

(2004) 05 AHC CK 0046
In the Allahabad High Court
Case No : C.M.W.P. No. 3566 of 1996

Surendra Kumar Katiyar

APPELLANT

Vs

Presiding Officer, Labour Court (IV) and Others

RESPONDENT

Date of Decision : 12-05-2004

Acts Referred:

Constitution of India, 1950 — Article 14

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N, 6P

Citation : (2004) 4 AWC 3173 : (2004) 102 FLR 794

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Akhilesh Misra and Sanjay Misra, for the Appellant; C.B. Gupta, S.C., for the Respondent

Judgement

Arun Tandon, J.—Heard Sri Akhilesh Mishra, holding brief of Sri Sanjay Mishra, counsel for the petitioner and Sri C. B. Gupta on behalf of the respondent No. 3 as well as standing counsel on behalf of respondent Nos. 1 and 2.

2. Sri Surendra Kumar, who was a class IV muster roll employee in the employment of respondent No, 3, was refused work w.e.f. 8th June, 1990 and his name from the muster roll was scored out on 27.7.1990 on the charges of unauthorised absence from duty.

3. Feeling aggrieved by the aforesaid action of the employers, the workman raised an industrial dispute. The State Government, in exercise of power u/s 4K of the U. P. Industrial Disputes Act, vide notification dated 4.10.1991 referred the said dispute for adjudication to the Labour Court, Kanpur, which was registered as Adjudication Case No. 205 of 1991. The labour court, after affording opportunity to the parties concerned, by means of the award dated 27.7.1995 answered the reference in favour of the employers and against the workman. Hence the present writ petition.

4. On behalf of the petitioner it is contended that the unauthorised absence from

the duty is at best only a misconduct and the services of the workman, under the standing orders, cannot be automatically terminated. The provisions of opportunity of hearing have necessarily to be read in the said standing order, failing which the standing order itself is to be declared arbitrary and violative of Article 14 of the Constitution of India. Reliance in that regard has been placed upon the judgment of the Hon'ble Supreme Court in *Upton India Limited Vs. Shammi Bhan and Another*, and *D.K. Yadav v. M/s. J. M. A. Industries Ltd.* 1993 (67) FLR 311,

5. It is contended that admittedly no notice or opportunity of hearing was afforded to petitioner before refusing work to petitioner and before striking of his name from the muster roll.

6. On behalf of the employers it is contended that the petitioner is habitual absentee and on an earlier occasion also his salary of three days was deducted for unauthorised absent. He was issued notice dated 20th June, 1990 to report back for duty but even then he did not come forward for discharging his duties. In such circumstances the name of workman has been scrolled out from the attendance register on 25.7.1990. It has further been stated that w.e.f. 8th June, 1990 the workman himself has refused to discharge the duty in the employment of respondent No. 3 so the reference, as made by the State Government, itself was bad.

7. I have heard counsel for the parties and have gone through the record of the writ petition.

8. The labour court by means of the impugned award, after noticing the contention raised on behalf of the counsel for the parties and after considering the evidence led by the parties, recorded a finding that since a notice was issued calling upon the petitioner to report for duty, which he did not comply with, the employers were left with no alternative but to strike off the name of workman from the attendance register w.e.f. 25.7.1990. Thereafter the labour court proceeded to record a finding that in the facts of the case the services of the workman have only been retrenched and since he has been paid salary in lieu of the notice period as well as compensation through a cheque and the workman has cashed the same, the provisions of Section 6N have been complied with hence there is no illegality in the action of the employers.

9. The finding recorded by the labour court is unsustainable in the eyes of law. Admittedly, in compliance of the employers' notice dated 20th June, 1990, the workman, vide exhibit Nos. 9 and 10 presented himself for joining his duty and for discharging his responsibility in the employment of respondent. However, the said evidence led by the workman has been disbelieved only on the ground that there is no independent witness in respect of the same.

10. In the opinion of the Court the said finding of the labour court cannot be sustained inasmuch as the workman had examined himself before the labour court and categorically stated that he has repeatedly reported for duty but the

employers had refused the work. In such circumstances, the labour court was not justified in disbelieving that the workman had actually presented himself for duty in response to letter dated 20.7.1990.

11. In any view of the matter, having regard to the judgment of Hon"ble Supreme Court referred to by the counsel for the petitioner in *Uptron India Limited Vs. Shammi Bhan and Another*, , the employers are under legal obligation to have afforded an opportunity of hearing to the workman concerned before taking the decision to strike off his name from the muster roll,

12. The Hon"ble Supreme Court has specifically held in the case of *D. K. Yadav (supra)*, that the principle of natural Justice must be read in the standing order otherwise it would become arbitrary, unjust, unfair and violative of Article 14.

13. In view of the aforesaid settled legal proposition and in view of the admitted fact that the employers did not afford any opportunity of hearing to the workman before coming to the conclusion that he was unauthorisedly absent from the duty. The impugned action of the employers striking off the name of workman from the muster roll, cannot be legally sustained.

14. So far as the question with regard to payment of notice pay and retrenchment compensation is concerned, it is needless to point out that u/s 6P of the U. P. Industrial Disputes Act it is mandatory that for the purposes of effecting legal retrenchment the principle of last come first go has to be followed. Absolutely no findings have been recorded by the labour court in respect of the aforesaid aspect of the matter. In such circumstances, it cannot be said that the services of the petitioner are retrenched in accordance with law.

15. At this stage the counsel for the respondent employers contended that even in the cases where the services of the workman have been terminated without complying with the principles of natural justice, it is still open to the employers to lead evidence before the Labour Court itself for establishing that the action taken against the workman was not an unfair labour practice and the striking off the name of workman was justified in the facts of the case. Since the labour court has decided the reference in favour of the employers, the aforesaid opportunity could not be availed by the employer.

16. In view of the aforesaid this Court has come to the conclusion that the award of the labour court cannot be sustained. However, this Court cannot deprive the employers from the opportunity, which was available to them before the trial court to bring home the charges for justifying the action taken against the workman.

17. In such circumstances, the writ petition is allowed and the award of the labour court is set aside. The matter is remanded to labour court to decide the dispute afresh after affording opportunity to the parties to lead evidence for bringing home the charges levelled against the workman and justify the action on the basis of the evidence so led. It shall be open to the parties to raise all

such pleas for justifying the action.

18. Since the dispute is very old, the Labour Court may decide the dispute at the earliest possible, preferably within a period of four months from the date a certified copy of this order is produced before him.