
(2009) 04 AHC CK 0008

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 39263 of 2007

Zila Gramodyog Adhikari, Aligarh and another

APPELLANT

Vs

Pradeep Kumar and another

RESPONDENT

Date of Decision : 10-04-2009

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 17B, 2(z), 6N

Citation : (2009) 121 FLR 1117

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Rajiv Sharma, for the Appellant; R.C. Maurya, D.B. Yadava and S.C., for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard learned Counsel for the parties.

The Petitioner was appointed on a fixed rate of Rs. 2,500/- per month. Subsequently, by an order dated 9.8.2003, the wages was increased to Rs. 3,500/-per month. The Petitioner, by an order dated 26.4.2004, terminated the contract of service of the Petitioner w.e.f. 5.7.2004, on the ground, that the work was no longer required since the back log had now been completed and, that the Petitioner was appointed on a contract basis. The workman, being aggrieved, raised an Industrial Dispute with regard to the validity and legality of the order of his termination. The Labour Court, after considering the evidence that was brought on the record, gave an award directing reinstatement of the workman with continuity of service and with full back wages. The Labour Court found that the workman had worked for more than 240 days in a calender year and that retrenchment compensation had not been paid in accordance with the provisions of Section 6-N of the U.P. Industrial Disputes Act and therefore, the order of the management dispensing the services of the workman was illegal and against the provisions of Section 6-N of the U.P. Industrial Disputes Act.

2. The Petitioner, being aggrieved by the aforesaid award, filed a writ petition and an interim order was granted staying the award provided the Petitioner complied with the provisions of Section 17-B of the Industrial Disputes Act.

3. The learned Counsel for the Petitioner submitted that the workman was appointed for a fixed term on a contract basis and, upon the completion of the contract, his services was dispensed with. Since the Petitioner was not appointed on any post, the provisions of retrenchment compensation was not applicable and therefore, he was not liable to be paid retrenchment compensation. In support of his submission the Petitioner has relied upon a decision of the Supreme Court in Himanshu Kumar Vidyarthi and Ors. v. State of Bihar and others, 1997 (76) FIR 237 (SC) in which it has been held that where an appointment is regulated by statutory rules, the concept of industry stands excluded and consequently, the provisions of Industrial Disputes Act was not applicable.

4. Having heard the learned Counsel for the Petitioner at some length, the Court is of the opinion, that the submissions raised by the learned Counsel for the Petitioner is bereft of merit and that the award of the Labour Court does not suffer from any error of law. The judgment cited by the learned Counsel for the Petitioner has no application whatsoever. There is nothing to indicate that the Petitioners appointment was in pursuance of any statutory rules. The concept of industry, vis-a-vis, the Industrial Disputes Act stands excluded only when the statutory Rules governs the appointment and service conditions of an employee or a workman. In the present case there is nothing on the record to indicate that the Petitioner had appointed the workman on the basis of any statutory rules. In the absence of any statutory Rules, the provisions of Industrial Disputes Act becomes applicable since the workman is admittedly a workman as defined u/s 2(z) of the U.P. Industrial Disputes Act.

5. The Labour Court has given a categorical finding of fact that the workman had worked for more than 240 days. No illegality in this finding has been pointed out by the Petitioner. Consequently, on this score, no interference is required by the Court. In so far as back wages is concerned, the Court finds that the award of the Labour Court granting complete back wages was arbitrary. The Labour Court should have gone into the question as to whether the workman was gainfully employed during the interim period or not. At this juncture, the Court would have remitted the matter back to the labour Court for adjudication. The Court also finds that by an interim order, the Court had directed the Petitioner to pay last drawn wages to the workman during the pendency of the writ petition. Consequently, instead of remitting the matter back to the Labour Court and further delegating the workman to take recourse to the provision of execution of the award for computation of the wages in terms of the award, this Court finds that it would be proper, if a lesser amount is awarded by way of back wages. Considering the facts and circumstances of the case, I find that 50% of the back wages would be adequate. The Court, accordingly, modifies the award to the

extent of grant of back wages and directs that the Petitioner will pay a sum of Rs. One lac towards back wages from the date of the termination till 31st March, 2009 in full and final settlement. The Petitioner is further directed to reinstate the Workman within four weeks from today and starts paying wages from 1.4.2009 onwards.

The writ petition stands partly allowed.