
(2010) 04 UK CK 0033

In the Uttarakhand High Court

Case No : Writ Petition No. 1536 of 2007 (M/S)

Vipin Bihari Lal

APPELLANT

Vs

Managing Director, U.P. Seeds and Tarai Devt. Corp. and
Others

RESPONDENT

Date of Decision : 02-04-2010

Acts Referred:

Citation : (2010) 04 UK CK 0033

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : S.K. Mandal, for the Appellant; Rajendra Dobhal assisted by, G.D. Joshi, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—Heard Sri S.K. Mandal, learned Counsel for the Petitioner. Sri Rajendra Dobhal, the learned senior counsel assisted by Sri G.D. Joshi, the learned Counsel for the Respondent No. 2.

2. The Petitioner has challenged the validity and the legality of the award dated 27-09-1992 (Annexure-21 to the writ petition) passed by the labour court, by which his claim for reinstatement has been declined, but, the labour court has awarded a sum of Rs. 20,000/- to the Petitioner as compensation.

3. The brief facts leading to the filing of the writ petition is that the Petitioner was appointed as a Mate-cum-Clerk on a temporary basis on 14th October, 1997 (sic). It is alleged that he was promoted as a Storekeeper on 06-12-1981. Thereafter, the services of the Petitioner was terminated by an order dated 17-06-1985 by giving one month's wages in lieu of one month's notice on the ground that his services was no longer required. The Petitioner, being aggrieved by the termination of his services, filed a claim petition before the Public Service Tribunal, which was, eventually dismissed directing the Petitioner to raise an arbitration proceedings under the agreement with the employers. It has come on

record that arbitration proceedings was held in which the arbitrator, vide an award dated 14-12-1987, held that the termination order of the workman was not in accordance with law and was also not passed by the competent authority and that the workman was not given any opportunity to defend himself. Based on the aforesaid award, the workman was issued a fresh appointment on the post of Storekeeper by an order dated 09th February, 1988. On this appointment letter, the Petitioner is alleged to have worked till 27th November, 1988, but the wages was not paid to him and, eventually, the Petitioner left the services again and joined as an Assistant Teacher pursuant to an appointment letter dated 23-02-1989.

4. In the meanwhile, after the dismissal of the claim application before the Public Services Tribunal and before the initiation of the arbitration proceedings, the Petitioner had moved an application before the Conciliation Officer under the UP. Industrial Disputes Act for the settlement of the dispute. Eventually, the State Government, by an order dated 18th August, 1987, referred the matter to the labour court for adjudication of the dispute. The dispute so referred was something like this:

whether the employer was justified in terminating the services of the workman Vipin Bihari Lal, Storekeeper w.e.f. 17th June, 1985? If not, to what relief is the workman entitled to ?

5. The labour court initially passed an ex-parte award directing the reinstatement of the workman, but, subsequently on an application of the employer, the award was set aside and the employer was directed to file its written statement. Before the labour court, the employer submitted that the Petitioner was juggling the books and was defrauding the opposite parties, which resulted in huge losses to the employer and an enquiry was made in which it was found that the Petitioner was guilty of manipulating the books, which led to a loss of confidence and, accordingly, the employer, instead of initiating full-fledged enquiry, issued a simplicitor order of termination, terminating the services of the workman wherein the employer had also given one month's wages in lieu of one month's notice. The employer further contended that the charges against the workman would be provided before the labour court, if required.

6. The award of the labour court indicates that necessary documents and witnesses were produced before the employer. The labour court, after considering the matter, found that the charge of manipulation in the books stood proved. The labour court further found that in view of the misconduct by the workman, the employer was justified in losing confidence against the workman. The labour court, consequently, held that the order of termination passed by the employer was justified in the facts and circumstances of case.

7. The labour court also considered the facts subsequent to the order of termination namely, the award passed by the Arbitrators pursuant to which the Petitioner was appointed afresh and again leaving the employment of the

opposite party and joining afresh as an Assistant Teacher in an educational institution vide order dated 23rd February, 1989. The labour court also found that the Petitioner was not paid the wages for the period, 09th February, 1988 to 27th November, 1988, i.e. the period which he had worked afresh pursuant to the second appointment letter issued in his favour. The labour court, consequently, concluded that the Petitioner would be entitled to a lumpsum compensation amounting to Rs. 20,000/-, which would include the arrears of wages for the period which he had worked subsequently.

