
(2010) 03 AHC CK 0272
In the Allahabad High Court
Case No : Writ-C No. 21885 of 2001

United Provinces Sugar Company Ltd.	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Constitution of India, 1950 — Article 14
Factories Act, 1948 — Section 112, 49, 50
Uttar Pradesh Factories Welfare Officers Rules, 1955 — Rule 21, 22
Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 — Section 3, 4

Citation : (2011) 2 LLJ 811

Hon'ble Judges : Yogesh Chandra Gupta, J;Prakash Krishna, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Prakash Krishna, J.—Petitioner, a company registered under the Companies Act carries on the business of manufacture and sale of sugar through vacuum pan sugar process at its factory premises situate at Tamkuhi Road, Kushinagar. The permanent strength of the workers is less than three hundred workers but during the crushing season the strength is enhanced up to about nine hundred. Provisions of the Factories Act, 1948 are applicable to the Petitioner company. Its Section 49 provides for the appointment of Welfare Officer in every factory wherein five hundred and more workers are employed.

The Petitioner being aggrieved by the order dated May 3, 2001 passed in favour of its Welfare Officer namely Narendra Das Gaur, the Respondent No. 5 herein by the Deputy Labour Commissioner, Gorakhpur under the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 (hereinafter referred to as the Act) has filed the present writ petition on a number of grounds including that the Rule 22 of the U.P. Factories Welfare Officers Rules, 1955 be declared as ultra vires and unconstitutional and the recovery certificate dated May 3, 2001 issued by the Deputy Labour Commissioner, Gorakhpur be quashed. It appears that by the impugned order dated May 3, 2001 (Annexure - 2) the Regional Deputy Labour

Commissioner has ordered for the recovery of 5,05,575/- towards the difference in wages of Shri Narendra Das Gaur, the Labour Welfare Officer for the period January, 1996 to December, 2000.

2. In reply, Narendra Das Gaur in his counter affidavit has stated that the recovery certificate has been rightly issued as the Petitioner has failed to pay revised pay scale to him and non-payment of the revised pay scale amounts to deduction. The provisions of the Act, 1978 shall apply to the Welfare Officers as well, and in view of the Act No. 5/1978 he has justified the invoking of jurisdiction of the Labour Court under Sections 3 and 4 of the Act, 1978.

3. In the rejoinder affidavit filed on behalf of the Petitioner, the pleas raised in the writ petition have been reiterated, additionally a plea has also been raised that the wages claimed by the Respondent No. 5 w.e.f. 1996 is not permissible in view of the fact that the amended revising grades of Welfare Officers came into existence w.e.f. June 30, 2000 Annexure No. 1 to the rejoinder affidavit is a copy of the said notification. It has been pleaded that the wages prior to June 30, 2000 cannot be granted nor can be claimed by the Respondent No. 5.

4. Heard learned Counsel for the parties and perused the record.

During the pendency of the writ petition, the writ petition was got amended and some more pleas that the Respondent No. 5 is claiming the arrears of his wages w.e.f. January 1, 1996] on the basis of the notification No. 1833 dated June 30, 2000; the notification dated June 30, 2000 can only be prospective in nature and cannot be retrospective in nature even if it is assumed that Welfare Officer is entitled to revision of his wages under the said notification, the said notification is wholly arbitrary and violative; the impugned recovery certificate has been issued mechanically, without any application of mind and without considering the objection raised by the Petitioner and as such it is arbitrary and violative of Article 14 of the Constitution of India and that whether the Respondent No. 5 is entitled to be given revised wages, if any, is a question of fact which cannot be adjudicated upon in the proceedings under Sections 3 and 4 of the Act, 1978 being summary jurisdiction, have been sought to be raised.

5. The aforesaid amendment application was allowed by the order dated January 8, 2007 and the Petitioner was permitted to incorporate the amendments sought for in the writ petition. Thereafter, the pleas have been incorporated in the writ petition; but it appears from the record that No. reply to the amended pleas has been filed by the contesting Respondent No. 5. In any view of the matter, the learned Counsel for the Respondent No. 5 did not, during the course of argument, refer to reply, if any, filed by the Respondent No. 5 to the amended pleas, nor sought time. 6. As noticed herein above, by means of the present writ petition, the Petitioner has sought (1) a writ, order or direction declaring the Rule 22 of the U.P. Factories Welfare Officers Rules, 1955 as ultra vires and unconstitutional, and (2) a writ, order or direction in the nature of Certiorari calling for record of the case and to quash the recovery certificate

dated May 3, 2001 issued by the Deputy Labour Commissioner, Gorakhpur.

