

(2017) 08 AHC CK 0013
In the Allahabad High Court
Case No : 35531 of 2002

U.P.S.R.T.C. Thru Regional Manager Jhansi

APPELLANT

Vs

Ram Karan, & Ors.

RESPONDENT

Date of Decision : 04-08-2017

Acts Referred:

[Limitation Act, 1963](#), [Article 137](#) -
[Uttar Pradesh Industrial Disputes Act, 1947](#), [Section 6A](#), [Section 6C](#), [Section 6H\(2\)](#), [Section 6H](#), [Section 6H\(1\)](#), [Section 6S\(1\)\(f\)](#), [Section 6S\(2\)\(f\)](#)

Citation : (2017) 08 AHC CK 0013

Hon'ble Judges : Sangeeta Chandra

Bench : Single Bench

Advocate : Rahul Anand Gaur, Nishant Mehrotra, Sheo Ram Singh, A.K. Umrao, R.S. Chauhan, T.S. Dabas

Final Decision : Dismissed

Judgement

1. The petitioner has filed this writ petition challenging the order of the Deputy Labour Commissioner, Jhansi Region, Jhansi passed in application filed under section 6 H (1) of the U.P. Industrial Disputes Act by the respondent No. 1 in Misc. Case No. 41 of 2002.

2. The facts relevant for decision of this case are stated, in brief, herein-below:

3. The respondent No. 1 was engaged as Conductor in the Corporation in 1989 on daily wages and thereafter his services were terminated on 31.03.1992 on several counts of misconduct. Respondent No. 1 was served with the charge sheets dated 10.07.1990, 26.03.1990 and 13.03.1992. After conclusion of disciplinary proceedings, his services were terminated on 31.03.1992. The respondent No. 1 raised industrial dispute namely, Adjudication Case No. 117 of 1991 and the Labour Court found that the disciplinary proceedings was

conducted in violation of the principle of natural justice and thereafter, enquired into the evidence in support of charges of misconduct and found such evidence to be insufficient for warranting punishment of dismissal and thus, set aside the order of the dismissal dated 31.03.1992.

4. The award of the Labour Court dated 07.09.1995 has been filed as annexure 2, which clearly shows that while setting aside the termination order dated 31.03.1992, the Labour Court directed for reinstatement of respondent No. 1 on the post which he held along with continuity in service and also directed payment of full back wages for the period respondent No. 1 had been illegally kept out of service and also payment of cost of Rs. 200/-.

5. It is the admitted case of the petitioner that the award dated 07.09.1995 was complied with by the petitioner and respondent No.1 was reinstated on 15.02.1996, but on daily wages post of conductor and he was posted at Mahoba Depot. The order of reinstatement also contained the order for grant of arrears of wages calculated from 01.03.1992 upto January 1996. Payment was made as per calculation of the daily wage employee, i.e. maximum period of 26 days in a month w.e.f. March, 1992 upto January, 1996. The respondent No. 1 was paid only wages as daily wage conductor. From perusal of the wages bill dated 20.06.1996, it is evident that a total sum of Rs. 41,430/- was paid after statutory deduction of EPF. On 02.09.1997 respondent No. 1 was regularized in the pay scale of Rs.950-1500/- and put on probation and later on confirmed as conductor.

6. It is the case of the petitioner that after his reinstatement, respondent No. 1 continued to work firstly as daily wage conductor and then as regular conductor without making any protest with regard to non-payment of arrears of back-wages nor made any claim for any amount due under the award. All of sudden, respondent No. 1 filed an application under section 6 H (1) of the Act on 29.05.1992, which was registered as Misc. Case No. 41 of 2002 before Deputy Labour Commissioner, Jhansi region Jhansi and demanded Rs. 2,42,492/- as arrears of salary and bonus for the period w.e.f. 31.03.1992 to 30.04.2002.

