

(2013) 10 UK CK 0026

In the Uttarakhand High Court

Case No : Writ Petition (M/S.) No. 336 of 2006

Uttaranchal Jal Sansthan

APPELLANT

Vs

Assistant Labour Commissioner and Another

RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2014) 140 FLR 524

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Advocate : Rakesh Thapliyal, for the Appellant; Rajesh Sharma for State and Shailendra Nauriyal, for the Respondent

Final Decision : Allowed

Judgement

B.S. Verma, J.—Heard learned Counsel for the parties and perused the Lower Court record. By means of this writ petition, the petitioner has sought a writ in the nature of certiorari to quash the impugned order dated 18.2.2006, passed by Additional Labour Commissioner, Dehradun, Uttaranchal, in Adjudication Case No. 130 of 1997, Sanjay Dhyani v. Chief General Manager and another u/s 6H(1) of U.P. Industrial Disputes Act, 1947, whereby the application was allowed and the employer was directed to pay Rs. 3,01,351/- within a period of one month treating the wage to be paid to a regular employee.

Mr. Rakesh Thapliyal, learned Counsel, appearing for the petitioner, submits that section 6H(1) proceedings are an execution proceedings, the Additional Labour Commissioner has exercised the jurisdiction to pay the wage, which was being paid to the regular employee. Before the Court, the only dispute was, whether the service of the workman was illegally terminated. The Labour Court in Adjudication Case No. 130 of 1997, which was decided on 25.11.1997, has held that the retrenchment of the workman is illegal and therefore, he is entitled to be reinstatement with 50% of arrear of wages with cost of Rs. 500/- as case expenses and that order was confirmed by this Court vide judgment and order dated 24.11.2004, therefore the Additional Labour Commissioner ordered to pay,

if any amount due, as prescribed in the Minimum Wage Act for payment of wages to the workmen by the employers. Learned Counsel for the petitioner, further contended that the learned Additional Labour Commissioner has calculated the wage, as has been paid to the regular pump operators thus the learned Labour Court has committed a manifest error by doing so and it is a perverse finding. He cannot comment on the issue that whether the order passed by the learned Labour Court or the employer is discriminatory in nature. That amount cannot be calculated, if it was not directed to be paid by the Labour Court. The only issue to be decided before this Court is that whether the workman was being paid a regular pay scale prior to the retrenchment or whether he was receiving minimum wage, as prescribed under the Minimum Wage Act, as per Government Notification dated 10.5.2005.

2. It appears by the perusal of the pleadings of the parties as narrated in writ petition and in the counter-affidavit, that the wages were being paid as per Government Notification, which was issued in exercise of power of the State Government u/s 4(1) of the Minimum Wages Act, 1948 and the Government revised the wages from time to time. Therefore, by the impugned order, the direction was given by the Additional Labour Commissioner to pay the minimum pay-scale, as was being paid to the other regular Pump Operators. Learned Additional Commissioner, on the basis of wages given in the application, calculated the amount and directed to pay the amount mentioned in the claim application dated 19.12.2005 without giving any reason and without verifying the fact, as to whether, he is entitled for getting the same amount or not and without hearing Jal Sansthan.

3. In the light of the discussions made in foregoing paragraphs, I am of the considered view that the findings recorded by the learned Additional Labour Commissioner are erroneous as no reason has been assigned and the same are liable to be set aside.

4. The writ petition is allowed. The impugned order dated 18.2.2006 (Annexure No. 9 to the writ petition), passed by Additional Labour Commissioner is set aside. It is made clear that the respondent/workman is not entitled for the regular pay-scale since, he has not been regularized, this fact is not disputed by the respondent-employee that he is not a regular employee.

However, the Additional Labour Commissioner is directed to decide the application afresh, considering the objections and pass fresh order on the basis of the Government Orders, issued under the Minimum Wages Act, expeditiously, as far as possibly, preferably within six months from the date of production of certified copy of the order.