

(2003) 11 AHC CK 0026

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4225 of 1998

Suresh Chand

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 18-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 92 FLR 192 : (2004) 2 UPLBEC 1185

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : R.N. Tripathi, B.P. Yadav and V.K. Singh, for the Appellant; V.P. Mathur and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—The petitioner-workman aggrieved by an award of the Labour Court, U.P., Agra dated 15th February, 1997, passed in adjudication case No. 162 of 1993 has approached this Court by means of present writ petition under Article 226 of the Constitution of India, copy whereof is annexed as Annexure-"6" to the writ petition.

2. The following dispute was referred to before the Labour Court for adjudication.

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3. Heard learned Counsel appearing on behalf of the parties.

4. After receipt of the reference the Labour Court issued notices to both the parties, namely, the employers as well as the concerned workman-petitioner in the present writ petition. Parties have exchanged their pleadings and adduced evidence. In short the case set up by the employers is that the workman

concerned has been dismissed from service after holding a domestic enquiry, which was in accordance with law. A preliminary issue was framed by the Labour Court to the effect as to whether the domestic enquiry conducted by the employers was fair and proper and in accordance with law or not? The Labour Court having come to the conclusion recorded a finding that the enquiry conducted by the employers was fair and proper. However the Labour Court after recording the finding that the reliance placed by the employers on the report of the Enquiry Officer, who appears to have been recommended in haste that the person like concerned workman is not entitled to be retained in service. The Labour Court further recorded a finding that the work of the Enquiry Officer is only to the effect as to whether the charges levelled against the workman have been brought home or not? He should not undertaken the exercise of recommending the punishment, which is in the exclusive domain of the punishing authority, but because of the aforesaid rashness, the Enquiry Officer has recommended the dismissal of the workman conceded. From the narration in the impugned award, it appears that Enquiry Officer has affirmed the earlier report submitted by him which, according to the workman, had never been made available to the workman and he has not been afforded any opportunity to meet the aforesaid enquiry report. Thus, the workman concerned was handicapped in submitting his defence. In the facts and circumstances of the case, the Labour Court has found that the charges of misappropriation have not been proved against the workman. However, the workman can only be said to be careless, but termination of his service, according to the Labour Court, is excessive punishment for the said charges. The Labour Court, therefore, held that the termination of services of the workman concerned with effect from 4th November, 1991 is neither legal, nor justified and he, therefore, is entitled for the reinstatement, but in the facts and circumstances of the case, the workman concerned will be entitled for only Fifty per cent back wages from the date of termination till the date of award and from the date of award, he will be entitled for full wages.

5. Learned Counsel for the petitioner-workman has submitted that the Labour Court has committed error inasmuch as it has not taken into account that the Enquiry Officer has relied upon an earlier report for which the workman had not afforded any opportunity to rebuttal. This point was considered by the Labour Court in the impugned award and has in fact recorded a finding against the workman. Since the Enquiry Officer has already arrived at the conclusion that the workman concerned is guilty of the charges levelled against him, therefore it was not open for the Labour Court to enter into further investigation regarding the veracity of the charges once it came to the conclusion that the domestic enquiry conducted by the employer was fair and proper. I see no error in the impugned award passed by Labour Court, therefore, it deserves to be upheld, as the workman concerned was already given the relief of reinstatement with fifty per cent of back wages from the date of termination till the date of award.

6. In view of what has been stated above, this writ petition has no force and is

accordingly dismissed. The interim order, if any, stands vacated. However, on the facts and circumstances of the case, the parties shall bear their own costs.