7. It is the case of the petitioner that it filed reply to the notice sent by the Deputy Labour Commissioner, Jhansi Region Jhansi, wherein an objection was taken that the award had already been complied with and nothing remained to be paid. However, Deputy Labour Commissioner did not consider the objection regarding maintainability of the application under section 6 H (1) of the U.P. Industrial Disputes Act, but relied upon the chart produced by the respondent No. 1 in support of his claim.

8. Copy of the objection filed before the Deputy Labour Commissioner has been filed as annexure 3 to the writ petition. A perusal of which shows that the petitioner had alleged therein that after the award dated 07.09.1995, respondent No. 1 was reinstated in service in February, 1996 and has been paid his salary as due to him each month along with arrears. If the respondent No. 1 was dis-

satisfied from arrears of regular salary and bonus etc., then he could have raised his dispute before the Labour Court, Kanpur and the Deputy Labour Commissioner had no jurisdiction to entertain the said application.

9. At the time of admission of the said writ petition, the learned counsel for the petitioner informed this Court that the order of Deputy Labour Commissioner had already been executed and therefore, the application for interim relief was rejected. It has come on record through supplementary affidavit that the Corporation has made a payment of Rs. 2,01,062/- (rupees two lac one thousand sixty two) to the respondent No. 1 by a cheque dated 24.08.2002 i.e. much before filing of the instant writ petition.

10. A counter affidavit has been filed on behalf of the respondent No. 1, in which he has alleged that since continuity in service had been given by the award dated 07.09.1995, respondent No. 1 could not have been reinstated as daily wage conductor, but should have been reinstated as regular conductor, as persons who were engaged as conductors along with him in 1989 had been regularized w.e.f. January, 1991. The direction of the Labour Court with regard to giving of continuity in service was not complied with, instead the respondent No. 1 was reinstated as daily wage conductor on 15.02.1996, and thereafter, regularized/confirmed only on 02.07.1997.

11. In the counter affidavit a break-up of the amount, which was demanded in the application under section 6 H (1) of the Act has been given. Under salary head, it has been alleged that the respondent No. 1 was entitled to Rs.4,69,976/- w.e.f. 31.03.1992 to 30.04.2002, but the petitioner had given him only Rs. 2,49,984. Therefore, the balance salary due as Rs. 2,19,992/- along with bonus due for the period of 1992 to 2001 of Rs. 22,500/- was demanded by him in his application under section 6 H (1) of the Act. It has been denied that respondent No. 1 kept silent and never demanded his dues as per the award.

12. It is alleged that respondent No. 1 repeatedly gave representations to the employer, but when the representations went unheeded, then he had filed application under section 6H(1) of the Act on 29.05.2002. The Deputy Labour Commissioner rightly awarded a sum of Rs. 2,42,492/- (Rs.2,19,992/- as against of salary) plus Rs. (22,500/- as bonus dues) to the respondent No. 1. As the order of the Deputy Labour Commissioner had been complied with before filing of the writ petition, a request was made that the writ petition be dismissed.

13. Rejoinder affidavit as well as two supplementary affidavits were filed thereafter by the petitioner, wherein it has reiterated the contention that respondent No.1 was engaged as a conductor on daily wage basis only and as such he could not claim salary of regular conductor or bonus and as his claim was seriously disputed, the Deputy Labour Commissioner should have referred the matter to the Labour Court for adjudication.

14. At the time of hearing of the aforesaid case, Shri Sheo Ram Singh, learned counsel for the petitioner challenged the order impugned on three grounds.

Firstly, that the award dated 07.09.1995 had already been complied with and therefore, the application under section 6 H (1) of the U.P. Act was not maintainable, secondly, it was argued that with regard to arrears of salary and bonus due as claimed by respondent No.1, the computation was seriously disputed and being a disputed claim, the matter should have been decided by the Labour Court through adjudication alone, and thirdly, it was argued that respondent No. 1 had been reinstated as daily wage conductor in February, 1996, if as per the award, continuity in service and back-wages had been directed, which had not been complied with by the Corporation, then respondent No. 1 should not have been kept quite for six years and then, suddenly filed an application in 2002. This application should have been dismissed on ground of unexplained delay by the Deputy Labour Commissioner.