7. At the very outset, it may be placed on record that during the course of argument, the learned Counsel for the Petitioner had laid much emphasis on the second prayer that is for quashing of the impugned recovery certificate although a feeble attempt was made by him for declaration of Rule 22 of the U.P. Factories Welfare Officers Rules, 1955 as ultra vires and unconstitutional.

8. Section 50 of the Factories Act gives power to the State Government to make rule to supplement Chapter v. of the Act. The State Government in exercise of powers conferred by Sections 49, 50 and 112 of the U.P. Factories Welfare Officers Rule, 1959 wherein Rule 21 provides for the age of retirement of Welfare Officer to be the same as for the senior Executive of the Factory. Rule 22 has been inserted w.e.f. September 21, 1979 which provides that the provisions of the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 shall also apply in the case of the Welfare Officers.

9. In reply, the learned Counsel for the Respondent, so far as vires of Rule 22 of the said Rule are concerned, has placed reliance upon a Division Bench judgment of this Court in the Writ Petition No. 46467/2006, Praveen Kumar Khare v. State of U.P. and Ors. dated September 14, 2007. However, our attention was also brought to an order of the Apex Court wherein the matter was carried in appeal by the employer in SLP (C) No. 24081/2007 MD, U.P. State Sugar Corporation Ltd. v. Praveen Kumar Khare and Ors. which was dismissed by the order dated January 8, 2008 a copy whereof was not produced but a copy of the order dated July 31, 2008 dismissing the application seeking review of the aforesaid order dated January 8, 2008 was produced. The Supreme Court dismissed the review petition as it did not find any merit therein.

10. It may be noted that the vires of Rule 22 sought to be challenged in the present writ petition was not there before the High Court or the Apex Court in the aforesaid Writ Petition No. 46467/2006. In the said writ petition the Petitioner was employed as Welfare Officer and the petition was filed for payment of revised pay scale to which the defence of financial constraints was urged by the employer. The relevant portion from the judgment is reproduced below:

A counter affidavit has been filed on behalf of the Respondent and it has been stated that having regard to the financial hardship faced by the U.P. State Sugar Corporation Limited as also in view of the Government Order issued by the State Government, it is not possible to ensure payment of salary to the Petitioner in accordance with the Amendment Rules, 2000.

In our opinion the ground raised on behalf of the Respondents is untenable. Once the statutory rules applicable are amended providing for revision of the pay scale, No. executive order of the State can withhold the enforcement of the revised pay scales as per the amended statutory rules. Similarly, any financial hardship faced by the U.P. Sugar Corporation Limited cannot be the basis for non-compliance of the amended statutory rules.

11. In this view of the matter, it is difficult to agree with the submission of the learned Counsel for the Respondents that vires of Rule 22 was upheld. However, we are not proposing to decide the said issue in the present writ petition leaving it open to be decided in appropriate proceeding as we are satisfied that on the facts and situation of the present case, No. recovery certificate could have been issued and the impugned order is not liable to be sustained for the reasons mentioned hereinafter.

12. A show cause notice dated January 22, 2001 before passing of the impugned order was issued by the Deputy Labour Commissioner to the Petitioner under Rule 4(2) of the Rules framed under the said Act, 1978. The said notice was issued on the ground that the said Officer has received information that the Petitioner has failed to pay the difference in salary for the period January, 1996 to December, 2000 and the wage bill exceeds.1 Lakh. To maintain industrial peace, the employer was asked to give a reply. Cause was shown to the Deputy Labour Commissioner by filing reply dated April 14, 2001 (Annexure -5 to the writ petition) by the Petitioner employer.

