
(2006) 08 AHC CK 0107
In the Allahabad High Court

U.P. State Sugar Corporation Limited	APPELLANT
Vs	
Deputy Labour Commissioner, Awadhesh Kumar Misra	RESPONDENT

Date of Decision : 04-08-2006

Acts Referred:

Constitution of India, 1950 — Article 32
Industrial Disputes Act, 1947 — Section 10, 17B, 18, 3, 33A

Citation : (2006) 7 AWC 7694

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shishir Kumar, J.—The present writ petition has been filed for quashing the order dated 2.9.1999 passed by respondent No. 1 in Case No. 37 of 1998, Annexure-11 to the writ petition and further for quashing the recovery certificate dated 22.9.1999 issued by the Tehsildar, district-Deoria, Annexure-13 to the writ petition.

2. This writ petition has been filed by U.P. State Sugar Corporation Ltd. Unit, Deoria, District-Deoria alleging that State of U.P. acquired the Deoria unit under the provisions of U.P. Sugar Undertaking (Acquisition) Act, 1971 and the said unit is vested with the U.P. State Sugar Corporation Ltd. under the provisions of the Act w.e.f. 24.4.1989. Prior to 24.4.1989 the aforesaid unit was being run and managed by the erstwhile private management M/S Deoria Sugar Mills. According to Section 3 of the Act the unit was acquired by the State of U.P. and vested with the Sugar Corporation free from all encumbrances, debts, liabilities etc. The provisions of Section 3 of the U.P. Sugar Undertakings (Acquisition) Act, 1971 is being reproduced below:

3. Vesting. - On the appointed day, every schedule undertaking shall, by virtue of this Act, stand and be deemed to have stood transferred to and vest and be deemed to have vested in the Corporation free from any debt, mortgage, charge or other encumbrance or lien, trust or similar obligation (excepting any lien or

other obligation in respect of any advance on the security of any sugar stock or other stock-in-trade) attaching to the undertaking:

Provided that any such debt, mortgage, charge or other encumbrance or Hen, trust or similar obligation shall attach to the compensation referred to in Section 7, in accordance with the provisions of that section, in accordance with the provisions of that section, in substitution for the undertaking:

Provided further that a debt, mortgage, charge or other encumbrance or lien, trust or similar obligation created after the scheduled undertaking or any property or asset comprise therein had been attached, or a receiver appointee over it, in any proceedings for realization of any tax or cess or other dues recoverable as arrears of revenue shall be void as against all claims for dues recoverable as arrears of revenue.

As such the petitioner submits that the petitioner is not liable for any liability whatsoever which pertains to the period prior to the date of vesting of the unit with U.P. State Sugar Corporation Ltd. for which liability separate provisions have been made in the Act and reference to that is being made to Sections 7 and 8 of the Act.

3. It appears that erstwhile private management of M/S Deoria Sugar Mills Ltd. dispensed with the service of respondent No. 2 w.e.f. 5.1.1984 much prior to the date of vesting. Against the order of termination respondent No. 2 raised a dispute and filed Adjudication Case No. 15 of 1985 and the reference was made whether the action of the employer in dispensing with the service of respondent No. 2 from the post of clerk w.e.f. 5.1.1984 was legal and valid? The Labour Court vide its award dated 16.8.1986 directed that the dispensing of service of respondent No. 2. w.e.f. 5.1.1984 is not legal and valid and directed for reinstatement and has also directed for payment of his wages from the date of award. From the perusal of the award dated 16.8.1986 it demonstrates that the same was passed prior to the vesting of the unit with the Sugar Corporation against Deoria Sugar Mills. Against the award dated 16.8.1986, Deoria Sugar Mills filed Writ Petition No. 2104 of 1987 before this Court in which an interim stay order was granted by this Hon"ble Court subject to compliance of the provisions of Section 17-B of the Industrial Disputes Act. When Deoria Sugar Mills did not make the payment to respondent No. 2, respondent No. 2 filed Case No. 1 of 1991 before the Prescribed Authority under the Payment of Wages Act for payment of his wages from 1.8.1989 to 30.9.1990. The Prescribed Authority after hearing the parties at length rejected the claim of respondent No. 2 against the Sugar Corporation vide its order dated 11.2.1993. Aggrieved by the aforesaid order respondent No. 2 filed a writ petition before Lucknow Bench of this Court as Writ Petition No. 5539 of 1993 for a direction that he may be reinstated as a clerk in terms of the award dated 16.8.1986 and may be paid his wages accordingly. The writ petition was finally allowed and in the operative portion of the judgment it was held that so far as the payment of arrears of salary is concerned, the aforesaid question is left open and corporation was directed to

take back respondent No. 2 in service. Respondent No. 2 in pursuance of the order of the High Court dated 6.1.1994 was reinstated in service vide its order dated 13.10.1994. Respondent No. 2 joined his duties on the same day and an application on 24.6.1998 was filed by respondent No. 2 before respondent No. 1 in pursuance of the award dated 16.8.1986 for payment of salary for the period from 15.11.1986 to December 1994.