15. On a query being put to the learned counsel for the petitioner by the Court as to how a daily wage employee, as has been alleged, that respondent No. 1 was daily wage conductor, was proceeded against in disciplinary proceedings by issuing three charge sheets to him for alleged misconduct and financial irregularities, learned counsel for the petitioner merely stated that it was the practice in the Corporation that all employees whether engaged on daily wage or on a regular basis, when found to have indulged in misconduct were proceeded against through regular disciplinary proceedings and then alone termination orders were passed. It is incomprehensible to this Court that this practice has been going on as alleged in the Corporation since long.

16. Nevertheless, the fact remains that treating him to be a regular employee respondent No. 1 was proceeded against in disciplinary proceedings by issuing three charge sheets to him and then having found him guilty of misconduct, termination order was passed on 31.03.1992. This termination order was found vitiated and set aside by the Labour Court by its award dated 07.09.1995. The matter requires interpretation of the operative portion of the award dated 07.09.1995.

17. It is clear from the language of the award that the Labour Court reinstated the respondent No. 1 on the post that he had held before his termination, which was the post of conductor. A further direction was issued to grant him continuity in service and also to make full payment of salary/wages for the period when he was illegally kept out of service.

18. From a perusal of the order of reinstatement dated 15.02.1996, by which it is alleged by the petitioner that the award of the Labour Court had been complied with, it is evident that reinstatement of the respondent No. 1 was only as daily wage conductor. Wages were also paid to him, as has already been mentioned herein above only on the basis of number of days in each month since March, 1992 to January, 1996. Also respondent No. 1 was not given continuity in service even as daily wage conductor because he would have been regularized along with similarly situated and similarly engaged daily wage conductors w.e.f. 1st January, 1991.

19. The respondent No. 1 being low paid employee could not muster courage against the Corporation and kept on sending representations, which went unheeded. It was only then that he approached the Deputy Labour Commissioner by filing an application under section 6 H (1) of the U.P. Act.

20. With regard to maintainability of application under section 6 H(1) of the Act before the Deputy Labour Commissioner, it has been argued by the learned counsel for the petitioner, on the basis of a judgment rendered by the Coordinate Bench of this Court in the case of National Thermal Power Corporation, Ltd. Sonebhadra vs Deputy Labour Commissioner, Pipri and others, reported in 2003 (98) FLR 538 that application under section 6H(1) of the Act could be entertained by the Deputy Labour Commissioner only exercising Executing power since the benefit under the award had not been computed in terms of money, and it was in fact seriously disputed, application only under section 6H(2) of the Act was maintainable before the Labour Court.

21. I have perused the judgment cited by the learned counsel for the petitioner and I find that the case is clearly distinguishable as in the said case, the workman concerned was asking for such benefits as LTC, dress costs (Vardi allowances) wall clock, leave encashment dues etc. The benefits claimed for such benefits as tea reimbursement, washing allowances, shift allowances etc. were all non-monetary benefits, which had to be computed before they could be granted to the workman concerned. This Court held that under section 6 H(1)of the Act a workman can claim an amount, which is legally due and which is not subject to computation. When there is a disputed benefit to which the workman is entitled, the provisions of section 6H(2) will come into play. It was evident from the list of demand raised along with application filed by the workman therein that there were several heads under which benefits due to the workman had to be computed first, specially so when the workman himself had not clearly stated that the other regular employees except the respondent No. 1, were getting those benefits. The application was held to be not maintainable under section 6 H(1), but the workman was directed to approach the Labour Court under section 6 H (2) of the Act.

22. The question with regard to applicability of section 6 H (1) or 6 H(2) to the case at hand would depend upon whether the award dated 07.09.1995 was clear in its directions with regard to benefit that were due to respondent No. 1 on his reinstatement. The operative portion of the award is quite clear. It is specifically stated that respondent No. 1 was entitled to the reinstatement on the post he was working and to continuity in service and to full back-wages.

