
(2005) 12 AHC CK 0148
In the Allahabad High Court
Case No : C.M.W.P. No. 11495 of 2000

U.P.S.R.T. Corporation

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-12-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Uttar Pradesh Industrial Disputes Act, 1947 — Section 10(1), 10(4), 2, 3, 4K

Citation : (2006) 1 AWC 134

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Advocate : Samir Sharma, for the Appellant; B.N. Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

Shishir Kumar, J.—This writ petition has been filed for quashing the impugned award dated 17.5.1999.

2. The facts arising out of the present writ petition are that Respondent No. 3 was working on the post of Assistant Mechanic in the U. P. State Road Transport Co.rporation. On 24.12.1987, a departmental test was conducted for preparing a select list/merit list of the Assistant Mechanics who would qualify in the test for considering their names for promotion to the post of Mechanic. Respondent No. 3 also appeared in the said test and was placed at serial No. 139 of the select list of the candidates who had qualified in the test. Thereafter, Respondent No. 3 raised an industrial dispute on the basis that he has not been promoted as per the select list whereas the junior to the Respondent No. 3 has been given promotion. The said dispute was referred by the State Government under the powers conferred by Section 4K of the Industrial Disputes Act, vide order dated 27.1.1999 to the labour court, Varanasi, which was registered as Adjudication Case No. 23 of 1999. A written statement was filed by Respondent No. 3 to the effect that candidate placed at serial No. 146 of the select list has been given

promotion and in spite of the aforesaid fact, the promotion to Respondent No. 3 has not been given. In the mean time by means of an order dated 3.5.1999, Respondent No. 3 was promoted to the post of Mechanic and by means of order dated 4.5.1999 the Respondent No. 3 was given seniority on the post of Mechanic w.e.f. from 24.1.1991, i.e., the date on which junior to the Petitioner have been promoted. The labour court thereafter vide its award dated 17.5.1999 which was published on 13.10.1999 has modified the order dated 4.5.1999 to the extent that the Respondent No. 3 would be entitled to the promotion on the post of Mechanic w.e.f. 24.1.1991 and also the difference for promotional pay from the said date. Aggrieved by the aforesaid order the Petitioner has approached this Court.

3. The contention raised on behalf of the Petitioner is that it is now well-settled that the labour court cannot travel beyond the term of reference and once the promotion and seniority have been given according to the reference made by the State Government u/s 4K of the Industrial Disputes Act, the labour court has wrongly adjudicated the dispute as immediately after filing the written statement and giving benefit on the basis of the reference, there did not remain any dispute for the labour court to adjudicate upon. The counsel for the Petitioner has stressed upon the language and intention of the reference to the effect that it was beyond the jurisdiction of the labour court to adjudicate upon when there was no dispute between the employer and the employee. The reference is being reproduced below:

4. As the promotion and seniority were granted to the Respondent No. 3 of the post of Mechanic w.e.f. 24.1.1991, i.e., the date when the junior to Respondent No. 3 has been promoted, the labour court clearly erred in allowing difference of wages to Respondent No. 3 for promotional post despite the fact that Respondent No. 3 had not worked on the said post for the relevant period. Reliance has been placed upon the judgment of the Apex Court on Paluru Ramkrishnaiah and Others Vs. Union of India (UOI) and Another, and has referred to para 19 of the said judgment. The same is reproduced below:

19. Since, however, the judgment of this Court dated February 2, 1981 in Civil Appeal No. 441 of 1981 has not been challenged and has become final, that next question which falls for consideration is as to what further relief, if any, are the Appellants in Civil Appeal No. 441 of 1981 entitled in pursuance of the civil miscellaneous petitions referred to above filed by them. The reliefs which they have claimed have already been indicated above. It is now not disputed that the Appellants of this appeal have in pursuance of the order of this Court dated February 2, 1981, been given a back date promotion to the post of Chargeman II synchronizing with the dates of completion of their two years of service as Supervisor "A". The grievance of the Petitioners, however, is that this promotion tantamounts to implementation of the order of this Court dated. February 2, 1981, only on paper inasmuch as they have not been granted the difference of back wages and promotion to higher posts on the basis of their back date