4. The petitioner filed a detailed objection to the aforesaid application before the respondent No. 1 stating therein that as per the award as well as on the basis of the order in writ petition dated 6.1.1994, the petitioner is not liable to pay the back wages and is only liable to reinstate the respondent No. 2 in service, which has already been done. An objection was also taken that the application is not maintainable. But the respondent No. 1 without considering the facts and evidence on record and the provisions of law passed the impugned order dated 2.9.1999 holding that as respondent No. 2 has neither been paid his wages nor has been reinstated in pursuance of the award of the Labour Court as well as the order of Lucknow Bench, therefore, the application of respondent No. 2 is liable to be allowed and the amount be recovered from the petitioner. Respondent No. 1 on 2.9.1999 sent a letter to the Collector for recovery of the amount from the petitioner and in pursuance of the aforesaid fact, Tehsildar Deoria has issued a recovery certificate on 22.9.1999 against the petitioner for recovery of Rs. 1,68,723.61 plus recovery charges. As the order passed by respondent No. 1 was wholly illegal, hence, the present writ petition.

5. It has been contended on behalf of the petitioner that respondent No. 1 has committed an error by not considering that the award could not be implemented against the petitioner company, as the same was not passed against the petitioner company. In view of the provisions of Section 3 of Industrial Disputes Act, the pre-take over liability cannot be settled upon the petitioner, for which there are separate provisions contained in Sections 7 and 8 of the Act by way of moving an application before the Prescribed Authority. It has further been submitted on behalf of the petitioner that the application filed by respondent No. 2; u/s 6H(1) of the Industrial Disputes Act was not maintainable. It has also been submitted that the Labour Court having assumed jurisdiction for the reason that the dispute was not with regard to retrenchment could not have proceeded to examine the issue of retrenchment and to hold it to be invalid for the alleged violation of Section 6N and Section 6 P of the Industrial Disputes Act. The award is thus wholly without jurisdiction and nullity and therefore, incapable of being enforced. It is well settled that the order passed by a Court having no jurisdiction is non est and the validity can be set up even at the stage of execution or collateral proceeding. Reliance has been placed upon the judgment of the Apex Court in *The Bahrein Petroleum Co. Ltd. Vs. P.J. Pappu and Another*, *Kiran Singh and Others Vs. Chaman Paswan and Others*, Further submission has been made on behalf of the petitioner that the dispute was the subject matter of adjudication before the Labour Court between Deoria Sugar Mills and respondent-workman Avadhesh Kumar Mishra. The Corporation was not a party to the award,

as such the same cannot be binding in view of Section 18 of the Industrial Disputes Act. The award was challenged before this Court and an unconditional stay order was passed by this Court on 28.1.1987. On the date of acquisition of the aforesaid Sugar Mill by the Corporation i.e. 24.4.1989 the award was not operative even against M/S Deoria Sugar Mill. The stay vacation application filed by respondent-workman was rejected by this Court on 17.10.1989 only with a slight modification that the stay order was made subject to compliance of Section 17-B of the Industrial Disputes Act.

6. Deoria Sugar Mill was acquired by the petitioner Corporation w.e.f. 24.4.1989 and by virtue of Section 3 of the Act, 1971 free from any debt mortgage charge or other encumbrances or lien trust or similar obligation. The provisions of the Acquisition Act which are relevant is being quoted below:

Section 8(5) stipulates that any person who was employed in connection with the scheduled undertaking immediately before the appointed day may prefer with the Prescribed Authority any claim relating to any salary, wages, etc in respect of any service rendered by him with the undertaking before the said date.

Sub-Section (7) of Section 8 further provides that such claim may be preferred whether or not a decree or Award has been obtained on the basis thereof.