23. The Hon"ble Supreme Court in a five judge decision in the case of Kays Construction Company (Pvt.) Ltd. vs State of U.P. and others reported in AIR 1965 SC 1488, has dealt with in detail, the provisions of section 6 H(1) and 6 H(2) of the U.P. Act, and has observed that provisions of section 6 H(1) and 6 H(2) are clearly "pari materia" with the provisions of section 33 C (1) and (2) of the Central Act. The question was considered as to how the two sub-sections

have to be read and the Constitution Bench specifically observed thus:

"This section is analogous to section 33-C of the Industrial Disputes Act, 1947 and section 20 of the Industrial Disputes Act (Appellate Tribunal) Act 1950. It is significant in all the three statutes the cognate section is divided into two parts and the first part deals with recovery of "money due" to a workman under an award and the second deals with a "benefit" computable in terms of money. Under the first sub-section the State Government (or its delegate), if satisfied that any money is due, is enabled to issue a certificate to the Collector, who then proceeds to recover the amount as arrears of land revenue. The second part then speaks of a benefit commutable in terms of money, which benefit after it is so computed by a Tribunal, is again recoverable in the same way as money due under the first part. This scheme runs through Section 6H, sub section (1) and (2)."

"That there is some difference between the two sub-sections is obvious enough. It arises from the fact that the benefit contemplated in the second sub-section is not "money due" but some advantage or perquisite which can be reckoned in terms of money. The Division Bench has given apt examples of benefits which are computable in terms of money, but till so computed are not "money due". For instance, loss of benefit of free quarters is not loss of "money due" though such loss can be reckoned in terms of money by inquiry and equation. The contrast between "money due" on the one hand and a "benefit" which is not "money due" but which can become so after the money equivalent is determined on the other, marks out the areas of the operation of the two sub-sections. If the word "benefit" were taken to cover a case of mere arithmetical calculation of wages, the first sub-section would hardly have any play. Every case of calculation, however, simple, would have to go first before a Tribunal. In our judgment, a case such as the present, where the money due is back wages for the period of unemployment is covered by the first sub-section and not the second. No doubt some calculation enters the determination of the amount for which the certificate will eventually issue but this calculation is not of the type mentioned in the second sub-section and cannot be made to fit in the elaborate phrase "benefit" which is capable of being computed in terms of money". The contrast in the two sub-sections between "money due" under the first sub-section and the necessity of reckoning the benefit in terms of money, before the benefit becomes "money due" under the second sub-section, shows that mere arithmetical calculations of the amount due are not required to be dealt with under the elaborate procedure of the second sub-section. (xxxxxxxThe inquiry with regard to "money due" being made is not of the kind contemplated by the second sub-section but is one for the satisfaction of the State Government under the first sub-section. It is verification of the claim to money within the first sub-section and not determination in terms of money of the value of a benefit) xxxxxxxx"

24. It is apparent from a perusal of the said judgment of the Constitution Bench, which has been reiterated in several judgments thereafter by the Hon"ble

Supreme Court and by this Court, that whether only execution of award is involved in terms of the "money due" arising out of publication of award then application under section 6H(1) is maintainable. If the workman also requests for computation of other benefits, which similarly situated employees have been getting during the course of their employment, but which has been denied to the concerned workman, who remained out of Job and was in fact under forced unemployment till his termination/retranchment was set aside by the Labour Court, then in such case application under section 6H(2) would be maintainable for it would require a detailed inquiry, the procedure for which has been set up under section 6H(2).