promotion as Chargeman II. As already noticed earlier certain writ petitions filed in Madhya Pradesh High Court were allowed by that Court on April 4, 1983, relying on the judgment of this Court dated February 2, 1981 in Civil Appeal No. 441 of 1981. Against the aforesaid judgment of the Madhya Pradesh High Court dated April 4, 1983 Special Leave Petitions (Civil) Nos. 5987-92 of 1986 were filed in this Court by the Union of India and were dismissed on July 28, 1986. The findings of the Madhya Pradesh High Court in its judgment dated April 4, 1983, thus stand approved by this Court. In this view of the matter to put them at par it would be appropriate that the Appellants in Civil Appeal No. 441 of 1981 may also be granted the same relief which was granted to the Petitioners in the writ petitions before the Madhya Pradesh High Court. As regards back wages the Madhya Pradesh High Court held:

It is the settled service rule that there has to be no pay for no work, i.e., a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of a higher post although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted. So the Petitioners are not entitled to claim any financial benefit retrospectively, at the most they would be entitled to refixation of their present salary on the basis of the notional seniority granted to them in different grades so that their present salary is not less than those who are immediately below them.

Insofar as Supervisors "A" who claimed promotion as Chargeman II the following direction was accordingly given by the Madhya Pradesh High Court in its judgment dated April 4, 1983, aforesaid:

All these Petitioners are also entitled to be treated as Chargeman Grade II on completion of two years satisfactory service as Supervisor Grade A. Consequently, notional seniority of these persons have to be refixed in Supervisor Grade A, Chargeman Grade II, Grade I and Assistant Foreman in cases of these who are holding that post.... The Petitioners are also entitled to get their present salary re-fixed, after giving them notional seniority so that the same is not lower than those who are immediately below them.

Another judgment of the Apex Court relied upon by the Petitioner is in Firestone Tyre and Rubber Company of India (P) Ltd. Vs. Workmen Employed, represented by Firestone Tyre Employees" Union, and has submitted that under the Industrial Disputes Act, 1947 u/s 10(4) the labour court has got no jurisdiction to travel beyond the terms of the reference. The Tribunal was required to confine its adjudication to those points and matters identical to them. The issue not covered under the reference the labour court cannot adjudicate the same. Admittedly when the written statement was filed on behalf of the Petitioner and order of promotion dated 3.5.1999 was produced before the labour court and by order dated 4.5.1999 the Petitioner was given promotion and seniority from 24.1.1991 that is the date when the junior persons to the Petitioner were promoted, therefore, it has been contended by Sri Sameer Sharma, counsel for the

Petitioner that in view of the two letters there was no dispute according to the reference made by the State Government and as such the labour court has travelled beyond its reference to grant the wages from 24.1.1991. The labour court should have, in view of the submissions made on behalf of the Petitioner, decided in the terms of the reference. Reliance has been placed upon a judgment of this Court in M/s. Sahkari Ganna Vikas Samiti Ltd. v. Presiding Officer, Labour Court and Anr. 1993 (66) FLR 744 and has referred to paras 8 and 9 of the said judgment. Reliance has also been placed on a judgment of Mukand Ltd. Vs. Mukand Staff and Officers' Association, and has submitted that the Apex Court has clearly held that the dispute referred by the order of reference as it was only in respect of the workman employed by the company, it is, therefore, clear that Tribunal being a creature of reference, cannot adjudicate matters not within the purview of dispute actually referred to it by the order of reference. The Apex Court has held that We therefore, hold that the reference is limited to the dispute between the Company and the Workman employed by them and that the Tribunal, being the creature of Reference, cannot adjudicate the matters not within the purview of the dispute actually referred to it by the order of Reference

and has held that the Tribunal has exceeded its jurisdiction. Reliance has been placed on para 24 of the said judgment which is reproduced below:

24. We have already referred to the order of reference dated 17.2.1993 in paragraph supra. The dispute referred to by the order of Reference is only in respect of workmen employed by the Appellant-Company. It is, therefore, clear that the Tribunal, being a creature of the Reference, cannot adjudicate matters not within the purview of the dispute actually referred to it by the order of Reference. In the facts and circumstances of the present case the Tribunal could not have adjudicated the issues of the salaries of the employees who are not workmen under the Act nor could it have covered such employees by its award. Even assuming, without admitting, that the Reference covered the non-workmen, the Tribunal, acting within its jurisdiction under the Act, could not have adjudicated the dispute insofar as it related to the "non-workmen".