Sub-Section (14) of Section 8 enjoins that all such claims shall be satisfied from the compensation amount and liabilities in respect thereof shall stand discharged.

Section 10 of the Acquisition Act refers to establishment of a Prescribed Authority having powers of a Civil Court for deciding all such claims. Section 12 provides for constitution of a Tribunal to hear Appeals against decision of the Prescribed Authority.

Section 14 of the Act bars jurisdiction of all courts in respect of decision of the Prescribed Authority.

Section 15(ii) specifically provides that liabilities in respect of unsatisfied claims and other dues shall not be transferred to the State Government or the Corporation.

7. An application filed by the respondent u/s 6H(1) of the U.P. Industrial Disputes Act was wholly misconceived. An objection was filed by the petitioner and a specific averment has been taken in para 16 of the objection that the application filed by the respondent was not based on any computation by any competent court or authority nor his entitlement in the said regard has been determined. The Labour Commission without considering the objection of the petitioner with regard to the maintainability and jurisdiction has granted the relief to the respondent. As the petitioner was not a party to the proceeding, therefore, the award cannot be enforced against the petitioner. It has further been submitted that the proceeding u/s 6H(2) of the Industrial Disputes Act or Section 33C(1)/33-C(2) which is like an execution proceeding in respect of a barred existing benefit or on- flowing from pre-existing right. The petitioner has placed

reliance upon a judgment of the Apex Court State of Uttar Pradesh and Another Vs. Brijpal Singh, and reliance has been placed upon paras 8, 10, 11 and 12, which are quoted below:

8. In the background facts of this case, the following questions of law arise for consideration by this Court:

(1) Whether the High Court erred in allowing the order passed by the Labour Court filed by the respondent u/s 33-C(2) of the Industrial Disputes Act ?

(2) Whether the pendency of Writ Petition No. 15172 of 1987 filed by the respondent herein, same being not finally disposed of, the liability to pay, if any to the workman concerned u/s 33-C(2) of the ID Act, does arise or not?

(3) Whether the High Court gravely erred in allowing the salary and bonus to the respondent, although he has not attended the office of the appellant after the stay order passed by the High court dated 28.10.1987 ?

(4) Whether the Labour Court has jurisdiction to entertain and decide the undetermined claim?

10. It is well settled that the workman can proceed u/s 33-C(2) only after the Tribunal has adjudicated on a complaint u/s 33-A or on a reference u/s 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. This Court in the case of Punjab Beverages (P) Ltd. v. Suresh Chand held that a proceeding u/s 33-C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. Proceeding further, this Court held that the right to the money which is sought to be calculated or to be benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman, and his employer. This Court further held as follows: (SCC p. 150, para 4)

It is not competent to the Labour Court exercising jurisdiction u/s 33-C(2) to arrogate to itself the functions of an Industrial Tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject-matter of an industrial dispute in a reference u/s 10 of the Act.

11. In the case of Municipal Corpn. Of Delhi v. Ganesh Razak this Court held as under: (SCC pp. 241-42, para 12-13)

12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit

claimed and is, therefore, clearly outside the scope of a proceeding u/s 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power u/s 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power u/s 33-C(2) like that of the executing court's power to interpret the decree for the purpose of its execution.

13. In these matters, the claim of the respondent workmen who were all daily-rated¹ casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation or that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of "equal pay for equal work¹ being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in their writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made u/s 33-C(2) of the Act by these respondents.

12. In the case of *State Bank of India v. Ram Chandra Dubey* this Court held as under: (SCC pp. 77-78, paras 7-8)

7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the facts to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made u/s 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific

question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

8. The principles enunciated in the decisions referred by either side can be summed up as follows:

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court u/s 33-C(2) of the Act. The benefit sought to be enforced u/s 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a preexisting right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers u/s 33-C(2) of the Act while the later does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference u/s 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages.

8. Further reliance has been placed upon the judgment reported in (2001) SCC 73 State Bank of India v. Ram Chandra Dubey and Ors. and reliance has been placed upon paras 7 and 8 of the judgment which are reproduced below:

7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made u/s 10 of the Act, all incidental questions arising

thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

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9. Another judgment reported in Municipal Corporation of Delhi Vs. Ganesh Razak and Another, has been placed reliance upon and paras 12 and 13 of the said judgment has been referred to which are reproduced below.

12. The High Court has referred to some of these decisions but missed the true import thereof The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding u/s 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power u/s 33-C(2) of the Act. It is only when the

entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power u/s 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.

