(2012) 08 AHC CK 0198

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 19063 of 1999

M/s. Swadeshi Cotton Mills		APPELLANT
	Vs	
Labour Court (II) and Others		RESPONDENT

Date of Decision: Aug. 23, 2012

Acts Referred:

- Evidence Act, 1872 - Section 106
- Industrial Disputes Act, 1947 - Section 17B, 25F

Citation: (2013) 2 ADJ 303 : (2013) 2 ALJ 291 : (2013) 136 FLR 379 : (2013) LabIC 1082 : (2013) 2 LLN 307 : (2013) LLR 285 : (2013) 1 UPLBEC 211

Hon'ble Judges: B. Amit Sthalekar, J

Bench: Single Bench

Advocate: Devendra Pratap and Siddharth Singh, for the Appellant; N.P. Singh and C.S.C., for the Respondent

Final Decision: Allowed

Judgement

B. Amit Sthalekar, J.

This writ petition has been filed by the petitioner challenging the order dated 27.3.1997 as published in the official Gazette on 4.10.1997 passed by Labour Court (II) U.P., Kanpur, respondent No. 1. The facts of the case, in brief, are that, the respondent No. 2, Prem Narain was working as Weaver in the petitioner establishment. He was transferred from one loom to another. He failed to carry out the order of transfer. He was issued a charge-sheet on 9.8.1991 to which he submitted his reply on 13.8.1991. Departmental proceedings were initiated against the respondent No. 2/workman and thereafter by an order dated 31.10.1991, petitioner''s services were terminated.

2. Aggrieved by the order dated 31.10.1991, the petitioner raised an industrial dispute which was registered as Adjudication Case No. 46 of 1993. As a preliminary issue, on the question as to whether termination of service of the petitioner was

according to the principles of natural justice or not, the labour Court vide its award dated 15.5.1996 held that the services of the respondent No. 2/workman were terminated illegally and in the departmental proceedings the principles of natural justice had not been complied with. This order was never challenged by the petitioner/Mills and the said order became final.

3. The labour Court further proceeded to hear the matter and thereafter, by the impugned award dated 27.3.1997 published on 4.10.1997 directed that the respondent No. 2/workman would be entitled for reinstatement in service and he will also be entitled for entire salary and back wages for the period from the date when his services were terminated.

4. I have heard Sri Siddharth Singh, learned counsel for the petitioner company and Sri J. P. Gupta, holding brief of Sri N.P. Singh, learned counsel for the respondent No, 2, workman.

5. No doubt the order of termination dated 31.10.1991 passed by the petitioner Mills terminating the services of the respondent No. 2 workman was set aside by the labour Court vide its order dated 15.5.1996 and that order was never challenged by the petitioner Mills and therefore, became final but it is also not disputed between the parties that the respondent No. 2 workman in the ordinary course superannuated on 1.7.1997 and therefore, on the date when the award was published on 4.10.1997, the respondent No. 2, workman could not have been reinstated in service. Therefore, the only question which now remains for consideration is as to whether the order of the labour Court for awarding the back wages to the respondent No. 2 workman from the date of termination of his service i.e. on 31.10.1991 till date of his reinstatement would be a valid order and whether such an order could be made at all and whether at this stage such an order could be given effect considering the fact that the workman had retired from service on 1.7.1997.

6. From a perusal of the impugned award, it can be seen that there is no discussion of any pleadings by the workman that after the termination of his services, he was not gainfully employed anywhere inasmuch as it is only in these circumstances that the award for back wages could have been made by the labour Court. A perusal of the impugned award does not reveal that any such pleading was made by the respondent No. 2, workman or any such tissue was ever raised before the labour Court. Therefore, before awarding back wages, it was incumbent upon the labour Court to have considered this aspect of the matter as to whether the respondent No. 2, workman had been gainfully employed after his services were terminated. In the absence of any positive finding of the labour Court and in the absence of pleadings by the respondent No. 2, workman, as back wages could not have been awarded automatically. The consistent view of this Court as well as the Supreme Court is that no back wages can be awarded to the workman automatically in the absence of any pleading by him that during the period he was out of service on

account of termination or otherwise, he was not gainfully employed :

The Supreme Court in General Manager, Haryana Roadways Vs. Rudhan Singh, , has held as follows:

8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be com-pared to short or intermittent daily-wage employment though it may be for 240 days in a calender year.
In U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, , the Supreme Court has held as follows:

22. No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act.

42. A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an Industrial Court shall lose much of their significance.

61. It is not in dispute that the respondent did not raise any plea in his written statement that he was not gainfully employed during the said period. It is now well-settled by various decisions of this Court that although earlier this Court insisted that it was for the employer to raise the aforementioned plea but having regard to the provisions of Section 106 of the Evidence Act or the provisions analogous thereto, such a plea should be raised by the workman.

Therefore, tine Court has held as follows :

45. The Court, therefore, emphasised that while granting relief application of mind on the part of the Industrial Court is imperative. Payment of full back wages, therefore, cannot be the natural consequence.

In U.P.S.R.T.C. Vs. Mitthu Singh, , the Supreme Court has held as follows:

12. Since limited notice was issued with regard to payment of back wages, we do not enter into the larger question whether the action of terminating the services of the respondent was legal, proper and in consonance with law. But we are fully satisfied that in the facts and circumstances of the case, back wages should not have been awarded to the respondent workman. In several cases, this Court has held that payment of back wages is a discretionary power which has to be exercised by a Court/ tribunal keeping in view the facts in their entirety and neither straitjacket formula can be evolved nor a rule of universal application can be laid down in such cases. 16. Thus, entitlement of a workman to get reinstatement does not necessarily result in payment of back wages which would be independent of reinstatement. While dealing with the prayer of back wages, factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate Court/tribunal.

