
(2003) 04 AHC CK 0042
In the Allahabad High Court
Case No : Appeal No: 36646 of 1996

Uttar Pradesh State Electricity Board and Another	APPELLANT
Vs	
Presiding Officer Labour Court IV, and Another	RESPONDENT

Date of Decision : 29-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 25F, 4K, 6N

Citation : (2003) 5 AWC 4216 : (2003) 5 AWC 4211

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Ranjit Saxena, for the Appellant; T.P. Singh, B.N. Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

Anjani Kumar, J.—By means of present writ petition under Article 226 of the Constitution of India, Petitioners-employer have questioned the award dated 30th May, 1996/1st June, 1996, passed by the Labour Court-IV, U.P. Kanpur, in Adjudication Case No. 38 of 1995, a copy whereof has been annexed as Annexure-11 to the writ petition.

2. By the order dated 15th February, 1995, the following dispute u/s 4K of the U.P. Industrial Disputes Act, 1947, was referred to for adjudication before the Labour Court, Kanpur.

3. The facts leading to the filing of present writ petition are that the concerned workman Dharmendra Kumar Bajpayee was appointed by the Petitioners-employer, according to the workman, as apprentice under the provisions of the Apprenticeship Act, 1961, which fact was denied by the employer before the labour court as well as before this Court in earlier writ petition filed by this very workman. This is admitted between the parties that the concerned workman was employed by the employer-Petitioners and his services were terminated w.e.f. 1st July, 1988. The workman concerned had filed a writ petition being 42798 of

1992 before this Court with the allegations that he was appointed as apprentice by the employer and that he was put to apprentice training as Accounts Clerk, which according to the assertion made in that writ petition, the workman concerned successfully completed, but the employer, Respondents in that writ petition and the Petitioners in the present writ petition, instead of employing the workman concerned after completion of the apprentice of training have refused to appoint the workman concerned. The writ petition filed by the workman concerned in the year 1992 was disposed of by this Court vide its order dated 17th May, 1993, the relevant portion of, which is reproduced below:

Accordingly, the Respondents are directed to consider the case of the Petitioner for appointment on the post in respect of which he has attained training in accordance with the provisions of the Apprentices Act, 1961 and to issue a letter of appointment to him, if he is otherwise eligible for the said post on availability of the post and further if no apprentice senior to the Petitioner is waiting for consideration. The Petitioner shall be appointed as far as possible within a period of one month from the date of presentation of a certified copy of this order before the Respondents.

4. Dharmendra Kumar Bajpayee, the concerned workman and the Respondent herein in the present writ petition, approached the employer by means of several representations and ultimately the representation dated 26th October, 1993, which has been decided by order dated 20th December, 1993, saying that since there is a ban by the Board/Undertaking since 1979/1980 on new appointments and further a large number of persons who have already been trained under the Apprentices Act, 1961, are waiting for appointments, who were senior to the workman concerned, therefore, it is not possible to consider the appointment of the Petitioner in view of the direction issued earlier by this Court on the writ petition filed by the concerned workman, namely, Writ Petition No. 42978 of 1992. The workman concerned thereupon approached under the machinery of Industrial Disputes Act and Labour Commissioner, who was exercising the power u/s 4K of the U.P. Industrial Disputes Act, 1947, has referred to aforesaid dispute, as stated above by the order dated 15th February, 1995. The Labour Court issued notices to the parties and invited their written statements. The case set up by the employer-Petitioners herein before the labour court was that the workman concerned Dharmendra Kumar Bajpayee was engaged as an apprentice under the Apprentices Act, 1961, for training in the trade of book keeping clerk and that being so Dharmendra Kumar Bajpayee is not a workman within the meaning of the word as defined under the U.P. Industrial Disputes Act, 1947. As such the present dispute relates to a non-workman and not an industrial dispute within the meaning of the aforesaid Act. The other stand taken by the Petitioners-employer was that the concerned workman was released from apprentice w.e.f. 30th June, 1988, namely, eight years back than the reference and that the present dispute is highly belated and is not maintainable in law. It is also the case set up by the employer that the concerned workman was engaged as apprentice w.e.f. 1st July, 1987, for a period of one year and that he was

released, as the stand taken by the employer on 30th June, 1988.

5. The labour court after considering the pleadings of the respective parties and going through the evidence have recorded a finding that the employer have failed to prove that the concerned workman was an apprentice, as the procedure prescribed for enrolling an apprentice under the Apprentices Act, 1961, was not followed and in fact the employer have appointed the workman on 1st July, 1987 and has allowed the workman to work till 30th June, 1988 and that his cessation from the work will amount to termination/ retrenchment within the meaning of the word under the provisions of the U.P. Industrial Disputes Act, 1947, which admittedly have been done without complying with the provision of Section 6N of the Act, which prescribes the procedure for retrenchment of the employee and this is *pari materia* to the Section 25F of the Industrial Disputes Act, 1947 (Central Act). Thus, the labour court vide its award have held that the retrenchment is illegal and the workman is entitled for reinstatement with continuity of service and back wages. It is this award, as stated above, which is under challenge by means of the present writ petition. This Court vide its order dated 18th November, 1996, passed the following interim order, which reads thus:

Hon"ble S. P. Srivastava, J. In the meanwhile, considering the implications arising under the judgment and order passed by this Court in Civil Misc. Writ Petition No. 42798 of 1992, decided on 17th May, 1993, which was *inter partes* and in view of the ratio of the decision of the Apex Court in the case of *U.P. State Road Transport Corporation and Anr. v. U.P. Parivahan Nigam Shishikshoo Berojgar Sangh and Ors.* : 1995 (2) AWC 828 (SC): (1995) 2 SCC 1, as well as the other facts and circumstances brought on record, it is directed that the operation of the impugned award dated 30th May, 1996, published on 1st June, 1996, a true copy whereof has been filed as Annexure-11 to the writ petition shall remain stayed till the date fixed.