13. In these matters, the claim of the respondent-workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage of computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of "equal pay for equal work" being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made u/s 33-C(2) of the act by these respondents.

10. Another judgment which has been relied upon by the counsel for the petitioner is Punjab Beverages v. Suresh Chandra 1978 (2) SC 144.

11. In view of the aforesaid submissions, the petitioner submitted that the question for consideration by this Court is that whether the petitioner's Corporation who was a successor of M/S Deoria Sugar Mills and the extent of its liability could not be determined in a proceeding u/s 6H(1) of the Industrial Disputes Act and reliance has been placed upon a judgment Central Inland Water Transport Corporation Limited Vs. The Workmen and Another,

12. On the other hand, the counsel for the respondent No. 2 has filed a short counter affidavit and supplementary counter affidavit stating the facts that in view of the provisions of acquisition, the total liability for payment was of the petitioner and it is incorrect to state that the application filed by the respondents was not maintainable. When the services of the respondent No. 2 were terminated and an award was given in favour of the respondent on 16.8.1986 to the extent of reinstatement and the payment of his wages from the date of award, the writ petition filed by the Deoria Sugar Mills before this Court, the interim order was passed subject to compliance of provisions of Section 17-B of

the Industrial Disputes Act. So far as payment from period 5.1.1984 till the date of award, the Labour Court has left open the question before the authority. The Deoria Sugar Mills did not make the payment to respondent No. 2; as such an application was filed before the Prescribed Authority under the Payment of Wages Act. The said claim was rejected and a writ petition was filed and the same was allowed by this Court and in pursuance of the aforesaid judgment, the petitioner was reinstated in service and was allowed to join his duties w.e.f. 13.10.1994. An application was moved u/s 6 H (1) for payment of wages for the period between 15.11.1986 to December 1994. There was no question of any adjudication as on the basis of award the petitioner was entitled to get the salary from the date of award. The writ petition filed against the award by the M/S Deoria Sugar Mills the interim order was modified on 17.10.1989 and a direction was given to make the payment of salary to the petitioner and to deposit the arrears of pay in the Court. It was further directed that in case of default the interim order would stand automatically vacated. As the order was not complied with which is apparent and admitted by the petitioner, the interim order dated 28.1.1987 as modified on 17.10.1989 stood vacated.

13. A further submission has been made on behalf of the respondent that on 24.4.1989 Ms. Deoria Sugar Mills was acquired by U.P. State Sugar Corporation under the provisions of Acquisition Act, 1978. At no point of time, the U.P. State Sugar Corporation was substituted as a petitioner in the writ petition filed by Deoria Sugar Mills, Deoria (No. 2104 of 1987) against the award passed by the Labour Court. The application filed before the Payment of Wages Authority for wages from 1.8.1989 to 30.9.1990 was rejected on the ground that there was no relationship of Master and Servant. The said order was challenged by respondent No. 2 in which the U.P. State Sugar Corporation was a party. The said writ petition was allowed and a direction was issued to implement the award dated 16.8.1986 by opposite parties No. 1 and 2 i.e. Corporation (Petitioner) by taking back respondent No. 2 in service. However, the question of payment of arrears of salary was left open to be decided by the Corporation.

14. In spite of the directions issued, the respondent No. 2 was not reinstated nor the question of salary was decided. As such a contempt application was filed and when the notices were issued in the contempt petition, respondent No. 2 was reinstated on 13.10.1994. As the question of salary was not decided by the Corporation and no payment was made as such an application was moved before the Labour Court giving details of dues towards the arrears of salary from the date of award i.e. 15.11.1986. The respondent Corporation is under obligation to pay the wages of respondent No. 2 from the date of award. There was nothing to be calculated, therefore, the Deputy Labour Commissioner, Gorakhpur directed for recovery of the amount. The point raised by the petitioner that as the date of vesting is 24.4.1989. therefore, there is no liability of the petitioner. Admittedly on the date of vesting the award dated 16.8.1986 was in favour of respondent No. 2. The writ petition which was filed against the award, the interim order was modified but the same was not complied with as such that has been

automatically vacated due to non-compliance of the condition of the order dated 17.10.1989. The said writ petition was dismissed in 2004 and the award-dated 16.8.1986 has become final.