13. In the reply, the Petitioner took a number of pleas including that the application of the Respondent No. 5, Narendra Das Gaur, under the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 is misconceived and not maintainable. The said Act is applicable to only workmen whereas Sri N.D. Gaur, Respondent No. 5, is an officer equivalent to the rank of Head of the Department of the Factory. The said Act, 1978 is to be read with Payment of Wages Act and the Payment of Wages Act is not applicable to an officer of the factory. It was also brought to the notice of the Deputy Labour Commissioner that the vires of the notification dated February 27, 1990 is already pending consideration before High Court and that there is No. violation of Payment of Wages Act. The maintainability of the application in question was challenged on the ground that the employer Petitioner has not violated any provision of the Payment of Wages Act nor of the said Act, 1978 or the Rules framed thereunder. The impugned order for recovery is dated May 3, 2001 (vide Annexure -2 to the writ petition). The Deputy Labour Commissioner has not even adverted any of the pleas raised by the Petitioner employer in its reply to the show cause notice. The impugned order proceeds on the basis that Shri N.D. Gaur, Welfare Officer, has not been paid difference in wages amounting to.5,05,575/-. He ordered issuance of recovery citation along with 10 per cent of recovery charges under Rule 3(1) of the Rules framed under the Act, 1978. No. reason whatsoever even in brief has been recorded in the impugned order. As noticed herein above, the reply filed by the Petitioner has not been taken into account. The case of the Petitioner besides vires of Rule 22 is that Sri N.D: Gaur, Respondent No. 5, was a Welfare Officer and was not a workman and as such the provisions of the Act, 1978 are not applicable, has not been considered at all. According to the Petitioner, the duties attached to the Welfare Officer comprises of managerial and administrative nature and his scale of pay being more than.5,000/- cannot be categorised as workman, should have been addressed by the authority concerned first.

14. From the material on record, it appears that the dispute is with regard to the entitlement of the Respondent No. 5 to receive the revised pay scale which came into force w.e.f June 30, 2000. By the impugned order, the Deputy Labour Commissioner has ordered the payment of revised pay scale for the period even prior to January 6, 1996 December 1, 2000. There being a dispute as to whether the Respondent No. 5 is entitled for payment of difference in wages due to enhancement of wages w.e.f. June 30, 2000 for the period prior to it required adjudication by the Labour Court on a reference made by the State Government. The proceedings before the Deputy Labour Commissioner under the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 are summary in nature. The said Act has been enacted to maintain industrial peace in bigger industrial establishments by making timely payment of Wages. The aim and object of its enactment is reproduced below:

The provisions of the Payment of Wages Act, 1936 have been found to be inadequate to ensure timely payment of wages. The incidence of disturbance of industrial peace being greater in comparatively bigger establishments, it was considered necessary to provide that if the wage-bill in default exceeds fifty thousand rupees the amount should be recoverable as arrears of land revenue. Further, in order to curb the tendency of the employers to keep large amounts of wages in arrears, it was also considered necessary to make it a penal offence to be in default of wage bill exceeding rupees one lakh. Since the State Legislature was not in session and the situation warranted immediate action, the Governor of Uttar Pradesh promulgated the Uttar Pradesh Industrial Peace (Timely Payment of Wages) Ordinance, 1977 December 12, 1977.

15. The Apex Court had an occasion to interpret the provisions of the Act namely the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 in *Modi Industries Ltd. Vs. State of Uttar Pradesh and others*, The Apex Court examined the scheme of the Act, 1978, in particular Section 2(a), which defines the Industrial Establishment and Section 2(d) defining "wage bill". It has, taking into consideration the preamble, the statement of objects and reasons and the other provisions of the Act, held that besides the other things, the Act deals with defaults in payment of the wage-bill of all the workmen in the establishment. It is not meant to provide a remedy for the default in payment of wages of individual workmen. That can be taken care of by the provisions of the Payment of Wages Act, 1936 which provisions are found inadequate to ensure timely payment of wages of the whole complement of workmen in an establishment.

16. To put the things beyond the pale of doubt, the Apex Court has observed that the object of the Act, 1978 is not so much to secure the payment of wages to an individual workman but to prevent the industrial unrest and disturbance of industrial peace on account of default on the part of the establishment in making the payment of wages to their workforce as a whole. The relevant extract from para 7 of the said judgment is reproduced below 2001 III LLJ (Suppl) 1446 at p. 1451:

7.....The object of the Act as stated above is not so much to secure payment of wages to individual peace on account of the default on the part of the establishment in making payment of wages to their work force as a whole. It appears that many establishments had a tendency to delay the payment of wages to their workmen and were playing with the lives of the workmen with impunity. This naturally led to a widespread disturbance of industrial peace in the State. Hence the legislature felt the need for enacting the present statute. This being the case, the inquiry by the Labour Commissioner contemplated u/s 3 of the Act is of a very limited nature, viz., whether the establishment has made a default in timely payment of wages to its workmen as a whole when there is No. dispute that the workmen are entitled to them.

