
(2002) 09 AHC CK 0109
In the Allahabad High Court
Case No : C.M.W.P. No. 684 of 1994

U.P. State Electricity Board and Another	APPELLANT
Vs	
Deputy Labour Commissioner and Others	RESPONDENT

Date of Decision : 19-09-2002

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6(1), 6H(1), 6H(2)

Citation : (2003) 2 AWC 1622 : (2002) 95 FLR 846

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : Tarun Agarwal, for the Appellant; K.P. Agarwal, Bushrah Mariyam and J.C. Pandey, S.C., for the Respondent

Final Decision : Allowed

Judgement

Vineet Saran, J.—This writ petition is directed against the order dated 23.9.1993 of the Deputy Labour Commissioner, Agra, passed u/s 6H (1) of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the Act) directing the Collector, Mathura to recover a sum of Rs. 4,52,994.58p. from the petitioners, U.P. State Electricity Board (hereinafter referred to as the U.P.S.E.B.

2. The brief facts of the case are that respondent Nos. 2 to 8 were employed on muster roll in Electricity Distribution Division. Mathura. Their services were dispensed with on 3.4.1976. A dispute was raised u/s 4K of the Act by the said respondents as to whether the U.P.S.E.B. was justified in terminating the services of the workers (respondent Nos. 2 to 8) on 3,4.1976 and as to what relief, if any, were the workers are entitled to. Vide its order dated 10.11.1979 the Industrial Tribunal III, Kanpur, dismissed the case and held that the termination of the workers was valid. Against such award of the Industrial Tribunal, respondent Nos. 2 to 8 filed Civil Misc. Writ Petition No. 3876 of 1980 before this Court, which was allowed on 28.4.1988. The operative portion of the judgment is quoted below ;

"In the result, therefore, 8 petitioners who are represented by the Sangh in this

petition, are entitled to be reinstated with full back wages. The petitioners will also be entitled to their cost. The petition is accordingly allowed and the award dated 10.11.1979 is quashed and set aside."

3. Against the said judgment of the High Court, the Supreme Court dismissed the SLP of the U.P.S.E.B. on 9.11.1989. The respondent Nos. 2 to 8 were thus, reinstated in service. The said respondents then filed an application in 1989 u/s 6H (1) of the Act for recovery of back wages including ex-gratia payment, etc. The Deputy Labour Commissioner, Agra, vide his order dated 11.4.1990 allowed the applications of the respondents in toto and directed that the sum of Rs. 12,24,403.16p. as claimed, be recovered from U.P.S.E.B. Against the aforesaid order of the Deputy Labour Commissioner, the petitioners filed eight writ petitions Bearing Nos. 10984 to 10991 of 1990, which were dismissed by this Court on 29.5.1990. After dismissal of the writ petitions, the U.P.S.E.B. deposited the sum of Rs. 12,24,403.16p. with the Collector, Mathura by Cheque No. 010136 dated 7.5.1991, which amount was disbursed to respondent Nos. 2 to 8 by the Deputy Labour Commissioner, Agra. According to the petitioners, the judgment of the High Court in Civil Misc. Writ Petition No. 3876 of 1980 was thus, fully complied with as the entire amount as claimed by their applications filed in the year 1989 had been paid to the respondent Nos. 2 to 8.

4. However, after having received the aforesaid payment, the respondent Nos. 2 to 8 in August, 1993, again filed applications u/s 6H (1) of the Act before the Deputy Labour Commissioner, Agra, alleging that the judgment of the High Court in Civil Misc. Writ Petition No. 3876 of 1980 had not been fully complied with. They claimed that they were entitled to receive further amounts. The respondent Nos. 2 and 3 claimed ex-gratia payment allegedly due to them from 1976 to 1988 and also encashment of earned leave for the period 1976 to 1992. The other respondent Nos. 4 to 8 had only claimed for encashment of earned leave for the period 1976 to 1992 and not ex-gratia payment.

