
(2010) 03 UK CK 0056

In the Uttarakhand High Court

Case No : Writ Petition No. 1856 of 2007 (M/S)

The State of Uttarakhand and Others

APPELLANT

Vs

Anand Prakash and Another

RESPONDENT

Date of Decision : 30-03-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 6(N)

Citation : (2011) 2 UC 946

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Subhash Upadhyaya, Brief Holder, for the Appellant; Pankaj Miglani, for Workman, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—Heard Sri Subhash Upadhyaya, the learned Brief Holder for the Petitioner and Sri Pankaj Miglani, the learned Counsel for the workman/ Respondent No. 1.

2. The State (Petitioners) has assailed the validity and legality of the award dated 31.10.2000 passed by the labour court in Adjudication case No. 240 of 1999 whereby the labour court directed the reinstatement of the workman without back wages but awarded a compensation of Rs. 10,000/- and Rs. 2,000/- as cost.

3. The brief facts leading to the filing of the writ petition is that the workman alleged that he was appointed as a casual labour in the Petitioner's institution in April, 1983 and worked till 28th March, 1987 when his services was dispensed with by an oral order. The workman, being aggrieved, raised an industrial dispute after thirteen years. The delay was condoned and the matter was referred for adjudication. Before the labour court, the Petitioner submitted that no relief can be granted since there was an inordinate delay in raising the reference and such old and stale dispute could not be referred nor could it be adjudicated. The

labour court, after considering the matter, held that the workman had worked for more than 240 days in a calendar year on the basis of the documents filed by the Petitioner and consequently, held that the dispensation of the services of workman without complying the provision of Section 6(N) of the Industrial Dispute Act, was invalid being in violation of Section 6(N) of the Act. The labour court, however, held that in view of the judgment of the SC in the case of Ajaib Singh v. the Sirhind Co-operative Marketing-cum-Processing Service Society and Anr. AIR 1999 SCW 1051 the workman was not entitled for payment of back wages.

4. The Petitioner, being aggrieved, has filed the present writ petition. The learned Brief Holder for the Petitioner submitted that old and stale dispute should not be referred and that there was delay of more than 13 years, consequently, no industrial dispute existed nor the workman was entitled for any relief. The learned Brief Holder for the Petitioner further submitted that the finding of the labour court that the workman had worked for more than 240 days in a calendar year was based on surmises and conjectures and consequently, the said finding was perverse. The learned Brief Holder for the Petitioner further submitted that the muster roll records are maintained for a period of ten years and as per their manual instructions the records were weeded out.

5. Having heard the learned Counsel for the parties, this Court is of the opinion that the finding of the labour court that the workman had worked for more than 240 days in a calendar year is based on the documents filed by the Petitioners themselves. Therefore, the findings of the Labour Court are based on appreciation of facts which are neither perverse nor against the material evidence on record. Such findings cannot be interfered in a writ jurisdiction. The contention of learned Brief Holder for the Petitioner that old and stale dispute cannot be referred for adjudication is not correct. Each and every case has to be considered in the facts and circumstances of that particular case. In the case of Sapan Kumar Pandit Vs. U.P. State Electricity Board and Others, , the SC has held that where a reference is made it should not be set aside merely on the ground of delay and that long delay in raising a dispute could only be a mitigating factor for moulding the relief for the parties. In the present case, the labour court, while considering the long delay in approaching the labour court, declined to grant the relief of backwages. This Court does not find any error in the discretion exercised by the labour court.

6. Further, no material has been brought on record to indicate that no industrial dispute existed or was apprehended at the time when the reference was made for adjudication of the dispute before the labour court. This Court further finds that the order of the State Government referring the dispute has not been questioned by the Petitioner before this Court. In view of the aforesaid, this Court is not in a position to adjudicate or dwell on the submission of the learned Brief Holder for the Petitioner with regard to the question of delay since there is no adequate material before this Court. In the light of the aforesaid, this Court

does not find any error in the impugned award. The writ petition fails and is dismissed.