(emphasis supplied)

17. Further, in paragraph 8 of the report it has been mentioned that under the Act of 1978, the Labour Commissioner acts to assists the workmen to recover their wages which are admittedly due to them but are withheld for not fault on their behalf. The Labour Commissioner does not act as an adjudicator if the entitlement of the workmen to the wages is disputed otherwise than on frivolous or prima facie untenable grounds. The relevant extract from paragraph 8 of the report is reproduced below 2001 III LLJ (Suppl) 1446 at p. 1451:

.....If the Labour Commissioner is satisfied that the workmen, though they have worked and are, therefore, entitled to their wages are not paid the same within time, he has further to satisfy himself that the arrears of wages so due exceed.50,000. It is only if he is satisfied on both counts that he can issue the certificate in question. Under the Act, the Labour Commissioner acts to assist the workmen to recover their wages which are admittedly due to them but are withheld for not fault on their behalf. He does not act as an adjudicator if the entitlement of the workmen to the wages is disputed otherwise than on frivolous or prima facie untenable grounds. When the liability to pay the wages, as in the present case, is under dispute which involves investigation of the questions of fact and/or law, it is not the function of the Labour Commissioner to adjudicate the same. In such cases, he has to refer the parties to the appropriate forum.

18. Coming to the facts of the present case, the impugned order cannot be allowed to stand in view of the aforestated pronouncements of the Apex Court. Firstly, the Respondent No. 5, Narendra Das Gaur, sought to raise his individual dispute by invoking the provisions of the Act, 1978 which is not permissible. There was No. dispute with regard to the timely payment of wages of all the workmen of the establishment. Secondly, the wages were paid to the Respondent No. 5 timely which were due according to the Petitioner employer. Whether the Respondent No. 5 was entitled for enhanced wages in view of the subsequent notification which came in force w.e.f January 30, 2000 was a matter of dispute between the parties. The said dispute could have not been adjudicated upon under the provisions of the Act, 1978, being summary in nature. Thirdly, it is not a case of any of the Respondents that the dispute sought to be raised by the

Petitioner employer was frivolous or prima facie untenable. The case of the Petitioner employer from the very beginning is that the Respondent no, 5 was not a workman and in any view of the matter, the provisions of the Act, 1978 are not applicable so far as recovery of difference of his wages are concerned. The said plea so raised in reply to the show cause notice has not been addressed at all before passing of the impugned order. Fourthly, No. reasons have been given in the impugned order for not accepting or rejecting the pleas raised by the Petitioner in reply to the show cause notice. The Apex Court in the case of *Modi Industries Limited v. State of U.P. and Ors.* (supra) has held that the Labour Commissioner is not a mere recovery officer and he has to ascertain himself whether and to what extent, the workmen are entitled to the wages and then issue or refuse to issue the certificate. The inquiry that Labour Commissioner conducts for the purposes is, thus, of a quasi-judicial nature. The Labour Commissioner has to satisfy himself that occupier of the industrial establishment concerned is in default of payment of wages and that the wage bill in respect of which the default is complained of exceeds 50,000. A hearing is required to be given to the occupier of the industrial establishment on the claim made to satisfy himself by the Labour Commissioner. Ultimately, it concluded that whether the certificate is issued or not, the parties' remedy to approach an appropriate forum for adjudication of their claim is not taken away.

19. On the facts as stated above, we are satisfied that there (sic) did exist a genuine dispute between the parties with regard to the entitlement of the Respondent No. 5 to claim revised wages for the period January, 1996 to December, 2000 as also as to whether the Respondent No. 5 is a workman or not. The Respondent No. 5 may raise an industrial dispute if so advised for adjudication of his claim. The proceedings before the Deputy Labour " Commissioner under the provisions of the U.P. Act of 1978, giving rise to the present writ petition are quashed.

20. For the reasons given above, the impugned order dated May 3, 2001 issued by the Deputy Labour Commissioner, Gorakhpur cannot be allowed to stand. The same is quashed hereby.

21. Viewed as above, the impugned recovery certificate dated May 3, 2001 being illegal and contrary to law, cannot be allowed to stand. This Court by means of the interim order dated June 6, 2001 had directed the Petitioner to deposit half of the amount under the impugned order with the Respondent No. 2 and furnish security for the balance amount to the Respondent No. 2. The Respondent No. 5 was permitted to withdraw the amount so deposited. Having held that the impugned order cannot be allowed to stand, the security, if any, furnished by the Petitioner in pursuance of the interim order dated June 6, 2001 stands discharged. The amount, if any, drawn by the Respondent No. 5 shall be returned/refunded to the Petitioner within a period of one month. The Petitioner shall be entitled to adjust the said amount from the outstanding amount, if any, of the Respondent No. 5, in case, the Respondent No. 5 fails to return the

amount as directed above within the stipulated period of time.

22. The writ petition succeeds and is allowed. No. order as to costs.