5. The petitioners filed objections to the aforesaid applications of respondent Nos. 2 to 8 on 27.8.1993. Thereafter on 23.9.1993 the Deputy Labour Commissioner, Agra, passed an order directing the petitioners to pay a sum of Rs. 4,52,994.58p. to the said respondent Nos. 2 to 8. In the aforesaid order, which is impugned in this writ petition, the Deputy Labour Commissioner, Agra, (respondent No. 1) has merely stated that the workmen (respondent Nos. 2 to 8) have filed applications u/s 6H (1) of the Act that certain amounts have not been paid in compliance of the High Court's order dated 28.4.1988 and as such he was satisfied that a sum of Rs. 4,52,994.58p. was payable to the workmen. The aforesaid order of the Deputy Labour Commissioner, Agra, is under challenge in this writ petition,

6. I have heard Sri Tarun Agarwal, learned counsel appearing for the petitioners and Sri K. P. Agrawal, learned senior counsel assisted by Ms. Bushrah Mariyam, appearing for the contesting respondent Nos. 2 to 8 at length. The facts as stated above have not been disputed by counsel for the parties.

7. Sri Tarun Agrawal has mainly raised three points, namely :

(i) the subsequent applications u/s 6H (1) of the Act, filed by respondent Nos. 2 to 8 were not maintainable ;

(ii) the alleged amount for encashment of earned leave was not payable at this stage as the said respondent Nos. 2 to 8 were still continuing in service of U.P.S.E.B. ; and in the alternative, amount claimed was calculated on the wages of 1993 for the entire period of claim from 1976 to 1992 ; and

(iii) that the Deputy Labour Commissioner, Agra, has given no reasons in his order dated 23.9.1993, while allowing the applications of respondent Nos. 2 to 8.

8. With regard to the first point, the learned counsel for the petitioners submitted that a bare perusal of the applications filed by respondent Nos. 2 to 3 in the year 1989 (Annexures-2 and 3 to the writ petition) would show that the claim for ex-gratia payment was made by both the respondents in the said application which had admittedly been allowed in toto ; as such the said amount had been paid to them in pursuance of the earlier proceedings u/s 6H (1) of the Act. Sri K. P. Agrawal, learned senior counsel appearing for the respondents could not dispute this position on facts and stated if that was so, the mistake could be corrected by the Deputy Labour Commissioner.

9. Sri Tarun Agarwal then submitted that the claim filed in August, 1993 was made five years after the judgment in Civil Misc. Writ Petition No. 3876 of 1980 passed on 28.4.1988, and two years after the earlier applications were finalised and payment was received by the respondents in 1991. It was contended by the learned counsel that the subsequent claim, in any case, is barred by limitation as u/s 6C of the Act, an award remains in operation only for a period of one year unless extended by the State Government, which according to him, had not been done.

10. Sri Tarun Agrawal then submitted that under the provisions of Section 6H (1) of the Act it is only the "money due" to the workmen which can be recovered and that too "if the State Government is satisfied that any money is so due". According to him the money which was due to the respondent Nos. 2 to 8 was the back wages which only included the ex-gratia payment (bonus) and not the encashment of earned leave. He submitted that it was only u/s 6H (2) of the Act where the labour court could have determined the amount, which the workmen may have been entitled to receive from their employer towards any benefit, which was capable of being computed in terms of the money.

11. Section 6H (1) and (2) of the Act read as under :

"6H. Recovery of money due from an employer.--(1) Where any money is due to a workman from an employer under the provisions of Sections 6J to 6R or under a settlement or award, or under an award given by an adjudicator or the State Industrial Tribunal appointed or constituted under this Act, before the commencement of the Uttar Pradesh Industrial Disputes (Amendment and

Miscellaneous Provisions) Act, 1956, the workman may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due to him and if the State Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same as if it were an arrear of land revenue.

(2) Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under this Act, be determined by such labour court as may be specified in this behalf by the State Government, and the amount so determined may be recovered as provided for in Sub-section (1)."

