
(2012) 10 AHC CK 0264

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 59196 and 59198 of 2006

U.P. State Electricity Board (Now UPPCL) and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-10-2012

Acts Referred:

Citation : (2013) 2 ALJ 34 : (2013) 136 FLR 198 : (2013) 1 UPLBEC 178

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Advocate : R.D. Khare, Arvind Kumar and H.P. Dubey, for the Appellant; Dinesh Kumar Mishra and H.N. Singh, C.S.C, for the Respondent

Judgement

Sibghat Ullah Khan, J.—Both the petitions have been filed by employer U.P. Power Corporation. Workman respondent No. 3 in the first writ petition is Murari and workman respondent No. 3 in the second writ petition is Shanker Lal. Through these writ petitions orders dated 5.8.2006 passed by Deputy Labour Commissioner U.P. Allahabad in letter No. 1069 Murari v. Chairman U.P.S.R.T.C., and letter No. 1070 Shanker Lal v. Chairman U.P.S.R.T.C., respectively have been challenged. Both the orders are identical and have been passed u/s 6-H of U.P. Industrial Disputes Act (U.P.I.D. Act). Both the workmen had claimed an amount of Rs. 1106266/- each as unpaid wages under the award dated 14.11.1983. Copy of the award is Annexure I to the writ petition.

2. Against the award dated 14.11.1983 petitioners had filed writ petition in the form of writ petition No. 6657 of 1984 in which stay order was granted on 14.5.1984. However, the same was vacated on 20.7.1994. Writ petition was dismissed on 13.7.2004.

3. The award dated 14.11.1983 was passed in eight Adjudication cases bearing No. 55, 92, 93, 140, 141 and 170 of 1980, 13 of 1981 and 105 of 1982. The matter which was referred to the labour Court was as to whether the action of petitioner employer of not declaring regularised 27 workmen whose names were

given in the Annexure annexed along with reference order was just and valid or not.

Para 19 of the award is quoted below:

Consequently, I hold that there is no justification for treating muster roll workman concerned in the eight cases on question, in differently from those of the comparably categories, recognised as regular by the employees in respect of wage rates and other benefits such as holiday etc. I therefore direct that the employers must treat them at par with the class of regular workman.

4. In para 8 of each present writ petition it is mentioned that workman respondent No. 3 in each petition had also filed an application in the year 1993 along with affidavit in earlier writ petition No. 6657 of 1984 (filed against the award) in para 8 of which he admitted that in spite of award (dated 14.11.1984) Chief Engineer had not reinstated the workman and he was out of employment for more than six years. In the counter affidavit the said allegation has not specifically been denied. However, it has been stated in para 9 of the counter affidavit that all the workmen who were parties in adjudication case No. 141 of 1980 had been given employment except the two workmen i.e. respondent No. 3 in each writ petition.

5. During arguments the Court specifically enquired from learned Counsel for the workman respondent No. 3 in each writ petition that till when respondent No. 3 in each case was paid salary. Learned Counsel after seeking instructions from his client categorically stated that respondent No. 3 in each writ petition was paid salary until July 1982 under muster roll.

6. The award dated 14.11.1983 did not direct reinstatement of those workmen whose services had already been terminated (rightly or wrongly, through written order or orally). In fact the said order was only in respect of rate of wages or other monetary benefits. Accordingly, the order was necessarily confined only to the quantum of pay packet (carry home amount) and was not concerned with termination etc. Salary or other monetary benefits as admissible to regular employees may be given to daily wager, muster roll employee or any other kind of employee only if he is actually working. Even if it is assumed that termination since August 1982 was illegal and only oral still unless that was challenged and set aside, petitioner No. 3 in each writ petition could not ask for payment pursuant to the award dated 14.11.1983. The main argument of learned Counsel for the workman in each petition is that these two workmen have been discriminated as against the remaining 25 workmen. Learned Counsel for the workmen has not been able to show that those 25 workmen were paid any amount under the award dated 14.11.1983 even though their services had already been terminated or that any of those workmen was paid the monetary benefits under the said award even though he did not work.

7. It is very strange that Dy. Labour Commissioner without recording any findings that the workman was actually working and without even looking into

the award dated 14.11.1983 directed payment of the amount to the workman. In the award dated 14.11.1983, there is nothing which directs for payment of any amount to a workman whose services had been terminated. The direction was necessarily for the working workmen.

8. Writ petition No. 59196 was dismissed in default thereafter restored. Meanwhile Dy. Labour Commissioner realised the entire amount of Rs. 11,06,000/- and odd from the petitioner and paid Rs. 6,06,266 to respondent No. 3 in the said writ petition.

9. Absolutely no reason has been given by the Dy Labour Commissioner. In the last paragraph of the impugned order which is the only paragraph showing the reason, only this much has been stated that there is lot of force in the case of the workman. This is no way of deciding the cases. Dy. Labour Commissioner shall be more careful in future.

10. The impugned orders are therefore set aside.

However, Supreme Court in Haryana Urban Development Authority Vs. Om Pal, has held that even if employer is not at all fault and workman is not entitled to any relief still some damages may be awarded to the workman after taking into consideration the facts and circumstances of the case. Accordingly I direct that each workman shall be paid Rs. 2,50,00/- by the petitioner. As far as Murari respondent No. 3 in writ petition No. 59196 of 2006 is concerned he has been paid Rs. 6,06,266/-. Petitioners are entitled to recover additional amount of Rs. 3,56,266/- from him, however, if they forgo the same then it will be an act of benevolence on their part which would be very much appreciated by the Court. The remaining amount of Rs. 5/- lacs along with all the accrued interest shall at once be returned to the petitioners. Petitioners are directed to pay Rs. 2,50,000/- to Shanker Lal respondent No. 3 in the second writ petition within four months positively failing which 1.5% per month interest shall be payable thereupon since after four months till actual payment. The amount shall be paid either through draft or by depositing before Dy Labour Commissioner for immediate payment to the workman.

Writ petitions are disposed of accordingly.