15. As regards the accountability of the Corporation is concerned, the said controversy has already been set at rest by this Court. In a similar case one Virendra Pratap Singh has also filed a writ petition before this Court and this Court has held that he shall be deemed to be in service throughout of the Corporation i.e. from the date of vesting as the order terminating his services were illegal. The Court has also come to the conclusion that in view of Section 16 of the Acquisition Act, the services of the employee shall be transferred to the Corporation and since an award has been passed in favour of workman and order of terminating the services are illegal, therefore he is entitled for entire back wages and the effect of the award was that the workman continued to be in employment of then Sugar Mills and the Court has held that in view of the provisions of Section 16 of the Acquisition Act, he will be treated to be an employee of the Corporation.

16. Further submission has been made by the respondent that the Corporation has filed a SLP against the order dated 27.3.1999 in Writ Petition No. 9950 of 1999 and the SLP was dismissed by Supreme Court on 28.3.1999. Thus the controversy raised in the instant writ petition is squarely covered by the judgment of this Hon'ble Court in Writ Petition No. 9950 of 1999. As regards the maintainability of the application filed by respondent No. 2 u/s 6 H of the Industrial Disputes Act, the respondent submits that the aforesaid proceeding is in the nature of execution proceedings. There was no disputed question, which was to be decided by respondent No. 1. Respondent No. 1 has directed execution of the judgment and order dated 6.1.1994 passed by Lucknow Bench. As regards the payment of salary to respondent No. 2 is concerned, the corporation has never passed any order against respondent No. 2. Only objection was taken before respondent No. 1 that they are not liable to make the payment to respondent No. 2 for the past liability. The award-dated 16.8.86 has become final and remained operative on the date of vesting as the order was not complied with and subsequently the writ petition was dismissed. Since the award given by the Labour Court before the appointed date, the termination order was set aside as such in accordance with the provisions of Section 16(1) of the Acquisition Act, the services of respondent No. 2 shall be automatically transferred to new employer i.e. the Corporation. Respondent No. 2 shall be re-delegated to the same position as was before passing of the order of termination against him.

17. I have heard Sri Yogendra Kumar Srivastava, learned Counsel for the petitioner and Smt. Sunita Agrawal who appears for respondent No. 2 and have perused the record. From the record it is clear that respondent No. 2 was a workman of the M/S Deoria Sugar Mills Ltd. His services were terminated and the Labour Court has given an award dated 16.8.1986 holding therein that the order of termination is bad in law and respondent No. 2 is entitled for reinstatement

and is also entitled for wages from the date of award. As regards the back wages, the same was not granted. A writ petition against the award was filed by M/S Deoria Sugar Mills and the stay order was passed but later on the said order was modified on 17.10.1989. The said order was conditional but as the order was not complied with, therefore, an application was filed by respondent No. 2 before the Payment of Wages Authority. The said application was rejected. Against that order the respondent filed a writ petition against U.P. State Sugar Corporation as Writ Petition No. 5539 of 1993 challenging the order dated 11.2.1993. The writ petition was allowed and a direction to this effect was issued to implement the award-dated 16.8.1986. Corporation was a party in that writ petition. The submission regarding that there is no liability prior to the date of vesting of the petitioner, was also raised in the writ petition but the same has not been accepted and the petitioners were directed to reinstate the respondent No. 2 and as regards the payment of wages, it was left open to the Corporation to decide the same. From the record it is clear and admitted by the petitioner that the judgment and order passed in Writ Petition No. 5539 of 1993 has become final. It has not been challenged by the petitioner in any court of law. It is not disputed that the writ petition filed by Deoria Sugar Mills challenging the award of the Labour Court has been dismissed. Therefore, the award given by the Labour Court has also become final. The contention of the petitioner to this effect that the application u/s 6 H (1) was not maintainable is also not acceptable to this extent that in view of the finality attached against the award by this Court, there remained nothing regarding the entitlement. As the petitioner has not decided and has not paid the wages, as such the application was filed before the Deputy Labour Commissioner for payment of the said amount. In view of the finality attached in Writ Petition No. 5539 of 1993 a direction was given to the petitioner to reinstate respondent No. 2. There was nothing to be adjudicated. It was a matter of calculation, therefore, the Dy. Labour Commissioner has passed an order in favour of respondent No. 2.