In State of Maharashtra and Others Vs. Reshma Ramesh Meher and Another, , the Supreme Court has held as follows:

24. It is true that once the order of termination of service of an employee is set aside, ordinarily the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back wages, which is independent of reinstatement. While dealing with the prayer of back wages, factual scenario, equity and good conscience, a number of other factors, like the manner of selection, nature of appointment, the period for which the employee has worked with the employer etc., have to be kept in view. All these factors and circumstances are illustrative and no precise or abstract formula can be laid down as to under what circumstances full or partial back wages should be awarded. It depends upon the facts and circumstances of each case.

7. At the time of admission of this writ petition on 10.5.1999, this Court had been pleased to pass the following order :

Heard Sri Devendra Pratap, learned counsel for the petitioner.

Issue notice to respondent No. 2, who may file counter-affidavit within six weeks. List thereafter.

In the meantime the impugned award dated 27.3.1997, Annexure-12 to the writ petition, shall remain stayed provided:

(1) the back wages to the extent of 50 per cent payable under the award are deposited with the concerned Labour Court within two months from today.

(2) a sum equal to wages payable to the workman from the date of the award till the last preceding month is paid to the respondent workman within two months from today; and,

(3) wages at the rate admissible u/s 17-B of the Industrial Disputes Act, 1947 for the succeeding months shall be paid to the respondent-workman, month by month basis, till further orders of this Court (see AIR 1998 511 (SC)).

The back wages so deposited, in terms of this order, shall be invested in some Nationalised Bank by the concerned Labour Court under an interest earning term deposit scheme initially for a period of one year, subject to further renewal. This deposit shall be subject to the ultimate decision of this petition.

In the event of default in complying with any of the aforementioned conditions, the present stay order shall automatically come to an end and award in question shall become enforceable and recovery proceedings, if any, shall revive.

8. With regard to the condition No. 2 in the interim order, it may be noted that if the petitioner had superannuated w.e.f. 1.7.1997 no such direction to pay wages to the workman from the date of the award till the last preceding month could have been directed. Therefore, directions No. 2 in the interim order could not have been given.

9. Besides, so far as the direction No. 3 in the interim order is concerned, the petitioner department had filed an application dated 21.7.1999 for modification of the said direction on the ground that it was not possible to comply with the direction in the interim order to pay back wages to the respondent No. 2 workman at the rate admissible u/s 17-B of the Industrial Disputes Act, 1947 as the workman had already superannuated on 1.7.1997. It may be noted that the provisions of Section 17-B are contained in the Industrial Disputes Act, 1947 (Central Act) and no such provisions exist in the U.P. Industrial Disputes Act, 1947 and there is no other provision under the U.P. Industrial Disputes Act, 1947 which is equivalent to the provisions of Section 17-B of the Industrial Disputes Act, 1947 (Central Act). Moreover, as regards applicability or non-applicability of Section 17-B of the Industrial Disputes Act, 1947 (Central Act) to the case under the U.P. Industrial Disputes Act, 1947, the Supreme Court in Civil Appeal No. 359 of 2007 arising out of SLP (C) No. 882 of 2007 U.P.S.R.T.C. v. Surendra Singh, has held that the provisions of Section 17-B of the Industrial Disputes Act, 1947 (Central Act) do not exist in the U.P. Industrial Disputes Act, 1947. The judgment is short and is reproduced in its entirety as follows:
Leave granted.

This appeal has been filed by the U.P. State Road Transport Corporation against an interim order passed by the High Court of Allahabad by which the High Court has modified the interim order granted by it staying the operation of the award to the

extent that the appellant shall comply with the provisions of Section 17-B of the Industrial Disputes Act, 1947.

It is not in dispute that the provisions of Section 17-B of the Industrial Disputes Act do not exit in the U.P. Industrial Disputes Act. In this view of the matter, question of compliance of the said provision does not arise at all. Accordingly, the impugned order is set aside. This, however, shall not preclude the respondent from making fresh application for grant of interim relief in his favour in accordance with law. Since the appeal is pending, we direct the High Court to dispose of the appeal preferred by the appellant within a period of six months from this date positively without granting any unnecessary adjournments to either of the parties.

Accordingly, the appeal is allowed to the extent indicated above. There shall be no order as to costs.

10. Thus, in view of the above settled proposition of law, I am of the view that the labour Court could not have been awarded back wages to the respondent No. 2, workman in absence of any pleading on the part of the workman that he was not gainfully employed anywhere after the termination of his service on 31.7.1991. Moreover, the provisions of Section 17-B of the Industrial Disputes Act, 1947 (Central Act) do not find place in the U.P. Industrial Disputes Act, 1947 and therefore, applying the law laid down by the Supreme Court in the case of U.P.S.R.T.C. v. Surendra Singh (supra), direction No. 3 in the interim order also could not have been given.

11. Since, the provisions of Section 17-B of the Industrial Disputes Act, 1947 (Central Act) do not find any place or mention in the U.P. Industrie Disputes Act, 1947 and no such direction No. 3 for paying wages u/s 17-B of the Industrial Disputes Act, 1947 could have been given, therefore, the modification application stands allowed in terms of the observations made herein above.

12. In view of the above stated position, this writ petition is, therefore, allowed. The impugned award dated 27.3.1997 as "published on 4.10.1997 is quashed. No order as to costs.