

(2003) 07 AHC CK 0217

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34389 of 1994

U.P. State Electricity Board and Another

APPELLANT

Vs

Presiding Officer, Labour Court (1) and Another

RESPONDENT

Date of Decision : 14-07-2003

Acts Referred:

Apprentices Act, 1961 — Section 4(5)
Apprenticeship Rules, 1991 — Rule 6(1)
Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2003) 3 UPLBEC 1983

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Tarun Agarwala, for the Appellant; G.L. Tripathi, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—The employer-U.P. State Electricity Board has challenged the award of the Labour Court (I), U.P., Kanpur dated 29th April, 1994 passed in Adjudication Case No. 277 of 1993 by means of this writ petition under Article 226 of the Constitution of India.

2. The following dispute was referred to the Labour Court (I), Kanpur for adjudication:

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3. The employer and the workman concerned have exchanged their pleadings and also adduced evidence. For the purposes, of decision of this writ petition, the facts which are not disputed are that the petitioner-employer have engaged the

concerned workman on an application being made by the respondent No. 2 as Apprentice and after the expiry of the period of Apprenticeship, his services were terminated for which a dispute has been raised, as stated above, and the reference is made to the Labour Court for adjudication. The Labour Court considered the case set up by the employer and arrived at the conclusion that the concerned workman cannot be treated to be an Apprentice because he has not been registered under the provisions of the Apprentices Act, 1961. The Labour Court found that irrespective of the nature of engagement of the workman concerned, the employer is under statutory obligation under the provisions of the U.P. Industrial Disputes Act, 1947 and has to comply with the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 before terminating the services of the workman concerned which, admittedly, has not been done. The Labour Court came to the conclusion that the termination of services of the workman by the employer is illegal and the workman concerned is, therefore, entitled for reinstatement with continuity of service and full back wages. The Labour Court has recorded a finding which has not been disputed by the employer that the workman concerned has not been registered under the provisions of the Apprentices Act and the benefit of the Apprentices Act can be conferred on a person only if he is registered under the provisions of the Apprentices Act.

4. In reply thereto, Sri Tarun Agarwal, learned Counsel appearing for the petitioner-employer has invited my attention to the application filed by workman concerned himself wherein he has applied to be engaged as Apprentice and has submitted that now it can not take a stand against his own admission. After having applied for the post of Apprentice, it is now not open for workman to take a different stand contrary to his own admission, so he is entitled for the benefits, which are available to a workman under the U.P. Industrial Disputes Act. Sri Tarun Agarwal in support of his contention has relied upon a recent decision of the learned Single Judge of this Court passed in Civil Misc. Writ Petition No. 3232 of 1997, U.P. State Electricity Board through Kanpur Electricity Supply Administration, KESA House, Civil Lines, Kanpur through its General Manager v. Ashok Kumar Shukla and Anr., decided on 31st March, 2003 wherein the learned Single Judge has relied upon several decisions of the Apex Court and has held that the workman concerned being Apprentice cannot be treated to be a workman and the view taken by the Labour Court to the contrary deserves to be set aside as has been done by the learned Single Judge in the aforesaid Civil Misc. Writ Petition No. 3232 of 1997 (supra), Sri Tarun Agarwal has further relied upon the decision reported in 1996 (72) FLR 328, Raj Kumar Srivastava v. State of U.P. and Ors., and the case reported in 1996 (72) FLR 335, Vazir Glass Works Ltd. v. Maharashtra General Kamgar Union and Anr. The decision of another learned Single Judge of this Court reported in 1998 78 FLR 511, U.P. State Electricity Board and Ors. v. P.O., Labour Court, Kanpur and Ors., and also the decision of another learned Single Judge of this Court reported in 1996 74 FLR 1847, U.P. Sugar Company Ltd., Deoria v. Ram Nath Prasad and Ors., has also been relied

upon by the learned Counsel for the petitioner.

5. Sri G.L. Tripathi, learned Counsel appearing for the workman concerned, on the other hand, has relied upon the decision of the Division Bench of Patna High Court reported in 1999 LabI.C. 1026, Ram Dular Paswan and Ors. v. Presiding Officer, Labour Court, Bokaro and Anr., and two decisions of the learned Single Judge of this Court passed in Civil Misc. Writ Petition No. 18 of 1995, U.P. State Electricity Board through Kanpur Electricity Supply Administration, KESA Bouse, Kanpur through its General Manager v. Presiding Officer, Labour Court-III, U.P. Kanpur and Ors., decided on 6th February, 2001 and the decision of Civil Misc. Writ Petition No. 21560 of 1995, U.P. State Electricity Board through General Manager, Kanpur Electricity Supply Administration, KESA House, Civil Lines, Knapur v. Presiding Officer, Labour Court-III, U.P. Kanpur and Ors., decided on 26th September, 2002 and has submitted that there is no dispute in the proposition laid down by the Apex Court that a person who is enrolled as Apprentice in accordance with the provisions of the Apprentices Act, 1961 cannot claim the benefit of the workman as stated under the U.P. Industrial Disputes Act, 1947 but in the present case, on the facts the Labour Court recorded a finding that on the facts and circumstances of the case, the workman cannot be said to have been enrolled as Apprentice because of non-compliance of the provisions of the Apprentices Act.

6. In this view of the matter, it is not necessary for this Court to go further into the proposition of law submitted by Sri Tarun Agarwal, learned Counsel appearing for the petitioner with which there is no dispute but since on the facts of the case as has been held by the decision of the learned Single Judge relied upon by Sri G. L. Tripathi, learned Counsel appearing for the workman concerned, it has been found that the workman concerned cannot be treated to be an Apprentice because of non-compliance of the provisions of the Apprentices Act. Therefore, he is nothing but as workman under the provisions of the U.P. Industrial Act. Sri Tarun Agarwal has submitted that as far as employer is concerned, it has complied with the entire provisions of the Apprentices Act so far it requires on behalf of the employer concerned, it has also submitted requisite papers for registration to the authorities. If the authorities under the Apprentices Act did not register the workman as Apprentice, there is no fault of the employer and the workman cannot be given the benefit of the lapses on the part of the authorities concerned constituted under the provisions of the Apprentices Act.

7. So far as this argument is concerned, the law is well settled that if the statute requires in thing to be done in a particular manner, it has to be done in that manner alone and not otherwise. (See Sharif-ud-din Vs. Abdul Gani Lone, Therefore, the submission of Sri Tarun Agarwal that the employer have performed their part so far as the recruitment of the workman as Apprentice is concerned and if the statutory authority did not perform their part, they cannot be blamed that the action on the part of the authorities concerned cannot be

accepted.

8. In view of what has been stated above and in view of the finding recorded by the Labour Court on the basis of the admitted facts of the case, I do not find that the Labour Court has committed any error of law so as to warrant interference by this Court in exercise of powers under Article 226 of the Constitution.

9. In view of what has been stated above, it is not necessary for this Court to consider the other arguments advanced on behalf of Sri G.L. Tripathi, learned Counsel appearing for the workman as the writ petition deserved to be dismissed

10. For the reasons stated above, this writ petition fails and is hereby dismissed. The interim order, if any, stands vacated. There will be no order as to costs.