

(2005) 04 AHC CK 0157

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2728 of 2003

Wheels India Limited

APPELLANT

Vs

State of U.P. and Ishwar Dayal

RESPONDENT

Date of Decision : 15-04-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Industrial Disputes Act, 1947 — Section 2

Citation : (2005) 6 AWC 5423 : (2005) 2 ESC 1461 : (2005) 106 FLR 417

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : J.N. Tiwari and Krishanji Khare, for the Appellant; Shabad Ali, Subodh Kumar, Shyam Ji Gaur and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Sri J.N. Tiwari, Senior Advocate, assisted by Sri Kirshnaji Khare, Advocate on behalf of the petitioner, Sri Shabad Ali, Advocate, holding brief of Sri Subodh Kumar, Advocate on behalf of the respondent No. 3-workman and Learned Standing Counsel on behalf of the respondent Nos. 1 and 2.

2. M/s Wheels India Ltd. is a company duly registered under the Companies Act, 1956. The said company has established an industrial unit for manufacture and sale of wheels at Tanda Bali, District Rampur. The Company has its Certified Standing Orders providing for the condition of employment applicable to the employees of the said factory as well as other factories of the company.

3. Respondent No. 3, namely, Ishwar Dayal was employed in the industry. The respondent-workman was issued warning letters dated 9th June, 1997 and 14th December, 1999 in respect of the certain misconduct. On 7th February, 2001 a show-cause notice was issued to the workman to show-cause as to why the services of the workman be not terminated for being habitual absentee as per the provision of the Certified Standing Orders applicable. The respondent-workman submitted his reply to the said show-cause notice. However, the

employers instead of holding disciplinary proceedings in respect of the alleged misconduct of the workman resorted to exercise of powers u/s 20(1) of the Certified Standing Orders and discharged the workman from service after giving one month's notice/ by payment of one month's wages in lieu thereof by means of the order dated 22nd February, 2001.

4. Feeling aggrieved by the aforesaid action of the petitioner-employers, the respondent-workman raised an industrial dispute, which was referred by the State Government for adjudication to the Labour Court, Uttar Pradesh, Rampur. The said reference was registered as Adjudication Case No. 104 of 2001. The Labour Court after hearing the parties by means of the award dated 31st May, 2001 held that the termination of the services of the workman w.e.f. 22nd February, 2001 was illegal and the workman was entitled to be reinstated and paid his back wages from the date of termination till reinstatement. It is against this award of the Labour Court that the petitioner-employers have filed the present writ petition.

5. The petitioner has challenged the award of the Labour Court on the following two grounds:

(a) The discharge of the workman has been effected in accordance with the provisions of Clause 20(1) of the Certified Standing Orders, and therefore, the Labour Court was not justified in recording a finding that the employers should have conducted disciplinary proceedings in respect of the alleged misconduct of overstay of leave;

(b) Even if, it is held that the discharge of the workman was not legally sustainable, the Labour Court was under legal obligation to have afforded opportunity to the employers to establish the misconduct on the part of the workman on the basis of the evidence which may have been led before the Labour Court and to have decided as to whether the action of the management was justified or not.

6. In that regard the petitioner has placed reliance upon the judgments of Hon'ble Supreme Court reported in Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, as well as reported in (2004) 8 Supreme Court Cases 135 (Pushpagiri Medical Society v. State of Kerala and Ors.).

7. On behalf of the respondents it is contended that the employers had come with a definite case before the Labour Court that they had discharged the workman. Therefore the only question, which was up before the Labour Court, was confined to the issue as to whether the discharge, in the facts of the case, was legally justified or not under Clause 20(1) of the Certified Standing Orders. The employers cannot be permitted to question the award of the Labour Court on the ground that they have been denied opportunity to lead evidence to establish the misconduct of the workman. The award of the Labour Court is to be judged on the pleadings and the contention raised before the Labour Court only.

