
(2006) 07 AHC CK 0154

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 27836 of 2001

Sugar Cane Research Centre and Genda Singh, Sugarcane
Research Institute

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 19-07-2006

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 16(2)

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6A(1), 6Q

Citation : (2006) 6 AWC 5758 : (2006) 110 FLR 1143

Hon'ble Judges : Bharati Sapru, J

Bench : Single Bench

Advocate : Siddharth Singh, for the Appellant; S.K. Srivastava, Shyam Narain and Sudhanshu Narain and S.C., for the Respondent

Final Decision : Partly Allowed

Judgement

Bharati Sapru, J.—This writ petition has been filed against an award of the Labour Court dated 15.2.2000 passed in Adjudication Case No. 219 of 1992 by which, the Labour Court has reinstated the respondent workman on the same position as he was engaged along with full back wages.

2. The petitioner has challenged the award for two reasons. Firstly, the petitioner states that the award was passed ex-parte against them and secondly on merits also.

3. I have heard learned Counsel for the petitioner Shri Sidhtharth Singh, learned Counsel for the respondent Shri Shy am Narain.

4. On the first point, the petitioner argued that a plain reading of the award itself would make it clear that the award was passed ex-parte against them and, therefore, the petitioner filed an application for recall of the exparte award.

5. The award is dated 15.2.2000. The undisputed fact is that the award was published on 21.10.2000 and, therefore, become enforceable within the period of

30 days on 21.10.2000 under the provisions of Section 6-A(1) of the U.P. Industrial Dispute Act. The petitioner, however, filed a recall application on 10.11.2000, which was rejected by the Labour Court by its order-dated 3.2.2004.

6. I have heard learned Counsel for the petitioner as well as the respondent on the issue of the application for recall. Having heard them and having perused the record, I am of the opinion that the order dated 3.2.2004 passed by the Labour Court rejecting the application for recall contains no error of law. In fact, the Labour Court has correctly applied the law, particularly, in view of the decision of the Hon"ble Supreme Court in the case of Sanham Tape Co. v. Hans Raj (S.C.) reported in 2004(103) FLR 699. There is no doubt in my mind that once the award is published, it becomes enforceable within a period of 30 days and, thereafter, the Labour Court becomes fatuous on this issue and, therefore, can not entertain any application for recall after that period of 30 days.

7. Under Rule 16(2) of the Industrial Dispute Act, an application for recall can only be made within a period of 10 days from the making of the award or at the most, struck the matter until the award is published. But once an award is published in the Labour Court, 30 days thereafter is rendered to recall the matter.

8. This Hon"ble Court in the decision rendered in the case of U.P. Awas Evam Vikas Parishad v. Presiding Officer, Industrial Tribunal, U.P. Agra and Ors. in a recent decision rendered by Hon"ble Rakesh Tewari on 7th of October, 2005 has also taken the same view. I support the above decision also. Therefore, so far as the first submission made by the learned Counsel for the petitioner is concerned, the same has no merit and is not accepted by this Court.

9. On the merits of the case, learned Counsel for the petitioner has argued that the respondent workman was a seasonal employee who was employed against exigencies of work from time to time. He has argued that the petitioner is not a regular establishment but is a research centre which only functions during the season and, therefore, cannot even be called an industry.

10. Learned Counsel for the petitioner has also argued that the Labour Court has failed to consider the submissions and pleadings made by the petitioner as filed in the W.S. and rejoinder submissions filed before the Labour Court.

11. Learned Counsel for the petitioner has also argued that the award was delivered on 15.2.2000 which was the date fixed for taking evidence. The local representatives of the petitioner elapsed and did not attend the matter on that date and, therefore, he argues that the Court should have closed the evidence on that date and should have fixed the matter for hearing. Instead he argues that the award itself was declared on that date and the Labour Court has acted in great haste and in a most arbitrary manner.

12. Learned Counsel for the petitioner has also argued that there was no post against which the respondent workman had been engaged and, therefore, the order of reinstatement is also bad.

13. Learned Counsel for the petitioner has also argued that the grant of full back wages is also not justified as the respondent workman has not worked after the date when his services came to an end on 10.5.91.

14. In reply, Shri Shyam Narain, learned Counsel for the respondent workman has argued that the workman fully discharged the burden of proof in respect of the claim set-up by him that his services had been wrongly terminated from 10.5.91.

15. Learned Counsel for the respondent has argued that the workman put in regular service as a semi scale workman from 8.11.89 to 9.5.91 and in every year he had worked for more than 240 days. The workman also established his case by giving a statement that the petitioner was a regular industry which works through out the year and his services were used by the petitioner organization through out the year. The evidence as given by the respondent workman was not refuted or denied by the petitioner and, therefore, the Labour Court has correctly come to the conclusion that the respondent workman had been wrongly terminated on 10.5.91.

16. Having heard learned Counsel for both the parties in the merits of the matter, I am of the opinion that the Labour Court has committed no error in coming to the conclusion that the services of the workman had been wrongly terminated with effect from 10.5.91 and in violation of the provisions of Section 6Q of the U.P. Industrial Dispute Act.

17. However, there is strength in the argument as made by the learned Counsel for the petitioner that the grant of full back wages was not justified. In view of the fact that the Labour Court has given no reason or justification for the grant of full back wages, the Labour Court has not at all applied its mind to the issue as to whether the workman was gainfully employed after the period of 10.5.91 or not, but has simply granted him relief of full back wages is perhaps an automatic result of the order of reinstatement. This could not have been done by the Labour Court. The Labour Court ought to have applied its mind to the facts and circumstances of this particular case on the issue of gainful employment and, thereafter, should have granted whatever back wages could have been granted in the circumstances of the case.

18. In the absence of any discussion in this regard, the order of the Labour Court granting full back wages is wholly unjustified, and is liable to be set aside, particularly, in view of the recent decision of the Hon''ble Apex Court in the case of U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey,

19. I, accordingly, modify the award of the Labour Court, in so far as a grants full back wages and reduces the same to 50%, The rest of the award will remain as it is.

20. In the end result, the writ petition is partly allowed. But there will be no order as to costs.