5. In such a way the Petitioner submits that from the language of the reference the labour court ought to have decided the case in terms as there is no dispute now. Therefore, there is nothing to decide but as the labour court in spite of the fact that according to the reference made by the State Government, the benefit to the Respondent No. 3 was given and seniority from 1991 was given, therefore, the labour court having no jurisdiction to give an award to the effect that the Respondent No. 3 will be entitled for salary on the post of Mechanic from 24.1.1991 as this was not in issue.

6. On the other hand Sri B. N. Singh who appeared for Respondent No. 3 has submitted that the labour court has decided the case and has given an award according to the Reference and as the Respondent No. 3 workman was held to be entitled to get promotion on the post of Mechanic from 1991 and promotion and seniority were given, therefore, the labour court was justified in passing an order

to the effect that the Respondent No. 3 will also be entitled for salary for the post of Mechanic. The labour court has not travelled beyond its jurisdiction to the Reference made to the Labour Court. Reliance has been placed upon a judgment of the Apex Court in 1967 LLJ 70 and has submitted that it is not necessary that the order of Reference should expressly state that it is because of proviso 1 to Section 10(1)(d) of the Industrial Disputes Act that a Reference is being made to the labour court and not to the Industrial Tribunal. If the Reference could be justified otherwise, on the facts there is nothing in the Act which makes such Reference invalid and has submitted that where the dispute related to transfer and subsequent removal of an employee in an establishment was referred for adjudication to the labour court, it could not be considered to be invalid. Further reliance has been placed upon a judgment of the Apex Court in *S. S. Sangh, Bombay v. I.H.P. Co. Ltd.*, 1993 (67) FLR 1, and has referred to para 7 of the said judgment. The same is reproduced below:

7. We find it difficult to agree with Shri Pai. In principle, we find no basis for the said contention. The Industrial Disputes Act does not provide for any such limitation. The definition of the expression "industrial dispute" in Clause (k) of Section 2 of the Act does not contain any such limitation. We are unable to see on what basis such restriction can be inferred or implied. It must be remembered that the Industrial Tribunal/ labour court is supposed to be a substitute forum to the civil court. Broadly speaking, the relief which the civil court could grant in an industrial dispute can be granted by the Industrial Tribunal/labour court. Indeed the Industrial Tribunal/ labour court is not bound by technical rules of procedure which bind the civil court. See *J.K. Cotton Spinning and Weaving Mills. v. Labour Appellate Tribunal*. In such circumstances we see no justification for holding that the Industrial Tribunal or for that matter a labour court has no jurisdiction to grant relief from a date anterior to the date on which the dispute is raised. "Take a case where the Labour Union raises a dispute on a particular date but says that the said relief should be granted from an anterior date. We see no reason in that the Industrial Tribunal should be held to have no power to grant relief with effect from such anterior date if it is found to be warranted by the facts and circumstances of the case. Here, it is necessary to emphasise the distinction between the existences of power and its exercise. It is one thing to say that the Tribunal has no power to grant such relief and it is an altogether different thing to say what in a given case it ought not to grant such relief. We are only emphasizing the aspect of power. Whether in a given case relief should be granted with effect from a date anterior to the date of raising the dispute is a matter for the Tribunal to decide in the facts and circumstances of that case.

Another judgment of the Punjab High Court has been relied upon which is in *British India Corporation Ltd. v. Industrial Tribunal, Punjab and Ors.* 1965 (II) LLJ 531 and it has been submitted that in the aforesaid case the date of dismissal was in dispute though the same was not referred to the Labour Court, the Apex Court has held that failure to mention the date of dismissal of the concerned workman in the order of Reference even though it was mentioned in the "A"