25. The second objection raised by the learned counsel for the petitioner is to the effect that the award had already been complied with by the petitioner and now there is no Award in existence, hence no application under section 6H(1) of the U.P. Act could have been entertained by the Deputy Labour Commissioner, relying upon a judgment of a Single Judge of this Court in the case of Kesarwani Zarda Bhandar vs Additional Labour Commissioner, decided on 8th August, 2005 reported in 2005 (6) AWC 5180. The said judgment has been over-ruled by a Division Bench of this Court in Smt. Kiran Devi and another vs Kesarwani Zarda Bhandar and others, reported in 2006 (5) AWC 4366, the Division Bench of this Court has observed in paragraphs 14, 15, 16, 17 and 18 thus:

"14. On these bases we are of the respectful opinion that the first point on which the learned Single Judge allowed the writ petition is not sustainable. Regarding the application of the workmen being made after the period of one year, the industrial law in this regard, although well settled, needs to be stated by us in brief so that in future these simple matters might be dealt with simply.

15. Under Section 6-C of the U.P. Industrial Disputes Act an award is stated to remain in operation in the first instance for a period of one year. The said Section 6-C is set out below :-

"6-C. Award of Labour Court or Tribunal or arbitration and its operation, -- An award shall in the first instance remain in operation for a period of one year or such shorter period as may be specified therein:

Provided that the State Government may extend the period of operation of an award from time to time, if it thinks fit:

Provided further that where the State Government whether of its own motion or on the application of any party bound by the award, considers the since the award was made there has been a material change in the circumstances on which it was based, the State Government may, after such enquiry as it may think fit, shorten the period of operation of the award."

16. Under Section 6A of the said Act it is provided that an award shall become enforceable on the expiry of thirty days from the date of its publication.

17. We have this position before us, therefore, that an industrial award becomes

enforceable on the expiry of thirty days after its publication but it remains in operation for a period of one year only.

18. It is a serious and than an elementary mistake to conclude from this that after a period of one year the enforceability of the award lapses and that it cannot be enforced any more under Section 6-H (1) of 6-H (2) unless the State Government extends the period of operation of the award under Section 6-C."

26. The Division Bench of this Court has compared the provisions of section 19 of the Central Act and its sub-sections (3) and (6) with the provisions of section 6-C as relied upon by the Hon"ble Single Judge and has observed in paragraphs 20, 21 and 22 thus:

"20. It has been held in numerous cases that even after lapse of one year and even after the service of notice by the as employer seeking to treat an award as at an end, the award does not really came to an end. We need not consider here whether Sub-section (6) of Section 19 of the Central Act is also applicable in Uttar Pradesh; there being as argued inconsistency between it and the provisions of the U.P. Act or 1947. We now merely observe here that the lapse of one year does not kill the award even though it might not remain " in operation" after that period. The case of South Indian Bank Ltd. v. R. Chacko reported at and the case of L.I.C. v. D.J. Bahadur make it amply clear that even after the operational period of one year the award remains binding between the parties.

21. There are clear indications in these cases that even after the period of one year the award would remain as binding as a contract between the employer and the employees . We may respectfully opine that such award after the operational period of one year would remain binding as a contract with the seal of the labour authority imprinted upon it. On the basis of such imprinting the award can be enforced even outside the period of its operation even though the State Government has not yet extended such period of operation. No doubt in every case, the award itself must be looked into and it has to be seen whether it is in its forms executable on the date it is sought to be executed. All that we lay down is that the period of one year mentioned in Section 6-C above, is a matter of practically no importance when the question of enforceability of the award is raised. One should always bear in mind that whether the award is in" operation or not is a question totally different from whether the "award is still enforceable or not. If one makes a reference to Section 23(c) of the Central Act, 1947 or to Section 6S(1)(f) and 6S(2) (f) of the U.P. Act 1947 one will see immediately that during the operational period of an award industrial actions are ruled out on the very same points which are covered by the award. This is the region where the operational nature of the award is of aft importance.

22. When enforceability of an award becomes an issue in an application under Section 6-H of the U.P. Act, 1947 one has no concern with the operational nature of the award. There, quasi judicial functions are performed, and recovery certificates and orders passed in same manner as those are, passed by the

executing courts in ordinary civil courts of law. These are different aspects than the aspects of industrial action like strike or lock out. It would be a complete confusion to treat the operational nature or period of an award as having any bearing on its enforceability or executability. "

27. The third point raised in the arguments although not made part of the pleadings of the writ petition as it was originally filed, was with regard to unexplained delay and laches on the part of workman in filing the application under section 6 H (1) of the U.P. Industrial Disputes Act.

