
(2003) 10 AHC CK 0081
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 34972 with 34965 of 2001

U.P.State Road Transport Corporation,Etawah

APPELLANT

Vs

Abdul Aziz & Ors.

RESPONDENT

Date of Decision : 20-10-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33C(2)

Citation : (2003) 10 AHC CK 0081

Hon'ble Judges : Rakesh Tiwari, J

Judgement

Rakesh Tiwari, J.—Heard Counsel for the respective parties.

This writ petition is directed against the award dated 1482001 passed by the labour Court (4), U.P., Kanpur in Misc. Case No. 436 of 2000 filed by respondent Nos. 1 to 6 under Section 33C (2) of the Industrial Disputes Act (in short the Act).

2. Brief facts of the case are that an application was filed by respondent Nos. 1 to 6 for encashment of their earned leave and payment of dearness allowance at the rate of 10% from January, 1999 and 5% from July 1999 as under :

respondent workers had not been paid any leave encashment in spite of the fact that order for payment for the same had been passed. It was also stated in oral evidence that after the order of leave encashment was passed the employer manipulated the record and reduced the number of leave of the workers. The employer's witness also corroborated the evidence of Abdul Aziz inter alia that the employees have yet to be paid the amount of earned leave as per exhibit paper No. 1. He also stated that 10% of the dearness allowance has been paid in instalments.

7. It appears from the record that the Assistant Regional Manager, Etawah had passed orders dated 971998 (Exhibit W/1) and dated 461998 (Exhibit W/1A) by which the concerned workmen were sanctioned leave encashment of 30 days in the months of June and July 1998. Documents were also proved before the labour Court regarding revision of pay scales. The Assistant Regional Manager

issued letter dated 1632000 directing revision of pay scales of Sri Abdul Aziz and Ram Datt Tiwari. It is also apparent from record that the pay scales of the workmen were determined vide letter dated 2171999. Ten percent dearness allowance with effect from the month of August and as per Government Order (Exhibit W/8) the employees had been allowed increased dearness allowance with effect from 171999.

8. By the impugned order the labour Court has held that the claim of the workers, respondent Nos. 1 to 6, was based on existing rights and they have neither been paid the amount of leave encashment in spite of the fact that it had been sanctioned nor they have been paid 10% dearness allowance with effect from January 1998 and 5% dearness allowance with effect from July 1998 in pursuance of the Government Order which is proved from the record. The labour Court has further held that the employer's witnesses have not been able to prove their case and as such the labour Court has allowed the claim of the workers and directed payment of the amount shown against the name of each worker with 10% interest and costs of Rs. 200.

9. The argument of the Counsel for the petitioner Corporation is two folds. The first argument/objection is that the claim of the workers had not been adjudicated under Section 10 of the Act and as such the labour Court could not have looked into the claim of the workers as this would amount to adjudication of the rights of the parties under Section 33 (C) (2) of the Act. The other argument/objection of the petitioner is that the claim was not maintainable as no specific issue had been framed before the labour Court and since the labour Court has not dealt with any of the objections raised by the petitioner in the impugned award it is wholly illegal and erroneous.

10. From a perusal of the impugned award it is evident that the claim of the workers was based on documentary evidence which was also proved by oral evidence. The employer has not disputed the claim of the workers, rather it was apparent from the documentary evidence as well as oral evidence led before the labour Court that the workers had an existing right to the claim and the same was admitted to the employer. The labour Court has also computed the admitted amount due to the workers based on existing right as such there was no question about any adjudication of the dispute under Section 10 of the Act and the argument of the petitioner is misconceived. The claim of the workers cannot be denied merely because additional issue was not framed. The question regarding framing of issue appears not to have been pressed before the labour Court and it is for the first time that such an issue is being raised in the instant writ petition, which is not permissible. Even otherwise, the application of the workers was maintainable.

11. The Counsel for the petitioner then submitted that the Presiding Officer passed the impugned award at the verge of his retirement and that he was adamant to pass the award against the petitioner corporation for extraneous consideration and as such two applications dated 3172001 and 782001 were

moved before the Labour Commissioner by the petitioner requesting him to transfer their case from the present labour Court to any other labour Court but no such order was passed by the Labour Commissioner. Had there been any doubt about the fairness and honesty of the Presiding Officer of the labour Court, the petitioner ought to have moved an application for transfer before him and not before the Labour Commissioner surreptitiously. The Presiding Officer of the labour Court had no knowledge about the moving of the application by the petitioner to the Labour Commissioner, as the copy of the said application (Annexure3) was never endorsed to the labour Court. Merely because a Presiding Officer is at the verge of retirement it cannot be a ground for levelling the charges of unfairness and dishonesty against him. This is only a bald allegation without any basis regarding the unfairness and dishonesty of the Presiding Officer and this argument has no force.

12. For the reasons that the claim of the workers was admitted to the employer which is evident from the perusal of the impugned order and the evidence given on behalf of the petitioner corporation which has been annexed as Annexure3 to the counteraffidavit, this writ petition fails and is dismissed. The interim order dated 7112001 granted by this Court is vacated. No order as to costs.