8. The Petitioner, being aggrieved by the said award, has filed the present writ petition.

9. The learned Counsel for the Petitioner raised three submissions, namely that no enquiry or charge sheet or an opportunity of hearing was provided to the Petitioner before passing the termination order dated 17th June, 1985 and consequently, in view of the violation of the principle of nature justice, the order of termination was wholly illegal and the Petitioner is liable to be reinstated with continuity of service and full back wages. Further, the award passed by the Arbitrators was still operative and is required to be enforced by the employer. In the end, the learned Counsel submitted that the compensation awarded was wholly negligible, which included the wages for the period 09th February, 1988 to 23rd April, 1989 and, therefore, this Court should consider the matter and enhance the compensation, if the court is not agreeable for the reinstatement of the Petitioner's services.

10. Having heard the learned Counsel for the Petitioner at some length, this Court is of the opinion that Petitioner is not entitled for any relief and the award of the labour court does not suffer from any error of law.

11. With regard to the first contention of the learned Counsel for the Petitioner, this Court finds that admittedly, the order of termination dated 17th June, 1985 was passed without giving a chargesheet or holding a full-fledged domestic enquiry. The employer did not choose to hold an enquiry or give a chargesheet to the Petitioner. The employer had chosen to issue a simplicitor order of termination indicating that his services was no longer required and that the workman was given one month's wages in lieu of one month's notice. This order on the face of it appears to be arbitrary since it has come on record that the Petitioner's services was dispensed with on account of certain charges. The employers before the labour court contended that they would prove the charge before the labour court. Consequently, once the veil is lifted, the labour court could go behind the order of termination and see as to whether the order of termination was punitive in nature. The employers admit that the order of termination was based on certain charges, which they would prove before the labour court. The SC in a catena of cases has held that where no enquiry is held, the order of termination is not vitiated on that ground itself and it would be open to the employer to prove the charge against the workman before the labour court, namely, in *Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd.* and

Another, , Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another, , State Bank of India Vs. R.K. Jain and Others, , The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, , The Cooper Engineering Limited Vs. Shri P.P. Mundhe, , Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, and Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory, .

12. In the light of the aforesaid, it was open to the employer to justify their stand and prove the charges against the workman before the labour court. In the present case, the labour court after appreciation of the evidence led by the parties found that the charge leveled against the workman stood proved. The labour court also came to a finding that in view of the gravity of the charge, the employer had lost confidence. Consequently, the contention of the learned Counsel of the Petitioner that the Petitioner is liable to be reinstated because no opportunity was given or no domestic enquiry was made by the employer is not justified in the light of the aforesaid rulings.

13. The second contention of the learned Counsel for the Petitioner that the award of the Arbitrators is still operative and is liable to be enforced by the employer, is patently misconceived. The reason is that the employer accepted the award passed by the Arbitrators and issued a fresh appointment letter dated 09th February, 1988 in favour of the Petitioner and based on such appointment letter, the Petitioner joined and continued to work till he left his services on his accord by taking an employment elsewhere. This Court is of the opinion that the award of the Arbitrators was duly implemented by the employer and instead of reconsidering the matter, the employer had issued a fresh appointment letter to the Petitioner.

14. There is another side to it. It is settled law that if the Petitioner has more than one avenue for redressal of his grievance, it is open to him to choose any avenue, which he prefers, but, having chosen one avenue, it is no longer open for the Petitioner to choose another avenue for the redressal of his grievance. In the case in hand, once the Petitioner invokes the arbitration proceedings and an award has been made, it was no longer open to the Petitioner to invoke another jurisdiction for the redressal of the same grievance. On that score, this Court is of the opinion that the proceedings initiated before the labour court were without jurisdiction, but, the Court is not quashing the said award on this ground itself since it finds that substantial justice was served by the labour court by giving a compensation of Rs. 20,000/.

15. The contention of the learned Counsel for the Petitioner that the compensation was negligible and that the compensation should be enhanced is unwarranted. As per the statements of the learned Counsel for the Petitioner, the salary, which the Petitioner would have fetched was approximately Rs. 1,345/- per month on the post of Storekeeper. If calculated for the period which he had worked and taking other aspects, the total amount of Rs. 20,000/- awarded by the labour court is sufficient and substantial. In the light of the aforesaid, this

Court does not find any error in the impugned award. The writ petition fails and is dismissed. In the circumstances, the parties shall bear their own cost.