

(2009) 03 AHC CK 0211

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 26758 of 2008

U.P. Power Transmission Corporation Ltd.

APPELLANT

Vs

Saheb Lal Kureel and another

RESPONDENT

Date of Decision : 25-03-2009

Acts Referred:

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

Citation : (2009) 121 FLR 501

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : S.C. Srivastava, for the Appellant; Narendra Mohan, S.C. and S.N. Dubey, for the Respondent

Judgement

Tarun Agarwala, J.—The services of the workman-Respondent No. 1 was dispensed with on 1.7.1978. The workman raised a dispute in the year 1991 and the matter with regard to validity and legality of his termination, was referred to the Labour Court for adjudication. The Labour Court made an award dated 31.8.1992 holding that the workman was working on a muster roll and had worked for more than 240 days in a calender year and was entitled for retrenchment compensation before dispensation of his services. The Labour Court found that retrenchment compensation had not been paid, and therefore, held that the order of the termination was illegal. Having said so, the Labour Court instead of reinstating the workman, directed the employer, to pay retrenchment compensation and further directed that as and when a vacancy arises, the workman would be given a fresh appointment.

2. The employer and the workman both were aggrieved by the said award and filed separate writ petitions. The writ petition of the employer was dismissed and the writ petition of the workman was allowed by a judgment dated 11.11.2005. The Writ Court directed the employer to reinstate the workman and also awarded Rs. 35,000/- as compensation for wrongful termination of his service and costs of the proceedings. The employer, being aggrieved by this judgment, filed a SLP

before the Supreme Court of India which was eventually dismissed by a judgment dated 30.7.2007. Since the matter reached finality, the employer issued an order dated 29.12.2007 directing the workman to join his duties on the post on which he was working prior to his termination.

3. In the meanwhile, pursuant to the judgment of the High Court dated 11.11.2005, the workman filed an application u/s 6(H)(1) of the U.P. Industrial Disputes Act for the recovery of the wages for the period 12.11.2005 to 30.6.2006 and another application was subsequently moved for the recovery of the wages for the period 1.7.2006 to 30.4.2007. It transpires that these applications were moved because the employer refused to allow the workman to join his duties pursuant to the judgment of the High Court dated 11.11.2005. It further transpires that the authority issued a recovery certificate u/s 6-H(I) of the U.P. Industrial Disputes Act for the recovery of the wages. It has been stated at the bar that the amount was recovered and payments were made to the workman.

4. The present dispute relates to recovery of wages for the period 1.5.2007 to 30.11.2007 for which a recovery certificate dated 1.5.2008 has been issued for the recovery of the wages amounting to Rs. 92,766.88 issued by the Additional Labour Commissioner, U.P., Kanpur Region, Kanpur which has been impugned in the present writ petition.

5. Heard Sri S.C. Srivastava, the learned Counsel for the Petitioner and Sri Narendra Mohan, the learned Counsel for the workman.

Paragraph No. 8 of the counter affidavit reveals that the workman refused to join the duties pursuant to the judgment of the High Court on the ground that the Petitioner was only permitting the workman to join as a muster roll employee and was not permitting the workman to join as regular workman of the Board.

6. In view of this categorical admission of the workman, this Court is of the opinion that the impugned order cannot be sustained and is liable to be quashed. Since the workman refused to join his duties pursuant to the direction of the High Court, the workman was not entitled for wages for the period in question because he has not worked and for the reason that he refused to join.

7. The stand taken by the workman that he was entitled to be regularised and was entitled to join as a regular workman of the Board and was also entitled to be paid the wages of a workman is patently misconceived and cannot be accepted and, the reason is, that admittedly the workman was working on muster roll when his service was dispensed with in the year 1978. The Labour Court found that he was working on muster roll and when the High Court directed his reinstatement, he was only entitled for reinstatement on the post on which he was working at the time when his service was terminated, i.e., on the post of muster roll. The question of the workman being regularised and to be paid the regular wages are matters which do not arise at the time of reinstatement. All such matters would arise after the workman is reinstated.

Similarly, the workman was only entitled for wages of a muster roll upon reinstatement and was not entitled for regular wages of a workman of a Board. This question will only arise after his services are regularised by an appropriate order being issued by the Board or such dispute being raised by the workman before the appropriate forum in the event the employers refuse to comply with the Award.

8. In view of the aforesaid, the Court is of the opinion that the stand taken by the workman was not correct. Since the workman refused to join, he was not entitled for wages pursuant to the judgment of the High Court.

9. In view of the aforesaid, the impugned order passed by the Additional Labour Commissioner dated 1.5.2008 cannot be sustained and is quashed. The writ petition is allowed.

A feeble submission was made by the learned Counsel that the workman was also not entitled for any wages for the period 12.11.2005 to 30.4.2007 and such amount paid to the workman should be refunded. In my opinion, this relief cannot be granted to the Petitioner because the recovery orders have not been challenged by the Petitioner.

The learned Counsel for the Respondents submitted that the workman is willing to join pursuant to the judgment of the Court.

10. In view of the aforesaid, the Court directs that it would be open to the workman concerned to join pursuant to the judgment of the Court dated 11.11.2005. In the event, the workman approaches the Petitioner for his reinstatement pursuant to the judgment of the Court dated 11.11.2005, the Petitioner will ensure his joining on the post on which he was working at the time of alleged termination and pays the current wages payable as on date.