12. Learned counsel for the petitioners thus, submitted that if the workmen felt aggrieved, they were entitled to any benefit which was capable of being computed in terms of money, they could have filed an application u/s 6H(2) of the Act for proper determination by the labour court and not u/s 6H (1) of the Act, which could have been made only after any money was so determined to be due. Without there being any finding that the respondents were entitled to any money towards encashment of leave, no amount could be said to be due to the respondents and thus no order could be passed for recovery u/s 6H (1) of the Act. In support of his submission, the learned counsel has relied on two judgments of the Apex Court rendered in Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, and Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another, In the aforesaid two cases, the Supreme Court, while dealing with the provisions of Section 33C of the Industrial Disputes Act, 1947 (Central enactment) (which is analogous to Section 6H of the State Government), has held that the right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for. The same view was taken by the Calcutta High Court in Jessop and Co. v. M. Mukherjee. 1975 LIC 1307. Accordingly, it was submitted that the amount as claimed towards encashment of earned leave could have been claimed only u/s 6H (2) of the Act and until such amount was computed and determined to be due by a competent authority, no recovery could be issued against the petitioners u/s 6H (1) of the Act.

13. With regard to the second point that the respondents were in any case not entitled to encashment of earned leave at this stage, it was urged by Sri Tarun Agarwal that such encashment would become due only after superannuation of the workmen. Further since the respondents did not work from 1976 to 1988, they would not be entitled to any earned leave for such period. The respondents would be entitled to 30 days earned leave provided they work for one calendar year and such leave would accumulate, up to a maximum of eight months, and would become due only at the time of superannuation. Thus, by issuing order for recovery of 17 months of wages towards encashment of earned leave and that too during the period when the respondents were still in employment of

U.P.S.E.B., the learned counsel submitted that the respondent No. 1 has passed a wholly erroneous and illegal order. Specific averments in regard to this have been made in paragraphs 30, 31, 32 and 33 of the writ petition. The same have not been denied by the contesting respondents in paragraph 12 of their counter-affidavit and it has merely been stated that the same would be effectively replied to at the time of hearing of the case. Further, the learned counsel submitted that in any case, the claim of the respondents for encashment of earned leave for the entire period of 1976 to 1992 had been made on the wages paid to them in 1993, although the wages in 1976 and thereafter were much lesser. As such also the impugned order was unjustified, having been passed without application of mind.

14. With regard to the third point that no reasons have been given in the Impugned order, the learned counsel for the petitioners submitted that regarding the grounds raised in the first two points above, the petitioners had filed objections dated 27.8.1993 (Anhexure-12 to the writ petition) but the same had not even been considered or decided by the Deputy Labour Commissioner, Agra. He submitted that in any case u/s 6H (1) of the Act, the State Government had to be satisfied that the money was due to the workmen before directing for its recovery. The impugned order passed by the respondent No. 1 was a totally non-speaking order without recording any satisfaction of his own that money was due to the respondents. It has merely been stated in the order that the amount has been claimed by the workmen and that he was satisfied that the amount of Rs. 4,52,994.58p. was due to them. The respondent No. 1 did not record any reasons whatsoever, as to on what basis the said amount was being awarded in favour of respondent Nos. 2 to 8. In support of this contention, learned counsel for the petitioners has relied on a judgment of this Court in *Kisan Sewa Sahakari Samiti Ltd. v. Deputy Labour Commissioner* 1991 (63) FLR 418 wherein it has been held that the powers exercised by the Deputy Labour Commissioner u/s 6H(1) are quasi-judicial and the order must contain the reasons on the basis of which the authority was satisfied that any money was found due to the employee. It has been submitted that in the present case the application of the respondents ought to have been decided by a reasoned order specially since there were objections regarding the maintainability of the application u/s 6H(1) of the Act as well as the fact that no amount was due to the respondents.