8. I have heard learned counsel for the parties and have gone through the records.

9. From paragraph Nos. 10 and 11 of the writ petition read with paragraph 29 of the written statement filed before the Labour Court as well as from the order of discharge dated 22nd February, 2001 (a copy whereof has been enclosed as Annexure No. 4 to the writ petition) and from the statement of employers before the Labour Court (a copy whereof has been enclosed as Annexure No. 10 to the writ petition), it is apparently clear that the only case pleaded by the employers was with reference to the discharge of the permanent employee, respondent No. 3 in exercise of power under Clause 20 (1) of the Certified Standing Orders. It is also apparent from the record that the employers after issuing notice to the workman and after receiving his reply, did not proceed to hold any disciplinary proceedings in respect of alleged misconduct and for the reason best known to them decided to take action in exercise of power 20(1) of the Certified Standing Orders.

10. In view of the pleadings as aforesaid it is established that the employers tried to justify their action before the Labour Court only with reference to the power under Clause 20(1) of the Certified Standing Orders. Clause 20 (1) of the Certified Standing Orders reads as follows:

"20) Term/nation of employment of workmen

(1) Any permanent employee may be discharged from service for any reason, by giving one month's notice or by payment of one month's wages in lieu thereof."

11. From the aforesaid clause, it is apparently clear that the services of the permanent employee have been permitted to be discharged by giving one month's notice or by payment of one month's wages in lieu thereof.

12. Such a clause has been subject matter of interpretation before the Hon'ble Supreme Court in the judgments reported in Uptron India Limited Vs. Shammi Bhan and Another, and D.K. Yadav Vs. J.M.A. Industries Ltd., and it has been held that Certified Standing Orders having statutorily force, must be in consonance with principles of natural justice and Articles 14 and 21 of the Constitution of India. Automatic discharge under Certified Standing Orders because of absence, without leave or beyond the period of sanctioned leave without holding any domestic enquiry or without affording opportunity to the workman has been held to be in violation of principles of natural justice. The Hon'ble Supreme Court has further held that the discretionary power conferred upon the employers under the Certified Standing Orders to terminate or not to terminate a confirm employee, who had unauthorizedly overstayed the leave, must be exercised in accordance with principles of natural justice. It has further been held that the termination if resorted to in such circumstances would amount to retrenchment u/s 2(oo) of the Industrial Disputes Act, 1947.

Issue No. (a).

13. In view of the aforesaid legal position and in view of the finding recorded by the Labour Court, it is established beyond doubt that employers did not hold any enquiry against the workman- respondent and did not ascertain the cause of unauthorized absence before the resorting to discharge of the workman in pursuance of Clause 20(1) of the Certified Standing Orders. In such circumstances, the award of the Labour Court dated 31st May, 2002, which has been passed strictly in accordance with law, calls for no interference.

Issue No. (b).

14. So far as the issue No. (b) is concerned, suffice it to point out that the only case pleaded by the employers before the Labour Court was with regard to exercise of power under Clause 20(1) of the Certified Standing Orders, it was not their case that they have passed the order of discharge of the workman by way of punishment, nor the employers made any prayer before the Labour Court for being permitted to lead evidence for the purposes of bringing home the charges, so as to justify their action. Neither any such pleadings have been raised before the Labour Court nor any attempt was made to establish the misconduct attributed to the workman on the basis of the evidence proposed to be led before the Labour Court.

15. It is settled law that the awards of the Labour Court are to be judged on the basis of pleadings and the contentions raised before the Labour Court. The award of the Labour Court cannot be questioned by the petitioner on grounds, which were never raised nor were subject matter of consideration before the Labour Court. [Reference; (1998) 1 SCC 248, Menka Gandhi v. Union of India].

16. In view of the aforesaid this Court is not inclined to interfere with the award of the Labour Court on the basis of the contentions raised on behalf of the petitioner.

17. The writ petition is accordingly dismissed. No order as to cost.