Form filled under Rule 3 of the Industrial Disputes Act could not affect the validity of the order. The main dispute relates to the dismissal of the concerned workman and it was for the Tribunal to find out the date of dismissal as in the instant case, the parties did not agree about the date of dismissal. Further reliance has been placed upon the judgment of Madhya Pradesh High Court in *Madhya Pradesh State Cooperative Marketing Federation, Bhopal v. Presiding Officer, Labour Court, Bhopal*, 1993 (67) FLR 526 .It has been submitted on behalf of the Respondents that scope for interference under Articles 226 and 227 of the Constitution of India regarding the reference and award is very limited and has submitted that if the undue delay has not been questioned at the time of Reference it is not open to challenge the award. Another judgment of the Apex Court relied upon by the Respondents is in *Council of Scientific and Industrial Research and Another Vs. K.G.S. Bhatt and Another*, . On the basis of the aforesaid judgment a submission has been made that the decision on individual dispute of seniority, promotion, reversion, suspension, pay fixation etc. are not ordinarily interfered with even though it is viewed as erroneous. The Tribunal may fall into some legal errors but if substantial justice has been rendered to a person, the Court will not interfere with such a decision.

7. In view of the aforesaid fact, it has been submitted that the labour court has not exceeded its jurisdiction and as it was a substantial relief in view of the submissions made on behalf of the employer-Petitioner, the labour court has given an award that the Petitioner is entitled for salary from 1991 on the post of Mechanic.

8. I have heard the learned Counsel for the parties and perused the record and the Reference to the labour court. From the record it is clear that immediately when the reference was made, after filing the written statement by Respondent No. 3, an affidavit with the order was filed before the labour court that an order of promotion dated 3.5.1999 was passed in favour of the Respondent No. 3 and he has been given promotion and seniority from 24.1.1991, as such there was no dispute. The Court has also perused the referring order in which it is clear that in not promoting the Respondent No. 3 on the basis of the select list whether the action of the employer is legal or not and if he is not entitled for promotion on the post of Mechanic to what extent he is entitled for compensation? From the referring order it is clear that the Reference was not to the extent whether Respondent No. 3 was entitled to the salary of the post of Mechanic from 24.1.1991. It is now well-settled that regarding payment of monetary" benefit and back wages, the same is to be decided or adjudicated by the authority concerned. It has to be seen whether the workman has worked on the said post or not. This was an issue which was to be decided by the employer. Admittedly Respondent No. 3 workman has not worked from 1991 till the date of promotion, i.e., 3.5.1999, the date of promotion. Regarding entitlement of the salary from 1991 to 1999, the employer has to decide that under what circumstances in spite of the fact that Respondent No. 3 was selected on the post of Mechanic and junior person to the Respondent No. 3 was given promotion, then under what

circumstances Respondent No. 3 was not given promotion. This was a matter to be decided. The Reference of the State Government to the labour court was not to that extent. Therefore, from the record it is clear that the labour court has travelled beyond the jurisdiction of the Reference. In case of Firestone Tyre and Rubber Co. (supra) the three Hon"ble Judges of the Apex Court has clearly held that the labour court has got no power to travel beyond the terms of the Reference. In Mukand Limited's case (supra) the Apex Court has clearly held that Tribunal being creature of Reference cannot adjudicate matters not within the purview of the dispute actually referred to it by the order of Reference. In a recent judgment in Mahendra L. Jain v. Indore Development Authority, 2005 SCC 154, the Apex Court has taken a view that the labour court can only decide the dispute referred to it and not beyond it. The labour court has no jurisdiction to go beyond the Reference. Relevant para 34 is being reproduced below:

34. We have noticed the provisions of the Act and the Rules. No case was made out by the Appellants herein in their statements of claims that they became permanent employees in terms thereof. There is also nothing on record to show that such a claim was put forward even in the demand raising the industrial dispute. Presumably, the Appellants were aware of the statutory limitations in this behalf. Furthermore, the labour court having derived its jurisdiction from the reference made by the State Government, it was bound to act within the four corners thereof. It could not enlarge the scope of the reference nor could deviate therefrom. A demand which was not raised at the time of raising the dispute could not have been gone into by the labour court being not the subject-matter thereof .

9. In view of the aforesaid fact, I find that the labour court has clearly exceeded its jurisdiction and travelled beyond the purview of the dispute actually referred to it by the order of Reference. The labour court had no jurisdiction to give an award in favour of the Respondent No. 3 that he is entitled for salary from 24.1.1991 for the post of Mechanic in spite of the fact that the same was not referred to the labour court.

10. In view of the aforesaid fact, the writ petition is allowed and the order of the labour court dated 17.5.1999, Annexure-1 to the writ petition cannot be sustained and is hereby set aside. In the circumstances of the present case, the parties shall bear their own costs.