15. Sri K.P. Agrawal, learned senior counsel appearing for the contesting respondents has submitted that the second application would not be barred if some amount, to which the respondents were entitled to, had been left out in the earlier application u/s 6H (1). He has argued that the principles of the CPC would not be applicable to the present proceedings and subsequent applications are permissible. He has further submitted that the amount towards encashment of earned leave is included in back wages as held by the Apex Court in *Gammon India Limited Vs. Niranjan Dass*, and as such since the respondents had been held to be entitled to reinstatement with full back wages, the said encashment of earned leave would be payable to the respondents. In the case before the

Supreme Court, which has been cited above, the workmen had superannuated and thus the Court held that with the back wages, the workmen would be entitled to encashment of earned leave if other workmen in the same category were paid the same. The ratio of the said decision would thus not apply to the present case as admittedly, the respondents are still in service of the U.P.S.E.B.

16. In reply to the contention of the learned counsel for the petitioners that the amount of leave encashment as claimed and directed to be recovered was calculated on the basis of the wages which the respondents were getting in the year 1993, at the time of making the application whereas the claim was for the period of 1976 to 1992 when the wages were much lesser, Sri K.P. Agrawal submitted that if it was so, the same could be corrected by the Deputy Labour Commissioner on an application. If so filed by the petitioners.

17. In reply to the third point argued by the learned counsel for the petitioners that reasons ought to have been given by the Deputy Labour Commissioner while allowing the application u/s 6H (1) of the Act, Sri K. P. Agrawal has submitted that if the matter was remanded back to the said authority, the mistake could be rectified and the objections of the petitioners could be considered on merits.

18. After having perused the record and considered the arguments advanced by the learned counsel for the parties, I am of the view that the claim of the respondent Nos. 2 and 3 for ex-grota payment was not maintainable as the same had already been allowed and paid to them in pursuance of the earlier application u/s 6H(1) of the Act. With regard to the other claim for encashment of earned leave filed by all the contesting respondents, I am of the view that the same was certainly a disputed claim. The assertion of the petitioners in the writ petition that the respondents-workmen would be entitled to 30 days of earned leave for every year that they have worked, up to a maximum of eight months and that too after the workmen retire, has not been denied by the respondents in the counter-affidavit. As such, it cannot be said that such money became due to the respondents to which they allege to be entitled to. It has to be first determined by the competent authority as to whether the respondents have become entitled to the said amount and any such money had become due to the petitioners before the application u/s 6H(1) of the Act could be allowed by the Deputy Labour Commissioner. The law provides for adjudication of such claim by the concerned labour court u/s 6H(2) of the Act, and only after such amount is determined, it can be held that the money has become due to the workmen. In the present case, the claim made by the respondents in their applications were seriously disputed by the petitioners by way of filing their objections, which were not even considered by the Deputy Labour Commissioner. The order of the Deputy Labour Commissioner, Agra, is a totally no speaking order and no reasons have been recorded on the basis of which satisfaction could be said to be arrived at by him in holding that the money was due to the workmen for which the recovery was issued. In my view, even remanding the case back to the Deputy Labour Commissioner would serve no useful purpose as the Deputy Labour

Commissioner is not competent to adjudicate upon the claim made by the respondents which is seriously disputed by the petitioners. Otherwise also, even though the CPC may not apply to the present proceedings, yet the general principles of res Judicata and constructive res Judicata would apply. Finality has to be given to proceeding at some stage. The workmen cannot be permitted to keep raising disputes time and again, without there being any fresh cause of action ; and that too after a long gap of time, without there being any explanation for the delay in making the subsequent claim or any explanation as to why the claim being made subsequently was not made at the initial stage. The workmen might and ought to have raised this claim for encashment of earned leave in the first application itself. If at all, the respondents were aggrieved that they had not been paid the entire dues in accordance with the directions of this Court in Civil Misc. Writ Petition No. 3876 of 1980, they would first have to get the dispute resolved, by the competent authority and after it is found that certain money is due to them, then alone an application u/s 6H(1) of the Act could be filed for recovery of the said amount. It is not for the Deputy Labour Commissioner to adjudicate upon a dispute with regard to any benefit, which the workmen may be entitled to.

19. In the result, the writ petition succeeds and is allowed. The order dated 23.9.1993 passed by the Deputy Labour Commissioner. Agra, is quashed. However, there shall be no order as to costs.