
(2003) 12 UK CK 0001
In the Uttarakhand High Court
Case No : Writ Petition No. 2487 of 2001

Uptron India Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 30-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22
Uttar Pradesh Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2004) 2 LLJ 378

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : U.K. Uniyal, for the Appellant; Pankaj Miglani, for the Respondent

Judgement

Rajesh Tandon, J.—By means of present writ petition, the petitioner has prayed for the issue of a writ in the nature of certiorari quashing the order dated January 30, 2001, Annexure-2 to the writ petition, by which the Labour Court has passed the order directing the payment to be made in favour of the respondent/employee in respect to his balance salary alongwith the payment of 90 days" leave encashment to the extent of Rs. 14,256/- and gratuity.

2. The Labour Court has directed for the payment of the following amount in favour of the respondent/employee:

1. July 1998 to September 6, Rs. 79,184.60 1999 wages
2. 90 days leave encashment Rs. 14,256.00 3. Gratuity Rs. 43,909.60
----- Total Rs. 1,37,350.20 -----

3. Thus, the respondent was found entitled for the salary from July, 1998 to September 6, 1999, gratuity as well as payment of 90 days" leave encashment. The Petitioner has challenged the said award. Brief facts giving rise to the present writ petition are that respondent No. 2 was admittedly employed with the petitioner as Service Technician who had resigned from service on September

6, 1999. The respondent No. 2 has filed an application before the respondent No. 1 u/s 33-C (2) of U.P. Industrial Disputes Act, 1947 seeking direction, for the petitioner for making good the payment to the following effect:

Vernacular matter omitted

4. The petitioner has filed a reply before the Presiding Officer in which the petitioner has stated that the respondent No. 2 was not entitled or leave encashment in view of the fact that the BIFR, vide its order dated August 19, 1994 had declared the petitioner a sick unit under the Sick Industrial Companies (Special Provisions) Act, 1985 with the meaning of Section 3(1) of the Act. The respondent No. 2 has filed a reply in which it has been stated that the petitioner/company has no right to challenge the award passed by the Labour Court and they are trying to avoid their liability.

5. The respondent No. 2 has further submitted that the petitioner's company itself was granting VRS to its employees. Some of the payments have been indicated in the Annexure-1 to the counter- affidavit and details have been given in Annexure-1 dated August 1, 2000. The respondent No. 2 has further submitted that U.P. Electronic Corporation Limited is a holding company of Uptron India Limited, State of U.P. has nothing to do directly or indirectly with the affairs of the petitioner's company. According to the respondent No. 2, he was forced to resign on account of non-payment of regular salary and non-payment of either VR Scheme or the Scheme of one time settlement.

6. The respondent No. 2 has referred the judgment of Swadeshi Cotton Mills, Naini, Allahabad Vs. Assistant Labour Commissioner (Central) Allahabad and others, , where it has been held that recovery of gratuity cannot be prohibited u/s 22 of Sick Industrial Companies (Special Provisions) Act, 1985. The relevant paragraphs are quoted below:

"In this connection, learned Counsel for the respondents submitted that this bar was not applicable in cases of payment of gratuity. Learned counsel for the Union of India relied on a decision of the Bombay High Court in support of her contention. The judgment was delivered in relation to a case between the NTC (South Maharashtra) and B.N. Jalgaonkar. It was a case of recovery of wages and a question came up for consideration whether the recovery of the wages due to workmen was also barred by the provisions of Section 22 of the SICA, 1985. The Hon"ble single Judge of the Bombay High Court had before him the decisions of the Apex Court in the case of Sri Chamundi Mopeds, and Dy. Commercial Tax Officer v. Coramandal Pharmaceuticals and Ors. and also some other decisions. The question was that if at all Section 22 of the SICA, 1985 was thought applicable to bar recovery of wages of workmen, the workmen would have to approach the BIFR and if such a position was allowed to prevail that would defeat the legitimate claim of the workmen for wages and other dues by non-payment in the first instance and also forcing them to resort to other remedies. The contention of the NTC was dismissed by the learned single Judge.

Reliance was also placed by the respondent on a decision of the Allahabad High Court in the case of Poysha Industries v. Collector of Ghaziabad. A recovery proceeding was initiated against an industry covered by the SICA, 1985 and the claim related to wages payable to the workmen. The relationship of master and servant between the industrial company and the workman was continuing, the Court held that the employer was bound to pay wages even though no work was (sic) taken from them and proceedings for recovery of such wages were not covered by Section 22 of the SICA, 1985.

