
(2009) 04 AHC CK 0776
In the Allahabad High Court
Case No : C.M.W.P. No. 34086 of 2006

U.P. Awas Evam Vikas Parishad

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 24-04-2009

Acts Referred:

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

Citation : (2009) 122 FLR 717

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : A.P. Srivastava, for the Appellant; Sudhansu Narain, Shyam Narain and S.C., for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Sri A.P. Srivastava, the learned Counsel for the petitioner and Sri Sudhansu Narain, the learned Counsel for the workman.

2.The services of the workman was terminated on 19.7.1986. Another dispute was raised with regard to the validity and legality of the order of termination. The Labour Court gave an award holding that the order of termination was illegal find directed reinstatement with continuity of service and with full back wages. The petitioner preferred a writ petition which was ultimately dismissed by a judgment dated 28.2.2004. During the pendency of the writ petition, an interim order was passed, directing payment of current wages to the workman. Against this interim order, a SLP was preferred which was rejected. It transpires that the petitioner eventually reinstated the workman and paid the current wages. During the pendency of the petition the workman retired on 30.12.2000.

3. Upon the dismissal of the writ petition in the year 2004, the workman filed an application u/s 6-H(1) of the U.P. Industrial Disputes Act (hereinafter referred to as the Act), for computation of its wages in terms of the award. The chart filed by the workman relates for the computation of the wages from the date when he

was initially suspended till the date of his retirement on 31st December, 2000. The Deputy Labour Commissioner, after considering the matter, issued an order for the payment of an amount of Rs. 6,19,203/- which included Rs. 1,35,000/- towards leave encashment and Rs. 4,84,203/- towards, arrears of wages. The petitioner, being aggrieved, has filed the present writ petition.

4. The learned Counsel for the petitioner submitted that the objection raised by the petitioner has not been considered by the Deputy Labour Commissioner. The learned Counsel submitted that computation of wages u/s 6-H(1) of the Act can only be computed in terms of the award and consequently, the wages for pre-award period cannot be taken into consideration. The learned Counsel for the petitioner further submitted that the post award wages also could not be determined u/s 6-H(1) of the Act and further submitted that the Leave Encashment, in any case, cannot be calculated u/s 6-H(1) of the Act and that the remedy available to the workman was to raise a reference u/s 4-K of the Act or u/s 6-H(2) of the Act. The learned Counsel for the petitioner further submitted that in terms of the interim order, the workman has been paid wages, which amount has not been adjusted while calculating the arrears of wages.

5. Having heard the learned Counsel for the parties, this Court finds that the impugned order passed by the Deputy Labour Commissioner cannot be sustained for the reasons stated hereunder.

6. The Court finds that reasons have not been given by the Deputy Labour Commissioner. Even though detailed reasons are not expected to be given but, where disputed questions of facts are raised, brief reasons are required to be given by the authority. Since the award was challenged by the petitioner in a writ petition and pending decision, the workman was reinstated, consequently, the application by the workman claiming arrears of wages for post award period, in the facts and the circumstances of the case, can be considered by the Deputy Labour Commissioner, in an application u/s 6-H(1) of the Act. The Award of the Labour Court merges in the judgment of the High Court. Consequently, to this extent, the post award wages can also be considered, and calculated by the Deputy Labour Commissioner. However, pre-award period cannot be taken into consideration by the Deputy Labour Commissioner. This Court finds that the Deputy Labour Commissioner has not included the said period while calculating the arrears of wages. However, the Court finds that the amount received by the workman pursuant to the interim order of the Court has not been adjusted. The chart filed by the workman also does not indicate that the amount claimed by him was after adjustment of the wages which he had received during the pendency of the writ petition. Consequently, the Deputy Labour Commissioner is required to re-calculate the amount accordingly. This Court further finds that the Leave Encashment cannot be considered in proceedings u/s 6-H(1) of the Act.

7. In view of the aforesaid, the writ petition is allowed. The impugned order is quashed. The matter is remitted again to the Deputy Labour Commissioner to decide the matter afresh within three months, in the light of the observations

made above.