

(2004) 01 AHC CK 0040

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 14531 of 1984

Verma Service Station and
Another

APPELLANT

Vs

Presiding Officer, Labour Court
and Others

RESPONDENT

Date of Decision: Jan. 27, 2004

Acts Referred:

- Uttar Pradesh Industrial Disputes Act, 1947 - Section 2A

Citation: (2004) 102 FLR 138 : (2004) 2 UPLBEC 1325

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Advocate: A.K. Tripathi and S.N. Agrawal, for the Appellant; J.C. Bhardwaj and S.C., for the Respondent

Final Decision: Allowed

Judgement

Rakesh Tiwari, J.

Heard Counsel for the parties and perused the record.

2. This writ petition is directed against the award dated 4.4.84 passed by respondent No. 1.

3. Brief facts of the case are that respondent No. 2 made a complaint to the Regional Conciliation Officer, Agra stating the he has been illegally removed from service. On his complaint a notice was issued to the petitioner by the Labour Inspector directing the petitioner as well as respondent No. 2 to appear in his office on 17.3.1981 for the purposes of making enquiry. The enquiry could not be made by the Labour Inspector on 17th March, 1981 and the case was fixed on 30th March, 1981. On the said date, the workman appeared and he made his statement and stated that he was in service of the petitioner since 5.10.1980 and worked till 8.1.1981. He was paid salary on 8.1.1981. The Labour Inspector recorded his statement and Netra Pal. The

respondent put his signature on the statement as well as on the report which was submitted by the Labour Inspector to the Conciliation Officer. Harish Chandra Verma appeared on behalf of the petitioner and he made statement before the Labour Inspector on 7.4.1981 that Sri Netra Pal was not in the employment of M/s. Verma Service Station. The State Government made a reference to Labour Court, Agra where it was registered as Adjudication Case No. 218 of 1982. The petitioner submitted his objection. In Para 5-A of the objection, he petitioner quoted the statement which respondent No. 2 has made before the Labour Inspector. The respondent No. 2 filed replication to the objection filed by the petitioner. He did not deny that he did not make any statement and he denied the averments made in Para 5-A of the objection. The petitioner moved an application before the Labour Court to summon the record of the Conciliation proceedings, but the application was returned with the observation that respondent No. 2 had not denied the statement which he had made before the Labour Inspector and in these circumstances it was observed that that summoning of the Labour Inspector was of no consequence. The petitioner filed the following documents before the Labour Court :

- (i) Attendance Register 1.4.80 to 31.3.1981
- (ii) Inspection report No. 209945, dated 20.8.80
- (iii) Inspection report No. 214835, dated 9.12.1980
- (iv) Inspection report No. 260665, dated 28.3.1981

4. The attendance register was duly verified by the Labour Inspector. The attendance register also contains his signature. It is alleged that the Court did not look into the signatures of the Labour Inspector on the register.

5. There was no dispute that the attendance register did not contain the signatures of the Labour Inspector. It is also not in dispute that at the time of inspection the names of the employees were given and their names were verified by the Labour Inspector after checking the attendance register and other documents.

6. It is submitted that the Labour Court has not considered these reports and thereby failed to consider the relevant material evidence on the record which vitiates finding. The reports clearly indicate that Netra Pal was never shown as employee of M/s. Verma Service Station. However, the Labour Court has taken the view that petitioner in his written statement admitted that respondent No. 2 worked for about 3 months in M/s. Verma Service Station. It is submitted that the observation is incorrect as the petitioner in Para 5 of the written statement had denied that respondent No. 2 ever worked in M/s. Verma Service Station. It is also stated in Para 5-A of the written statement that the petitioner only quoted the written statement which the respondent No. 2 has made before the Labour Inspector and in Para 5-B of the written statement an alternative plea was taken that

the view of the Labour Court that the Labour Inspector submitted a report that the Government can take action u/s 2-A of the U.P. Industrial Dispute Act was illegal.

