
(2005) 11 AHC CK 0122

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8494 of 1998

U.P. State Electricity Board

APPELLANT

Vs

Phool Chand and another

RESPONDENT

Date of Decision : 21-11-2005

Acts Referred:

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

Citation : (2005) 11 AHC CK 0122

Hon'ble Judges : Bharati Sapru, J

Final Decision : Allowed

Judgement

Bharati Sapru, J.—The present writ petition has been filed against an award passed by the Labour Court dated 20.12.1996 in adjudication case No. 222 of 1989.

2. I have heard Sri Arvind Kumar, learned Counsel for the petitioner and Sri A.K. Misra learned Counsel for the respondent workman. The reference which was sought in the present case is quoted herein below:

"KYA SEWAYOJAKON DWARA APNE SHRAMIK PHOOL CHAND PUTRA SURYA NARAYAN LAL KO 1.5.1988 NIYAMIT KULI KA PADNAM EVAM VAITENMAN NA DIYA JANA UCHIT TATHA/ATHWA VAIDHANIK HAI? YADI NAHI TO SHRAMIK KYA LABH/ANUTOSH PANE KA ADHIKARI HAI?"

3. It is wellsettled that the Labour Court is a Court of referred jurisdiction and must confine itself to the reference that is before it. It cannot travel beyond the reference.

4. Learned Counsel for the petitioner has argued that in the present award, the claim of the workman was that he should have been regularized in service. While answering the reference, the Labour Court has recorded a finding that the termination of the workman was bad and violative of Section 6N of the U.P. Industrial Disputes Act. This issue was not in reference before the Labour Court.

5. Learned Counsel for the petitioner has next argued that the award of the Labour Court is patently illegal for the reason that it has acted in excess of jurisdiction. In support of his argument, learned Counsel has relied on a decision of this Court in the case of *Ram Narain Tiwari v. State of U.P. and ors.*, 1998 (79) FLR 770, where this precise question was in issue. This Court in almost identical circumstances came to the conclusion that in absence of any challenge to the termination or cessation of the work, the workman cannot claim regularization so long as the order of termination remains unchallenged. When the workman is not in service, there is no scope or question of regularization of the service, until or unless the alleged termination or refusal of work is set aside.

6. From the averments made in paras 3 and 4 of the written statement of the respondent workman, which is on record as Annexure 4 to the writ petition, it is clear that the respondent workman was illegally removed from the services with effect from 28.5.1978. Such being the case, the argument raised by the learned Counsel for the petitioner is sound that until or unless the termination itself was set aside, the workman would not have any claim for regularization whatsoever.

7. The argument as advanced by the learned Counsel for the petitioner has substance. The award of the Labour Court thus indeed has a defect and findings recorded by the Labour Court so far as it relates to the Section 6N of U.P. Industrial Disputes Act is wholly illegal and beyond the terms of reference. I am in respectful agreement with the decision in the case of *Ram Narain Tiwari (supra)*. However, I may add that it is also established law that a Labour Court, being a Court of referred jurisdiction, cannot extend the scope of reference or travel beyond it. This is the dictum of the Hon'ble Supreme Court as has been held in the case of *Pottery Majdoor Panchayat v. Perfect Pottery Co. Ltd.*, 1979 (38) FLR 38 and followed recently in the case of *Mukund Ltd. v. Mukund Staff and ors.*, 2004 (101) FLR 219.

8. In view of the above, I am of the opinion that the impugned award of the Labour Court is, therefore, illegal and is liable to be set aside.

9. In the result, the writ petition succeeds and is allowed. The impugned award passed by the Labour Court dated 20.12.1996 in adjudication case No. 222 of 1989 is set aside. Interim order dated 18.3.1998 is discharged. There shall be no order as to costs.