

(2013) 03 AHC CK 0209

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No"s. 37520, 37522, 37527, 37528, 37536
and 37537 of 2011

U.P. State Road Transport Corporation and Others

APPELLANT

Vs

Mohar Singh and Another

RESPONDENT

Date of Decision : 01-03-2013

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2013) 5 ADJ 401 : (2013) 4 LLN 77 : (2013) 2 UPLBEC 1041

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Samir Sharma, for the Appellant; Gopal Narain, Sudhanshu Narain
and Shyam Narain, for the Respondent

Final Decision : Partly Allowed

Judgement

Tarun Agarwala, J.—Heard Sri Samir Sharma, the learned counsel for the petitioner namely U.P. State Road Transport Corporation (hereinafter referred to as the Corporation) and Sri Sudhanshu Narayan, the learned counsel for the respondents-workmen. The Corporation has challenged the validity and legality of the award passed by the Labour Court directing reinstatement of the workmen with continuity of service and with full back wages.

2. The facts reveals that the workmen were employed for washing the Buses of the Corporation in the year 1989-1991 and that their services were dispensed with at some point of time in the year 1995. The workers did not stir in the matter and remained silent and only raised the dispute after a lapse of 10 years, i.e., in the year 2005.

3. Upon the dispute being referred, the Corporation filed its written statement contending that there is no master and servant relationship between them and the workmen in inasmuch as the respondents-workmen were only appointed on a contract basis for the purpose of washing the Buses and were paid @ Rs. 2/- per

Bus.

4. On the other hand, the workmen contended that they were employed by the petitioner and were being paid the wages, but for reasons best known to the employer, they were illegally removed from work in the year 1995.

5. The Workmen moved an application before the Labour Court for production of payment register to indicate that they were being paid wages as claimed by them. In spite of opportunity being given, the registers were not produced. On the other hand, an objection was filed stating therein that the production of register is irrelevant for the purpose. It was also objected that the matter had become old and that the registers are not available. The Labour Court, after considering the matter, drew an adverse inference against the employer for the non production of the registers and permitted the workmen to lead secondary evidence of this aspect. In furtherance of this direction of the Labour Court, the workmen filed Travel Pass to show that the Corporation had issued passes to them. A medical certificate was also filed by one of the workman to indicate that while he was travelling to Dehradun, he was given medical treatment on behalf of the employer when he met with a road accident. In addition to the aforesaid, a photostat copy of the payment register for the month of February, 1994 was also filed to indicate that the workmen were being paid wages by the Corporation.

6. On the basis of these evidences and the averments made in the affidavit, the Labour Court drew an inference that the Workmen had worked for more than 240 days and had worked continuously and that at that time when their services were dispensed with, no retrenchment compensation was paid. The Labour Court held that there was a master and servant relationship between them and since the provision of Section 6-N of the U.P. Industrial Disputes Act had not been complied with, the order of termination of workmen was bad in law. The Labour Court accordingly directed reinstatement of the workers with continuity of service and also awarded full back wages. The Corporation, being aggrieved by the said award, has filed the present writ petition.

7. Having heard the learned counsel for the parties, the Court finds that, admittedly, the dispute was raised by the workmen after a lapse of 10 years. The employer is not required to keep registers for such a long period and are only required to retain them as permissible under the Labour Law. The Corporation had categorically stated that the records are not available. Since much water had flown, the Labour Court should have accepted the statement of the employer instead of drawing an adverse inference. The Court is of the opinion that the workmen alone is to be blamed for raising the dispute belatedly, and for this delay, an adverse inference ought not to have been drawn against the employer. To that extent, the finding of the Labour Court is not correct.

8. However, the finding on merit is not affected by this adverse inference being drawn. The Court finds that the Labour Court had rightly drawn an inference in holding that a master and servant relationship existed between them. On the

basis of the secondary evidence filed by the Workmen, namely, travel passes, medical certificate, photostat copy of the payment register, the Labour Court was justified in holding that the Workmen had worked with the Corporation at some moment of time. This fact is also, otherwise, admitted by the Corporation in their written statement admitting that the workmen were being paid Rs. 2/- for washing per Bus. The only thing which had been denied by the Corporation was the master and servant relationship.

9. The Labour Court, on the basis of the aforesaid documents, drew an inference that there was a master and servant relationship. The Court finds that this being finding of fact which is neither perverse and is not such that a reasonable person could not arrive at and, accordingly, the Court declines to interfere in this finding of fact since it is not perverse. In the light of the aforesaid, the contention of the petitioner that there was a master and servant relationship between the Corporation and the Workmen cannot be accepted.

10. In *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, , the Supreme Court held that depending upon the circumstances if there has been any inordinate delay in referring the dispute, the same should not be quashed and that the Labour Court while granting the relief can accordingly mould the relief considering the mitigating circumstances.

11. In the light of the aforesaid decision, the Court finds that, admittedly, the dispute was referred which was raised by the Workmen after 10 years and for this period, the Labour Court has committed an error in granting back wages. The Corporation cannot be held responsible for this liability. The dispute was referred in the year 2005 and the award was given in the year 2011. There is nothing to indicate that the workers were unemployed. In *Kendriya Vidyalaya Sangathan and Another Vs. S.C. Sharma*, , the Supreme Court held that back wages cannot be granted as a matter of right. In the light of the aforesaid decision, the Court is of the opinion that the Labour Court committed an error in granting back wages.

12. In view of the aforesaid, the writ petition is partly allowed. The award of the Labour Court, in so far as it relates to reinstatement, is affirmed. The award in relation to back wages is quashed. In view of the aforesaid, the parties shall bear their own cost.