
(2008) 10 AHC CK 0141
In the Allahabad High Court

U.P. State Electricity Board

APPELLANT

Vs

Presiding Officer and Others

RESPONDENT

Date of Decision : 24-10-2008

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2009) 1 AWC 918 : (2010) 124 FLR 611

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

S.U. Khan, J.—This writ petition was allowed on 28.9.2004 and the award of the labour court directing reinstatement of workman-respondent No. 2 Pankaj Kumar Srivastava with back wages was set aside. Review petition was also dismissed. Thereafter respondent No. 2 filed SLP before the Supreme Court which was converted into Civil Appeal No. 2994 of 2008. The appeal was allowed by the Supreme Court on 24.4.2008 and writ petition was remanded to the High Court for reconsideration.

2. Through the award challenged in the writ petition four adjudication cases were decided. The number of adjudication case relating to respondent No. 2 in this writ petition was Adjudication Case No. 86 of 1991. The numbers of other Adjudication Cases Nos. 71 of 1991, 210 of 1991 and 164 of 1992. In respect of the same award relating to Adjudication Case No. 71 of 1991. Writ Petition No. 12428 of 1998 was filed which was dismissed by another Hon'ble Judge of this Court on 23.3.2004.

The Supreme Court in the instant case remanded the matter to consider the effect of dismissal of the Writ Petition No. 12428 of 1998.

3. An Executive Engineer of petitioner-Electricity Board B. L. Prasad issued more than 100 certificates in favour of different persons to the effect that they had worked for more than 240 days. They all filed references after about 8 or 9 years

of the date of alleged termination of service as mentioned in the aforesaid certificates issued by B. L. Prasad. Sri B. L. Prasad himself appeared before the labour court in some references and stated that several certificates shown to have been issued by him were forged. However, he stated that some certificates about 20 in number were in fact issued by him. The labour court gave awards mostly in favour of the workmen. Most of them were brought to this Court in the form of different writ petitions about 75 in number. Except the writ petition mentioned in the judgment of the Supreme Court, i.e., Writ Petition No. 12428 of 1998 and another writ petition, all the writ petitions were allowed in favour of the employer Electricity Board. In all the writ petitions it was held that Sri B. L. Prasad after about 8 or 9 years of his retirement had issued the certificates and had ante-dated those certificates.

4. In every case workman contended that his services were terminated in the year 1982. In every case the dispute was raised after 1990. In some cases in 1991-92 and in some cases in 1997-98. I also decided twenty three such writ petitions through three judgments. One of such judgments in seven petitions was delivered on 8.5.2007 leading one being Writ Petition No. 12163 of 1998, Uttar Pradesh State Electricity Board v. Presiding Officer, Labour Court, Varanasi. All the certificates issued by Sri B. L. Prasad (he is now no more) stated that the grantee of the certificate had worked for more than 240 days till March/ April, 1982. Some paragraphs of my judgment delivered in Writ Petition No. 12163 of 1998 and other writ petitions decided on 8.5.2007 are quoted below:

More than hundred adjudication cases were decided on the basis of certificates issued by Sri B. L. Prasad-respondent No. 3, who is now no more. He was retired Executive Engineer. He issued certificates to more than hundred persons including the seven workmen, who are respondent No. 2 in these writ petitions, stating therein that till March-April, 1982, they had worked for more than 240 days. Most of the workmen in such cases claimed that their services were terminated on 1.4.1982. Some other workmen gave a nearby date.

In several cases, before labour court Sri B. L. Prasad appeared as witness. He stated that he had issued certificates only to some persons and other certificates were forged. In the impugned award, his statement given in other adjudication cases has been considered.

In each case, the workman concerned had taken up the case that his termination order was in violation of Section 6N of U.P. Industrial Disputes Act, as no compensation was paid to him. Except one, each and every award given by the labour court on the basis of certificates issued by B. L. Prasad has been set aside by this Court in different writ petitions. In other petitions, it has been held that Sri B. L. Prasad fraudulently issued the certificates much after his retirement. All the disputes were raised in the year 1990-1991 by filing C.P. cases. No workman could explain the delay of eight or nine years. I have myself set aside the awards in eleven such cases in Writ Petition No. 21632 of 1999, U.P.S.E.B. v. Presiding Officer, Labour Court, Varanasi and Ors. connected with ten other writ petitions

decided on 13.2.2007. I allowed the writ petitions. In the said judgment, I placed reliance upon the judgments given in other writ petitions by other Hon''ble Judges in similar matters, i.e., awards given on the basis of certificates issued by Sri B. L. Prasad.

I also held that nine years'' delay in raising the dispute was sufficient to. reject the claims. For the said proposition, I placed reliance upon the following four authorities:

1. Haryana State Coop. Land Development Bank Vs. Neelam,
2. Manager (Now Regional Director) R.B.I. Vs. Gopinath Sharma and Another,
3. Assistant Engineer, C.A.D., Kota Vs. Dhan Kunwar, and
4. Chief Engineer, Ranjit Sagar Dam and Another Vs. Sham Lal,

In the said judgment, I mentioned that similar judgment in respect of certificates issued by Sri B. L. Prasad had been delivered by Hon''ble Rakesh Tiwari, J., in the case of U.P.S.E.B. v. Presiding Officer, Labour Court 2003 (5) AWC 3538. One such case was decided by Hon''ble V.K. Shukla, J., one by Hon''ble Shishir Kumar, J., and one by Hon''ble D.P. Singh, J., I have also noticed in my earlier judgment, the solitary dissenting judgment in Writ Petition No. 12428 of 1998 dismissed on 23.3.2004. In all the judgments except the one through which writ petition was dismissed, it was held that certificates issued by Sri B. L. Prasad after his retirement were fraudulent, baseless and erroneous and several certificates were not even issued by him. Two paragraphs of my earlier judgment are quoted below:

Even if it is assumed that the workmen had worked for more than 240 days and their retrenchment was bad for non-payment of retrenchment allowance etc., as required by Section 6N of U.P.I.D. Act still instead of reinstatement with back wages the proper order would have been to direct the employer to pay a consolidated amount as compensation as held by the Supreme Court in Nagar Mahapalika (Now Municipal Corpn.) Vs. State of U.P. and Others, and Haryana State Electronics Development Corporation Ltd. Vs. Mamni, Even it is assumed that all the allegations made by workmen were correct reinstatement could not be directed. No workman pleaded that he was appointed against any post on a basis which may have semblance of permanence. They all pleaded that due to sudden spurt in the requirement of man power in relation to need of the work, they were employed on muster roll/daily wages. Such employees are not entitled to continuance. They do not have any right or sort of Ken on the post (however still Section 6N of I.D. Act is to be complied with at the time of retrenchment vide Nagar Mahapalika (Now Municipal Corpn.) Vs. State of U.P. and Others, Haryana State Electronics Development Corporation Ltd. Vs. Mamni, and Branch Manager, M.P. State Agro Industries Development Corpn. Ltd. and Another Vs. Shri S.C. Pandey, . The labour court without recording any finding that post or at least work was available with the employer directed reinstatement. The U.P.

State Electricity Board (Now U.P. Power Corporation) is a State instrumentality. It can make appointment only in accordance with rules (vide Himanshu Kumar Vidyarthi and Others Vs. State of Bihar and Others, Hence also instead of reinstatement award of consolidated damages would have been proper relief.

In the instant cases, all the workman have received more than Rs. 50,000 each under interim orders passed by this Court in terms of Section 17B of I.D. Act. In most of the cases workmen received the wages without any work, i.e., idle wages. These idle wages received by them is sufficient compensation to them even if it is assumed that they had worked for more than 240 days.

In Writ Petition No. 12435 of 1998 decided by Hon''ble V.K. Shukla, J., on 28.9.2004, reliance was placed upon the Supreme Court authority of The Range Forest Officer Vs. S.T. Hadimani, to hold that burden to prove that the employee had worked for 240 days was upon the employee himself. Learned Counsel for the workmen in these writ petitions has vehemently argued that the said view of the Supreme Court has sufficiently been diluted by subsequent three Judges authority in R.M. Yellatti Vs. The Assistant Executive Engineer, The Supreme Court in Sriram Ind. Ent. v. Mahak Singh 2007 AIR SCW 1712 (para 34) : 2007 (5) AWC 5332 (SC). has held that Range Forest Officer has been watered down by R.M. Yellati. According to the learned Counsel for the workman in view of Supreme Court authority in R.M. Yellati, burden to prove that the workman had not worked for 240 days is upon the employer. In the aforesaid authority of R.M. Yellati, the workman had produced some documentary evidence, which showed that he had worked. In that background, Supreme Court held that if extent of period for which workman had worked was disputed by the employer, then the burden to prove lay upon the employer. In the instant case, absolutely no evidence apart from the certificates issued by Sri B. L. Prasad was adduced by the workmen. Employer did not admit that any of the workmen worked with him even for a single day. In this scenario, it cannot be said that in view of Supreme Court authority of R. M. Yellati burden was upon the employer, who failed to discharge the same.

5. Thereafter I decided 5 more similar writ petitions the leading one being Civil Misc. Writ Petition No. 19636 of 2002 on 19.7.2007 on the basis of my judgment dated 8.5.2007. Earlier another bunch of eleven similar cases was decided by me on 13.2.2007.

6. One judgment delivered on 11.7.2003 has been cited by learned Counsel for the petitioner where the writ petition has been dismissed. Learned Counsel has also filed copy of Supreme Court order dated 2.12.2005 through which SLP was dismissed on the ground of delay which was directed against the judgment delivered in Writ Petition No. 12428 of 1998.

7. In view of the above, it is clearly proved that the certificate was issued by B. L. Prasad after about 7 or 8 years of his retirement, it was ante-dated and not based upon any record. Claim was also not maintainable as it was highly belated.

8. In any case the amount (more than Rs. 50,000) which has already been paid to the workman-respondent No. 2 under impugned award and limited stay order dated 15.4.1998 granted by this Court is sufficient compensation to the workman even if it is held that he in-fact worked for more than 240 days and his services were terminated without complying with the provisions of Section 6N of U.P. Industrial Disputes Act. Absolutely no procedure for appointment was followed.

9. Apart from the authorities of the Supreme Court mentioned in my judgment dated 8.5.2007, reference may also be made to the following authorities of the Supreme Court in which it has been held that if the only defect in the termination order is non-compliance of provisions of Section 6N of U.P. I.D. Act then instead of reinstatement, the proper relief is to direct payment of consolidated damages/compensation.

Sita Ram and Others Vs. Moti Lal Nehru Farmers Training Institute, , and the authorities mentioned in this Judgment.

10. Accordingly, writ petition is disposed of. Impugned award is modified.

11. The direction of reinstatement with back wages is substituted by the direction of payment of damages/compensation of the amount/wages already paid to the workman. Neither any further amount shall be payable to the workman nor any amount shall be refundable by the workman.