.11.1999, which is amounting to Rs. 1,60,147.50/- and Rs. 1,000/- was also to be paid by the petitioner as litigation expenses.

14. Learned Counsel for the Respondent No. 1 has submitted that the petitioner was reinstated on 2.11.1999 after about three months of the order passed by the Allahabad High Court.

15. The respondent has further submitted that the award dated 28.3.2001 passed by the Labour Court is founded on the well settled principles of law and is based on evidence led by the parties. The termination of the respondent has been considered by Labour Court in Industrial Dispute Case No. 137 of 1990 as well as by the Allahabad High Court in Writ Petition No. 586 of 1996 and both the Courts have held that, the termination of the respondent was illegal and he is entitled for the reinstatement with back wages.

16. Counsel for the respondent has referred the decision in Thandi Ram v. State of Haryana, reported in AIR 1999 SCW 468 where it has been held that the settlement should be arrived from the free will of the parties and when there is a dispute that the settlement is not bonafide in nature and it has been obtained on

fraud, misrepresentation or concealment of facts, then the same will be a subject matter of another Industrial Dispute. The relevant observations are quoted below :

"Settlement is arrived at by the free will of the parties and is a pointer to there being good-will between them. When there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the Conciliation Officer must be fair and reasonable."

17. In the present case, the State of Uttaranchal has referred about the settlement in Paragraphs 11 and 12 of the writ petition, the same is quoted below :

"That respondent had admittedly received the amount of Rs. 1,21,245/- in full and final satisfaction of the Respondent No. 1 in connection with earlier award dated 19.3.1996, which was published on 17.7.1996 and the respondent gave in writing supported by an affidavit that he has nothing to be received further more from the petitioner department. In this connection the copy of the receipt in respect of payment of Rs. 1,21,245/- dated 30.12.2000, copy of affidavit dated 28.9.2000 and undertaking dated 21.12.2000 given by the Respondent No. 1 are enclosed herewith and marked as Annexure Nos. 13, 14 and 15 to this writ petition.

That the learned Presiding Officer ignoring the submissions and pleadings of the petitioner department illegally awarded full wages w.e.f. 1.3.1982 till the date of reinstatement as well as cost of litigation to the petitioner. The copy of the aforesaid award dated 28.3.2001 is annexed herewith and marked as Annexure No. 16 to this writ petition."

18. In the counter affidavit, the Paragraphs 11 and 12 of the writ petition have been replied by the Respondent No. 1 and substantially stated that any agreement contrary to law or in violation of orders of Hon'ble Court will be void-ab-initio. It has also been stated in Paragraph 10 that the affidavit was obtained by pressurising him and by use of undue influence by the employer. Relevant Paragraphs to that effect are quoted below :

"That the contents of Paragraph No. 11 of the writ petition are admitted only to the extent that the deponent i.e., Respondent No. 1 received the sum of Rs. 1,21,245/- from the petitioner in connection with the award which was published on 17.7.1996. Rest of the contents of this Paragraph is totally wrong, misconceived, baseless and hence vehemently denied. It is pertinent to mention here that total amount i.e., 50% as per the award published on 17.7.1996 was to be paid from 1.3.1983 till 1.11.1999 which comes to Rs. 1,60,147.50/- further Rs. 1,000/- was to be paid by the petitioner as litigation expenses but a sum of

Rs. 1,21,245/- was paid by the petitioner to the deponent which was for the period of 18.7.1996 to 1.11.1999. The copy of detail of the amount paid by the petitioner to the deponent is annexed herewith as Annexure CA-2. The deponent gave the details of the amount due as per award dated 17.7.1996 to the petitioner but to no avail. The copy of detail of the amount actually due towards the petitioner as per award published on 17.7.1996 is annexed herewith as Annexure CA-3. The petitioner obtained the affidavit and the undertaking of the deponent only by pressurising him and by the use of undue influence being the employer of the deponent. Further it is worth while to mention here that the Hon"ble High Court at Allahabad disposed of the Writ Petition No. 586/1997 on 29.7.1999 and confirmed the judgment of the Respondent No. 2 however, the matter was remanded to consider the claim of the deponent for further 50% of the back wages. The petitioner was reinstated on 2.11.1999 after about 3 months of the orders of Hon"ble High Court. Further it is pertinent to mention here that no undertaking as alleged is registered one thus the petitioner is not entitled to get any benefit of the same and that too when it is the settled principle that any agreement contrary to law or in violation of the orders of Hon"ble Court is void-ab-initio.

That the contents of Paragraph No. 12 of the writ petition are totally wrong, misconceived and hence vehemently denied. It is pertinent to mention here that the award dated 28.3.2001 passed by Learned Labour Court i.e., Respondent No. 2 is based upon well founded principles of law and was passed after the proper perusal of the evidence led before it. Neither it suffers from any illegality nor it is perverse."

19. In view of the aforesaid facts stated above, the Labour Court has rightly come to the conclusion that the settlement was not proper and in order to frustrate the order passed by the Hon"ble High Court, the settlement has been arrived. The Labour Court has also referred the judgment of Karnataka High Court in The Workmen and Allied Beedi Factories Workers" Association, Mysore Vs. Presiding Officer, Industrial Tribunal, Bangalore and Another, to the following effect:

"Since the Tribunal has placed reliance on the settlements, the duty was cast upon the management to place positive and substantive evidence on record with reference to the terms and conditions of the settlements to show that the points of dispute referred to at the instance of the petitioner union have been settled keeping in view the entitlement of the workmen with regard to various aspects and answer the points of dispute with reference to the claim and the settlements based on the evidence placed on record. While considering the dispute, if any, of the parties to the dispute place reliance on the settlement and seeks to accept the same as award in the disputes, such party must establish that the terms and conditions of the settlements are fair and reasonable with reference to the points of dispute."

20. In view of the aforesaid facts and circumstances, the findings recorded by

the Labour Court are the findings of fact and needs no interference under Article 226 of the Constitution of India.

21. The writ petition is dismissed. No order as to costs.