As observed above, the SICA, 1985, is a legislation made in public interest for securing timely detection of sick companies owning (sic) industrial undertakings and it was thus a legislation for the benefit of the industries in public interest. The public interest cannot be looked bereft of the interests of the workmen. The policy behind the labour legislations is aimed at securing justice to the workmen and to avoid exploitation by employers, either by non-payment of wages or by wrongful retrenchment or by withholding payment of wages or the like. Thus, a protection of the interest of an industrial company may not be given an upper hand to the protection of the labourers working therein and, as observed by the Bombay High Court in the case of NTC v. B.L. Jalgaonkar (supra), Section 22 of the SICA, 1985, must not be allowed to defeat the legitimate claim of the workmen for wages. In fact, this decision was based on the finding of the Apex Court in the case of Dy. Commercial Tax Officer (supra), wherein it had been held that recovery of commercial tax could not be barred u/s 22 of the SICA, 1985. Gratuity, as observed above, is related not only to the period of employment but also to wages and the payment of gratuity is one of the beneficial measures introduced by labour legislation. To extend the provisions of Section 22 of the SICA, 1985 to prohibit recovery of gratuity, which is related to wages, would be a negation of a legally accepted right of the workmen. Section 22 must be interpreted not to cover a bar of recovery of payment of wages or gratuity to workmen. Seen in this light, the objection of the petitioners against the impugned recoveries is not tenable."

7. Similar view has been taken in the judgment of Bombay High Court, N. T. C (South Maharashtra) Ltd. v. B.N. Jalgaonkar and Ors. 1999 (81) FLR 234. The same is quoted below:

"Apart from that, language of Section 22 in no way would stand in the way of workers making recovery of wages much in the same way as recovery of tax by the Government as has been laid down by the Apex Court in the case of Deputy Commercial Tax Officer and others (supra). As further pointed out by the learned Counsel for the respondents, the petitioners have been paying wages of other workers in all such similar cases. It has been clearly conceded by the learned Counsel for the petitioners that in those cases payment was made as the present issue was not raised and this issue has been raised for the first time in this matter. As the contention of the applicability of Section 22 has been rejected, there is no substance in the arguments advanced on behalf of the petitioners."

8. Similar view has been taken in *Poysha Inds. Co. Ltd. v. Collector, Ghaziabad* (All India High Court) 1988 (79) FLR 167. The relevant paragraphs are quoted below:

"In the present case the recovery related to claim for wages by the workmen. Admittedly, the petitioner-company has not terminated the relationship of master and servant between the company and its workmen. No case has been made out of lay-off or lock-out or retrenchment or closure. Therefore, so long relationship of master and servant between the company and its workmen continues, the employer is bound to pay wages to the workmen even if the employer for some reason does not feel inclined to get actually the work done by the workmen. In respect of such payment the employer cannot dispute its liability because of the sickness of the Unit or pendency of the scheme for rehabilitation. Therefore, I am of the opinion that the proceeding for recovery of such wages is not covered by Section 22 of the said Act of 1985. Relying on the principle laid down in the case of *Shri Chamundi Mopeds Limited* (supra), I find that in case of such proceeding no consent from the B.I.F.R. is required. Contrary interpretation of law will result in compelling the present workmen to continue to discharge duties without any payment of wages and this also cannot be the intention of the legislature. If the purpose of said Act of 1985 is to rehabilitate the company itself, the same cannot mean that the workmen are to be compelled to continue without payment of wages as workmen are important constituent of the industrial unit. The said Act cannot be interpreted to mean that it saves only the employer and not the employees. Such an interpretation will not only leave the workmen to starve but also will lead to slavery. In the aforesaid circumstances, I hold that the recovery certificate, auction and removal of goods on the aforesaid ground do not become illegal. With respect to the contention regarding 1978 Act, I hold that the present claim of workmen in respect of wages is not a disputed claim in view of the findings, herein arrived, as regards such wages. True, when there is a dispute regarding adjudication of disputed facts relating to some claim of wages, a reference u/s 4 of the U. P. Industrial Disputes Act is required. But, this does not mean that in every case whenever employer refuses to pay, claim has to be described as disputed claim.

In the present facts, admittedly, the relationship of master and servant continues between the petitioner-company and its workmen and petitioner-company could not show any reason for withholding payment of wages of workmen so long such relationship continues. Therefore, I am of the opinion that the law as decided in the case of *Modi Industries Ltd. v. Addl. Labour Commissioner and Ors.* (supra) is applicable herein. Following the said law, I am of the view that the recovery certificate, auction and removal of goods in pursuance thereof are not illegal."

9. In view of the aforesaid facts and circumstances, the writ petition has no force and no interference is called for under Article 226 of the Constitution of India.

10. The writ petition is dismissed. The petitioner will pay the balance of salary; leave encashment and gratuity total amounting to Rs. 1,37,350.20 to the respondent No. 2 within a period of one month from the filing of the certified

copy of this order.

11. With the aforesaid observations, the writ petition is disposed of.