6. From the record and the order-sheet, it is clear that the interim order was allowed to continue till further orders of this Court. Learned Counsel for the Petitioners-employer Sri Ranjeet Saxena has argued that his stand taken before the labour court was that the workman concerned approached the labour court with undue delay and, therefore, the labour court should have returned back the reference as highly belated. Sri Saxena, in respect of his argument has relied upon a decision of the Apex Court in *Assistant Executive Engineer, Karnataka v. Shivalinga*, (2002) 1 LLJ 457SC, which says that the labour court ought not to have interfered and answered the reference, as the same was highly belated. Paragraph 5 of the aforesaid judgment relied upon by learned Counsel for the Petitioners-employer is quoted below:

5. Learned Counsel for the Appellant strongly relied on the reasoning of the labour court and contended that the view of the High Court would not advance the cause of justice. Learned Counsel for the Respondent relied upon two decisions of this Court in *Ajaib Singh v. Sirhind Co-operative Marketing-cum-*

Processing Service Society Ltd. and Anr. and Sapan Kumar Pandit v. U.P. State Electricity Board and Ors. to contend that there is no period of limitation prescribed under the Industrial Disputes Act, to raise the dispute and it is open to a party to approach the Court even belatedly and the labour court or the Industrial Tribunal can properly mould the relief by refusing or awarding part payment of backwages. It is no doubt true that in appropriate cases as held by this Court in aforesaid two decisions, such steps could be taken by the Labour court or the industrial Tribunal as the case may be, where there is no such dispute as to relationship between parties as employer and employee. In cases where there is a serious dispute or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances, to make them available to a labour court or the industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think two decisions relied upon by the learned Counsel, have no application to the case on hand. Proceeding on the facts of the case, we think the High Court is wrong in having interfered with the award made by the Tribunal. The order made by the High Court in writ proceedings, therefore, shall stand set aside and the award made by the labour court shall stand restored. The appeal is allowed accordingly.

Learned Counsel for the Respondent (workman) relied upon two decisions of this Court in case of Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, and in the case of Sapan Kumar Pandit Vs. U.P. State Electricity Board and Others, and contended that

there is no period of limitation prescribed under the Industrial Disputes Act to raise a dispute and it is open to a party to approach the Court, even belatedly and the labour court or the Industrial Tribunal can properly mould the relief by refusing or awarding part payment of back wages. It is no doubt true that in appropriate cases as held by this Court in aforesaid two decisions, such steps could be taken by the labour court or the Industrial Tribunal, as the case may be, where there is no such dispute as to relationship between parties as employer and employee. In cases where there is a serious dispute or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances, to make them available to a labour court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think two decisions relied upon by the learned Counsel, have no application to the case on hand. Proceeding on the facts of the case, we think the High Court is wrong in having interfered with the award made by the Tribunal. The order made by the High Court in writ proceedings, therefore, shall stand set aside and the award made by the labour court shall stand restored.

7. In the present case, except for raising the ground that dispute is highly belated, the employer have no-where pleaded that records are not available or that there is serious dispute with regard to the appointment and continuance of the workman till 30th June, 1988. The only dispute raised by the Petitioners-employer before the labour court was that the workman concerned was appointed as apprentice for one year and after completion of apprentice training, he was released from the training which, as stated above, was found by the labour court was not supported by any evidence led on behalf of the employer, though the notices were admitted by the employer, inasmuch as that the procedure for appointment of apprentice under the Apprentices Act, 1961, will not be complied with by the employer while engaging the concerned workman as alleged by the employer, as apprentice. In these circumstances, the labour court recorded a categorical finding, which could not be assailed by the employer in the present proceeding that the findings are, either perverse, or suffers from the manifest error of law.

8. In view of the aforesaid fact, the finding recorded by the labour court that the stand taken by the employer that the concerned workman was appointed as apprentice has rightly been disbelieved by the labour court. In such circumstances, the labour court has rightly interfered with that the services of the workman was terminated, which was admitted fact, without complying with the provisions of Section 6N of the Act. In this view of the matter and in view of the fact that the facts of the present case and the findings recorded by the labour court do not come within the law laid down by the Apex Court in the case in Assistant Executive Engineer, Karnataka v. Shivalinga, (2002) 1 LLJ 457SC . The principles laid down by the Apex Court in two decisions, referred to in the aforesaid judgment, namely, Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, and in the case of Sapan Kumar Pandit Vs. U.P. State Electricity Borad and Others, , will apply and the claim of the Petitioners-employer that there was no doubt delay or that the labour court has admitted the stale claim delayed, has rightly been rejected by the labour court.

9. In view of what has been stated above, the award of the labour court does not warrant any interference by this Court under Article 226 of the Constitution of India. Learned Counsel for the Petitioners-employer then submitted that in view of the law laid down by the Apex Court in different decisions that admittedly since the workman has not worked, therefore, the principle of no work no pay will apply and, therefore, the workman is not entitled for the back wages. Suffice it to say that it is because of the interim order passed by this Court in the present writ petition, the workman was deprived to join the services after the award is passed in his favour. However, in the interest of justice, I direct the Respondents that the reinstatement with continuity of service awarded by the award impugned in the present writ petition does not warrant any interference. However, in the facts and the circumstances of the present case, the award of the labour court is modified only to the extent that instead of giving full back

wages, the concerned workman will be entitled for half of the wages, which he would have been entitled had he been allowed to join the services pursuant to the award under challenge.

10. With the aforesaid modification, this writ petition is allowed in part.