
(2010) 08 AHC CK 0511

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 33247 of 1991

Workman of Durga Enterprises Pvt. Ltd.

APPELLANT

Vs

Industrial Tribubal (5) and Another

RESPONDENT

Date of Decision : 19-08-2010

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 2(10), 40, 40, 4B
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : (2011) 2 ADJ 138

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Judgement

Arun Tandon, J.—Substitution is allowed.

In the facts and circumstances of the case, this Court holds that since 5 of the workmen had espoused the case of the workman of M/s Durga Enterprises and since during the pendency of the writ petition three have expired, the two, who still survives, are competent enough to pursue this writ petition.

2. By means of the impugned order dated 16.12.1999 the necessary reference made by the State Government u/s 4-K of the U.P. Industrial Dispute Act, 1947 has been returned unanswered on the ground that as per Rule 40 of the U.P. Industrial Disputes Rules, 1947 if there is no union of workmen of the industry then their claims can be represented by a representative duly nominated by the workmen to make an application before the Conciliation Board but such an application must be signed by 5 of the workmen employed in the industry concerned, and they must be duly elected by majority of their employees in a meeting held for the purpose. It has been held that one of the representatives who had signed the papers, has categorically stated on oath that no meeting was held to elect them as the representatives of the workmen or to espouse their case, he is not interested in the dispute. It has been held that since the dispute has not been espoused by persons authorised under a meeting held for this purpose, the application for conciliation represent of the workmen was defective

and, therefore, the reference itself is defective.

3. On behalf of the Petitioner, it is pointed out that u/s 4-K of the U.P. Industrial Dispute Act a reference in respect of existing dispute can be made by the State Government at any time. The Section only contemplates that if any dispute is existing or is apprehended, the State Government can refer the dispute for adjudication to the Labour Court or the Labour Tribunal, as the case may be. There is no requirement of any application being made by the workmen concerned for such a reference being made. The power can be exercised by the State Government suo moto.

4. Rule 40 of the U.P. Industrial Disputes (Central) Rules, 1957 provides as follows:

Representatives of employer.-Subject to the provisions of these rules, the representatives of the employer shall be nominated by the employer and shall, as far as possible, be officials in direct touch with or associated with the working of the establishment.

From a simple reading of the aforesaid Rule 40, it will be seen that it is the choice of the workers to nominate their representatives where there is no union of the workmen. The said representatives have been provided for in the matters of making of the conciliation application and any orders issued by the Government or any Member of the Executive or by other Officer. There is no requirement that? at least five members are to be appointed as representatives of the workmen for espousing their case.

5. In view of the aforesaid, this Court records that the findings recorded in the impugned order that application has to be made by at least five of the workmen is totally uncalled for and not borne out from Rule 40 of the U.P. Industrial Disputes Rules, 1947 as noted above.

6. At this stage, counsel for the Respondents made reference to Rule 4-B of the Industrial Disputes (Central) Rules, 1957 for suggesting that at least five workers are required to espouse the case of the workmen of the industry where there is no union. The contention raised on behalf of the employer cannot be accepted by this Court. Rule 4-B will have no application in a dispute referred u/s 4-K of the Industrial Disputes Act. The procedure of representation of the workmen qua such disputes has specifically been provided for under Rule 40 of the U.P. Industrial Disputes Rules. Even otherwise Rule 4-B deals an application to be made under Rule 2(10) for reference of Disputes to the Boards, Courts or Labour Courts or Tribunals. Such application will not in any way affect the discretion vested in the State Government to make a reference u/s 4-K of the Industrial Disputes Act.

For the reasons recorded above the Court hold that the impugned order dated 16.12.1999 cannot be legally sustained. It is hereby quashed.

Let the Labour Court decide the reference on merits after affording opportunity

of hearing to the parties concerned by reasoned of a speaking orders preferably within four months from the date of providing of the certified copy of this order.

Writ petition is allowed.