

(2007) 01 AHC CK 0064

Allahabad High Court

Case No: None

State of U.P.

APPELLANT

Vs

The Presiding Officer,
Labour Court and Sri
Keshav Singh

RESPONDENT

Date of Decision: Jan. 8, 2007

Citation: (2007) 2 ADJ 460 : (2007) 5 AWC 4783

Hon'ble Judges: S.U. Khan, J

Bench: Single Bench

Judgement

S.U. Khan, J.

Heard learned Counsel for the parties.

2. This writ petition by the employer is directed against the award dated 30.4.1999 passed by Presiding officer, Labour Court, Varanasi in Adjudication Case No. 85 of 1997.

3. The matter which was referred to the Labour Court was as to whether the action of the employer in not making permanent its employee Keshav Singh, respondent No. 2 and terminating his services with effect from 16.3.1995 was valid and legal?

4. The workman pleaded before the Labour Court that he was appointed on the post of Mali in March 1991 on daily wages and he worked without any break till 15.3.1995, however, when he raised the demand for his regularization and wages equivalent to the wages which were paid to the regular / permanent employees, his services were terminated with effect from 16.3.1995 orally. The employer petitioner pleaded that the workman had worked with it only till September, 1992. The respondent No. 2 filed a letter written by Ramji Singh Junior Engineer dated 21.1.1994 in respect of three workmen, which included his name also. Before the Labour Court the employer could not produce the Register of daily wages subsequent to 1992.

5. Ultimately Labour Court held that termination of services of respondent No. 2 was illegal. Reinstatement was directed by the Labour Court. It was further directed that since the date of termination till the date of award, respondent No. 2 should be paid the wages admissible to daily wager and since the date of Award he must be paid the wages along with other benefits paid and admissible to regular malis. However, prayer for making the respondent No. 2 permanent was declined.

6. In this writ petition no stay order was granted. However, learned Counsel for both the parties have stated that till date neither respondent No. 2 has been reinstated nor any wages have been paid to him.

7. A daily wager holds no post. However, a daily wager is very much entitled to the benefits of Section 6-N of the U.P. Industrial Disputes act. Even according to the version of the employer, respondent No. 2 worked from March 1991 till September, 1992, hence he was fully entitled to the benefit of Section 6-N of U.P. Industrial Disputes Act.

8. So far as the case of respondent No. 2 that he worked till March, 1995 is concerned, it is based only and only upon a certificate of a Junior Engineer dated 27.1.1994. This fact could be proved by the workman by filing payment slip etc. which was not done. Burden to prove that workman had worked for a particular period lies upon him. However this fact is not much material as no grievance was made regarding wages from September 92 to March, 1995.

9. In any case even if termination of services was in violation of Section 6-N of U.P. Industrial Disputes Act, still reinstatement in every case is not the proper relief. Respondent No. 2 was working on daily wage basis. There was serious dispute regarding the period for which respondent No. 2 worked. In such situation, in my opinion, in stead of reinstatement the proper relief would be award of damages.

10. Recently the Supreme court in several authorities has held that even if termination is violative of Section 6-N of U.P. Industrial Disputes Act or 25-F of Industrial Disputes Act, still award of consolidated damages is more appropriate relief than reinstatement vide [Nagar Mahapalika \(Now Municipal Corpn.\) Vs. State of U.P. and Others](#), and [Haryana State Electronics Development Corporation Ltd. Vs. Mamni](#),

11. It has been stated on behalf of Employer that daily wagers were employed only when sanctioned by the Government and over and above the sanctioned post concerned officer had no authority to appoint a daily wager. Moreover, the workman did not show that he was not gainfully engaged after his removal.

12. In view of the above facts and circumstances and the position of law, the award of the Labour Court is modified. It is directed that in stead of reinstatement with back wages respondent No. 2 shall be entitled to a consolidated sum of Rs. 50,000/-. If any amount has already been paid to the workman since after the award the same

shall be adjusted there from. The entire amount shall be paid within three months failing which 1 per cent per month interest shall be payable after three months till the actual payment of the amount.

13. Writ petition is accordingly disposed of.