

(2002) 01 AHC CK 0029
In the Allahabad High Court
Case No : C.M.W.P. No. 7877 of 1998

U.P. State Electricity Board and Another	APPELLANT
Vs	
Presiding Officer, Labour Court and Another	RESPONDENT

Date of Decision : 21-01-2002

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K, 6N

Citation : (2002) 2 AWC 975 : (2002) 93 FLR 199 : (2002) 2 UPLBEC 1070

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Ranjit Saxena, for the Appellant; V.K. Singh and G.K. Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—After hearing the learned counsel for the parties, this writ petition has been dismissed on 21.1.2002 for the reasons to be recorded later on. Herein below are the reasons for dismissing the aforesaid writ petition.

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner-employer, U. P. State Electricity Board against the award dated 30.10.1986. Annexure-9 to the writ petition, passed by respondent No. 1 in Adjudication Case No. 12 of 1995.

3. The facts leading to the filing of present writ petition are that the State Government vide Its order dated 14.3.1995 referred the dispute with regard to the termination of services of workman Vansh Narain Mishra, son of Sri Rajaram Mishra, Khalasi w.e.f. 31.12.1975 to the effect as to whether the same is valid or not and if not, to what relief the workman concerned is entitled?

4. The workman in his written statement filed before the labour court has stated that he was employed as a muster role employee in the year 1973 and has worked as such till 31.12.1975 when his services were terminated, though the work for which he was appointed is still continuing as would be clear from the

fact that the junior employees to the workman concerned are still continuing and have been regularised also whereas the services of the workman concerned were illegally terminated. He further stated that neither any notice was given to him, nor the employer have paid retrenchment compensation. The workman further stated that he has given several applications and representations to the higher officers, but to no consequence and ultimately when he made a representation to the then Minister of Power, Sri Lalji Tondon. only then the proceedings were initiated.

5. As against the aforesaid statement of the workman, the employer-petitioner have taken stand that the workman has never been appointed and has never worked with the employer and further according to them reference is highly belated and is liable to be dismissed on this ground alone. In rejoinder-affidavits, both the parties have reiterated their stand. The labour court after considering the evidence on record have arrived at the conclusion that the workman had in fact worked from 1973 till December, 1975 and, therefore, he has worked for more than 240 days itself in the preceding 12 calendar months. The employer wanted to examine one witness on commission as he was seriously ill due to heart disease, on which the labour court passed appropriate orders, but even thereafter no steps have been taken by the employer to examine that witness. It is stated that the workman has filed an application with the prayer that the employer may be directed to produce the relevant documents, which are in their custody, which will demonstrate that the workman has worked with the employer during the aforesaid period. Inspite of the order being passed by the labour court, the employer have never produced those documents even the witness examined on behalf of the employer has admitted that the workman concerned has worked with the employer during the period in question, therefore, it is admitted case that while terminating the services of the workman concerned, no notice or compensation as contemplated u/s 6-N of U. P. Industrial Disputes Act, 1947, has been paid or offered to the workman concerned.

6. From the above, it is abundantly clear that in the teeth of these findings, which cannot be assailed and in fact has not been assailed, except the stand taken by the employer that the workman had never worked with them, which in view of the above discussions and the discussions of the labour court is proved against the employer.

7. The another stand taken by the employer that according to the allegation of the workman his services were illegally terminated in the year 1975, whereas the reference has been made on the application of the workman on 14.3.1995, therefore apart from that the reference is made after undue delay and, therefore, liable to be rejected on this ground. More emphasis led by the employer that the workman is not entitled for the wages prior to the date of reference. In view of the aforesaid stand, a counter stand has been taken by the parties and findings recorded by the labour court, the labour court has not accepted the case of the workman so far as the back wages are concerned and answered the reference

that termination of the workman concerned is illegal and therefore, he is entitled for re-instatement with continuity of service, but so far as back wages are concerned, the workman concerned is entitled to get the same from 14.3.1995 till the date of re-instatement as he has admittedly not worked between 1975 till 14.3.1975. Learned counsel for the employer has reiterated the arguments which have been advanced before the labour court and has cited decisions that the reference made by the State Government was barred by time in view of the decisions of Hon'ble Supreme Court in *Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others*, and *Shalimar Works Limited Vs. Their Workmen*, These two decisions and Anr. decision relied upon by the learned counsel for the employer in *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, has been considered in the recent Supreme Court decision in *Sapan Kumar Pandit Vs. U.P. State Electricity Board and Others*, in which the Apex Court has observed in paras 9 and 10, which read as follows :

"9. Hence the real test is, was the industrial dispute in existence on the date of reference for adjudication? If the answer is in the negative, then the Government's power to make a reference would have extinguished. On the other hand, if the answer is in positive terms, the Government could have exercised the power whatever be the range of the period, which elapsed since the inception of the dispute. That apart, a decision of the Government in this regard, cannot be listed (sic) on the possibility of what another party would think, whether any dispute existed or not. The section indicates that if in the opinion of the Government the dispute existed then the Government could make the reference. The only authority, which can form such an opinion is the Government. If the Government decides to make the reference, there is a presumption that in the opinion of the Government, there existed such a dispute.

10. In considering the factual position whether the dispute did exist on the date of reference the Government could take into account factors, inter alia, such as the subsistence of conciliation proceedings. It is of no consequence that conciliation proceedings were commenced after a long period. But such conciliation proceedings are evidence of the existence of the industrial dispute. It is an admitted fact that on the date of reference in this case the conciliation proceedings were not concluded. If so it cannot be said that the dispute did not exist on that day."

8. In view of the aforesaid, it is clear that once a reference is made, it is presumed that the State Government is satisfied that natural justice is still subsisting, therefore, the labour court cannot go behind the reference.

9. In this view of the matter there is no force in the writ petition and is accordingly dismissed. The interim order, if any stands vacated. There will, however, be no order as to costs.