7. No counter affidavit has been filed. I have perused the record. The Labour Court has given a finding that :

^^Jfed us esllZ oekZ lfoZI lVs"ku] fQjstkckn esa dsoy rhu ekg vkSj rhu fnu gh dk;Z fd;k gS ftldh iqf"V Jfed }kjk fujh{kd ds le{k fn;s x;s c;kuksa ls dh tk ldrh gS A blds vfrfjDr Isok;kstdksa dh vksj ls ;g Hkh dgk x;k gS fd Je fujh{kd }kjk laLFkku dk mifLFkfr iaftdk gks fd vizSy] 1980 ls ekpZ] 1981 rd dk Fkk esa psd fd;k x;k vkSj mlesa Jfed dk uke ugha ik;k x;k A Isok;kstdksa dh vksj ls ,d mifLFkfr iaftdk Hkh nkf[ky dh xbZ ysfdu Je fujh{kd ds c;ku ugha dj;k x;s ftlds vHkko esa bl ckr dh iqf"V ugha dh tk ldrh fd okLro esa Je fujh{kd us bl laLFkku dk fujh{k.k fd;k vFkok ugha A**

The findings of the Labour Court that :

^^;fn Jfed okLro esa Isok;kstdks ds ;gkW dk;Zjr ugha Fkk vkSj ;g fookn "krizfr"kr >wBk gS rks Je fujh{kd vius i= iz- Mcyw@4 }kjk ea=h] Xykl etnwj lHkk] fQjstkckn dks ;g lykg ugha nsrk fd nksuksa ikksa esa le>kSrK ugha gks ldk gS A vr% Jfed paks rks viuk fookn vf/kfu;e dh /kkjk 2&, ds vUrxZr lajk;u vf/kdkjh ds le{k izLrqr dj ldrh gS A bls ;g Hkh fl) gksrk gS fd Jfed us esllZ oekZ lfoZI lVs"ku] fQjstkckn ij vo"; gh dk;Z fd;k gS A leqfpr volj ds ckotwn Hkh Isok;kstd bl ds fo:) dqN fl) ugha dj lds A vr% eSa bl fu"d"kZ ij igqWprk gwW fd Isok;kstdksa us Jfed us=iky flag dks fnukad 10&12&1980 ls vuqfpr ,oa voS/kkfud :i ls Isok; ls i`Fkd dj fn;k gS vkSj Jfed iw.kZ cdk;k osru viuk vfHkfu.kZ; ikfjr djrk gwW A**

8. From the findings quoted above it is apparent that the award is based on surmises and conjectures inasmuch as if the employee and the alleged employer do not come to terms or settle the dispute, there exists an industrial dispute. The employer had categorically denied the relationship of master and servant. Merely because the Labour Inspector gave an advice to respondent No. 2 to raise an industrial dispute and industrial dispute will not come in existence. It was incumbent upon the Labour Court to have adjudicated the dispute and ought to have decided the matter on the basis of evidence led before it. The conclusion drawn by the workman that the Labour Inspector had advised respondent No. 2 to file a case u/s 2-A of the Industrial Disputes Act in itself was sufficient to establish that he was an employee of the petitioner can not be sustained. The Labour Court has committed an error apparent on the face of the record for putting the burden of proof on the shoulder of the employer to establish that respondent No. 2 was not employed in the establishment. The Apex Court in case of Range Forest Officer v. S.T. Hadimani 2002 (94) FLR 622 has held that the burden of proof lies on the party who has initiated the dispute and claimed relief. The petitioner could not have given any negative evidence and as such, the findings of the Labour Court are perverse and against the material on record. There was no documentary evidence before the Labour Court from which it could be established that respondent No. 2 had

completed 240 days of actual service. From perusal of Annexures 6 to 8 it appears that respondent No. 2 has not worked 240 days, the averments made in the petition have not been rebutted by filing any counter affidavit. It appears that it has become stale. The termination is said to be of 8.1.81. By now 23 years have passed. The workman must have lost interest, hence he did not file counter affidavit.

9. For the reasons stated above, the writ petition is allowed. No order as to cost.