28. It needs to be remembered that unlike section 33-C (1) of the Central Act where the proviso prescribed the period of limitation of one year from the date of award for approaching the Government for its compliance, no such limitation is prescribed under section 33-C (2) of the Central Act. Similarly no such limitation is prescribed under section 6 H(1) of the U.P. Act. Thus, it can safely be said that the observations of the Hon''ble Supreme Court with regard to non-applicability of Limitation Act to monetary claims under Labour laws has been discussed at length in a three Judge Bench decision of Hon''ble Supreme Court in Nityanand M. Joshi and others vs Life Insurance Company India and others reported in 1970 (1) SCR 396. Hon''ble Supreme Court was dealing with a case where the appellants filed applications under section 33-C (2) of the Industrial Disputes Act, 1947 for computing in terms of money, the benefit of holidays, and for recovering the amount. The Labour Court dismissed the applications insofar as the claim was for a period beyond three years, on the ground that the applications were barred under Article 137 of the Limitation Act, 1963.

29. The Hon''ble Supreme Court observed that the scheme of the Indian Limitation Act, 1963 is that it only deals with applications to ordinary courts and, as the Labour Court is not such a court, the High Court erred in holding that the applications were barred by Article 137 of the Limitation Act.

30. The Supreme Court reiterated its earlier decision in the case of Town Municipal Council, Athani vs The Presiding Officer, Labour Court Hubli, 1970 (1) SCR 51, which had held that Article 137 of the Limitation Act, 1963 does not apply to applications under section 33-C (2) of the Industrial Act.

31. The Supreme Court reiterated the said judgment in the case of Ajaib Singh vs Sirhind Co-op. Marketing-cum-Processing Service Society Ltd. and another, 1999 (2) SCR 505, wherein after referring to the aforesaid judgment and the history of the Legislation as well as purpose for which it was enacted, the Supreme Court observed that The Legislature had intended to protect workmen against victimisation and exploitation by the employer and to ensure termination of industrial disputes in peaceful manner. The object of the Act, therefore, is to give succour to weaker sections of the society which is a pre-requisite for a welfare State.

"It observed that "An industrial tribunal or a Labour Court dealing with applications or references under the Act are not courts and they are in no way

governed either by the Code of Civil Procedure or the code of Criminal Procedure".

" XXXXXXXX We cannot therefore, accept the submission that Article 137 of the Limitation Act will apply even to applications made to an Industrial Tribunal or a Labour Court XXXXXXXX".

32. Relying upon the judgment rendered by it in *Sakura vs Tanaji*, AIR 1985 Supreme Court 1279, wherein it was held that provisions of the Limitation Act applied only to proceedings in courts and not to appeals or applications before the bodies other than courts such as quasi-judicial tribunal of executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under the Codes of Civil or Criminal Procedure, the Supreme Court further observed that it is not the function of the court to prescribe the limitation where the Legislature in its wisdom had, thought it fit not to prescribe any period. The courts admittedly interpret law and do not make laws. Personal views of the Judges presiding the court cannot be stretched to authorise them to interpret law in such a manner which would amount to legislation intentionally left out by the Legislature.

33. The Supreme Court having said so with respect to non prescription of any limitation for approaching Labour Court/Tribunal for computing the benefits admissible under application under section 33-C (2) of the Act, I am of the considered opinion that since section 6 H(1) also does not prescribe any limitation, unlike the proviso in section 33-C (1), then the argument with regard to unexplained delay in approaching the Deputy Labour Commissioner by respondent No. 1 also falls to the ground.

34. For the reasons aforesaid, the writ petition is dismissed as devoid of merits. No order as to costs.