
(2011) 08 AHC CK 0215

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7512 of 1997

U.P.S.E.B., Kanpur

APPELLANT

Vs

Ram Narayan and Another

RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2011) 10 ADJ 626

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble A.P. Sahi, J.—Heard Ms. Deepti Singh, learned counsel for the petitioner and Ms. Sumati Rani Gupta, Advocate holding brief of Kumari Suman Sirohi for the respondent workman.

2. The respondent workman filed an application for computation of certain payments and the order was passed by the Labour Court on 24th January, 1994. Pursuant to the said order, the petitioner issued an office memorandum dated 27th May, 1994 extending the benefit of a payment of Rs. 1637/- only as computed by the Labour Court. Learned counsel for the petitioner submits that the respondent workman on the strength of the same proceeded to raise a further claim u/s 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the 1947 Act") upon which an objection came to be filed by the petitioners, a copy whereof is annexure 4 to the writ petition.

3. A preliminary objection taken to the said proceedings was that the issue involved was not one of computation but of an Industrial Dispute as certain rights were being claimed with regard to the payment of pension on the strength of the earlier order dated 24th January, 1994.

4. Learned counsel for the petitioner submits that the earlier order dated 24th

January, 1994 was not an adjudication and it did not confer any right on the respondent workman so as to entitle him to get a further computation made. The impugned order, therefore, is beyond the scope of Section 33-C(2) of the 1947 Act and hence, the Presiding Officer has committed a manifest error by allowing the said application.

5. In response, learned counsel for the respondent workman submits that the petitioner will be presumed to have acknowledged a right that accrued to the answering respondent under the order of the Labour Court dated 24.1.1994 through the office memorandum dated 27.5.1994. Thus it was only a matter of computation and no adjudication was required. In such circumstances, the application was rightly accepted and as such the order impugned does not require any interference under Article 226 of the Constitution of India.

6. Having hearing learned counsel for the parties, the contention on behalf of the petitioner deserves to be accepted, inasmuch as, the proceedings of the year 1994, in the opinion of the Court, do not amount to any adjudication of a right as claimed by the respondent. The said proceedings were also ex parte and the employer instead of contesting the claim of a meagre amount, simply made over the payments to the workman. The same will not amount to abandoning any future objections that are available in law. The petitioner's conduct does not suffer from any legal waiver or estoppel, more so in the absence of any adjudicatory order in favour of the workman.

7. In the absence of any such right having been accredited in favour of the respondent workman, the computation thereof in proceedings u/s 33C(2) of the 1947 Act was beyond the scope of the proceedings culminating into the passing of the impugned order.

8. The impugned order dated 2.8.1996 is set aside and the writ petition is allowed.