18. There is no dispute to this effect that application u/s 33-C(2) and the application filed by respondent No. 2 is a proceeding as summary in nature. In view of the Apex Court judgment unless and until there is adjudication by any authority, the application u/s 33-C(2) and 6H(1) is not maintainable. But as in the present case there was an award in favour of respondent No. 2 and the finality was attached on the basis of writ petition filed by respondent No. 2, therefore, respondent No. 2 was entitled to get the wages. It was obligatory on the part of the petitioner to consider and decide the question of wages on the basis of the direction issued by the High Court in Writ Petition 5539 of 1993 but the same was not decided, therefore, respondent No. 2 made an application before the Dy. Labour Commissioner for payment of his wages. In my opinion the application itself was in the nature of execution proceeding and nothing was to be adjudicated. Only it was a matter of calculation, therefore, the Dy. Labour Commissioner has rightly granted relief to respondent No. 2. The operative portion of the order in the writ petition decided in favour of respondent No. 2

dated 6.1.1994 is being reproduced below:

It follows that this petition deserves to be allowed, but so far as payment of arrears of salary is concerned the question is left open and the opposite party Nos. 1 and 2 shall have to take back the petitioner in service. The writ petition is allowed to the extent that the award dated 16.8. 1980 has to be implemented by opposite party Nos. 1 and 2 by taking back the petitioner in service. A mandamus is issued accordingly which shall be complied with within a period of for weeks from the date of the passing of this order.

19. As regards the argument raised on behalf of the petitioner that the petitioner has got no liability as the award is not against the petitioner and the petitioner was not a party to the proceeding. The similar controversy has taken attention of this Court in Writ Petition No. 9950 of 1999 decided on 27.3.1999 U.P. State Sugar Corporation Ltd. v. Presiding Officer, Labour Court Gorakhpur and this Court while considering the submissions made on behalf of the respondents has held that submission of the petitioner Corporation that as they were not party to the award is not liable for payment. The Court has decided that if there was no termination and award in favour of the employee on the date when the Corporation has taken over the Mill and if his services were never terminated, then on the date of taking over of Scheduled undertaking the workman was the existing employee and he automatically became the employee of the petitioner Corporation by virtue of the provisions of Section 16 of the U.P. Sugar Undertaking (Acquisition) Act, 1971. It is now too late for the petitioner Corporation to assert that there does not subsist any relationship of employee and employer between the petitioner and respondent No. 2 and petitioner is not bound by the award dated 16.8.1986 passed in favour of respondent No. 2.

20. In that case also the objection was raised on behalf of the petitioner that the application was not maintainable u/s 33-C(2) of the Act. The Court has not accepted the said contention and has held that the submission has no force. The judgment and order passed by Hon"ble Single Judge has been affirmed by the Apex Court.

21. Before concluding it will not be out of place to mention that the petitioner Corporation has unnecessarily been dragging respondent No. 2 in a long-drawn litigation. The Acquisition Act, 1971 has been enacted for the acquisition and transfer of scheduled undertakings in the interest of general public. The pre-factory statement and object and reasons appended to the Act makes it clear that the Act was brought in the Statute Book with an object of curbing certain evil as the owner of certain sugar mills of the State had created serious problems for the cane-growers and the labourers which resulted in adverse impact on the general economy of the area where sugar mills are situate. It was thought that only solution of the problem was that the State Government should take immediate steps to acquire the problems by undertakings with a view of renovating, rehabilitating and carry out improvements therein. The Act of 1971, therefore, as a social welfare measure to the further general interest of the

community of workmen is opposed to the particular interest of the individual. The theme of the Act is rehabilitating the problems, establishments is primary to improve the lot of the workmen. The beneficial aspect and the provisions of the Act 1971, particularly the provisions of Section 16 cannot be overlooked and has to be given full and liberal effect. The petitioner Corporation has deliberately ignored to take into consideration the provisions of Section 16 of the Act 1971 with a view to defeat the legitimate claim of workmen respondent No. 2 who is being enforced to run from the pillar to post in spite of the fact that the award was in his favour. Undoubtedly the petitioner corporation has restored unfair labour practice, which is not only economically short-sighted but an unsound policy both from the point of view of undertaking concerned and its workmen. The conclusion arrived at by the petitioner Corporation flies in the face of very scope and ambit of provisions of Section 16 of the Act of 1971 and is bound to frustrate the very purpose for which the scheduled undertaking was taken away.

22. In view of the aforesaid submissions and considering the arguments raised on behalf of the parties, I am of view that the petitioner is not entitled for any relief and the writ petition is devoid of merit and is hereby dismissed. No order as to costs.