

(2007) 11 AHC CK 0125

Allahabad High Court

Case No: None

Panki Thermal Power Station

APPELLANT

Vs

Labour Court (III) and Kanpur
Begli Mazdoor Sabha

RESPONDENT

Date of Decision: Nov. 2, 2007

Acts Referred:

- Uttar Pradesh Industrial Disputes Act, 1947 - Section 4K

Citation: (2008) 6 AWC 6365 : (2008) 116 FLR 1149

Hon'ble Judges: R.K. Agrawal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

R.K. Agrawal, J.

By means of the present writ petition filed under Article 226 of the Constitution of India, the petitioner, M/s Panki Thermal Power Station, Kanpur, seeks to challenge the award dated 31.8.1993 of the Labour Court (III), U.P., Kanpur, declaring that the workman, V.K. Srivatava, was entitled to get the designation and pay of R.G.C. since June, 1973.

2. Briefly stated, Sri V.K. Srivastava, workman, was appointed as Daftan with effect from 1.8.1972 vide office memo No. PPB-55- 2A/1423 in the petitioner's establishment which post he joined on 4.8.1972. Vide Office Memo dated 31.3.1978/4.4.1978, he was promoted as R.G.C. since 15.3.1978. According to the petitioner, vide order dated 20.9.1975, the workman was directed to help Sri P.S. Gupta, R.G.C, in his work. It was specifically provided in the order dated 20.9.1975 that the entire responsibility for disposal of the work would be on Sri P.S. Gupta. After the aforesaid order was passed, the workman started helping Sri P.S. Gupta in his work till his actual promotion on the post of R.G.C. from 15.3.1978. The workman through the Union raised a dispute claiming pay and designation of R.G.C. with

effect from June, 1973, which dispute was referred by the State Government u/s 4K of the U.P. Industrial Disputes Act, 1947 to the Labour Court, Kanpur for adjudication. The industrial dispute, so referred, was subsequently amended vide order dated 6.9.1989. The following industrial dispute was referred:

KYA SHWAYOJAKO DWARA APNE SHRAMIK VIRENDRA KUMAR SRIVASTAVA PUTRA SRI BHAGATI PRASAD SRIVASTAVA KO USKE KARYA KI PRAKRITI KE ANUSAR JUNE 1973 SUB-SECTION R.G.C. KA PAD NAM WA TADNUSAR VETANMAN NA DIYA JANA UCHIT TATHA/ATHAWA VAIDHANIK HAI? YAD! NAHI TO SAMBANDHIT SHRAMIK KYA LABH/ANUTOSH (RELIEF) PANE KA ADHIKARI HAI TATHA ANYA KIS VIVARAN SAHIT.

3. The petitioner filed its written statement and asserted that the workman V.K. Srivastava was appointed as Daftari with effect from 1.8.1972 and joined as such on 4.8.1972. Vide Office Memo dated 31.3.1978/4.4.1978, he was promoted as R.G.C. since 15.3.1978 and has been continuously working and drawing wage as such. The petitioner further asserted that the reference having been made after 11 years, the same was redundant and could not be adjudicated upon. In the additional written statement, the petitioner pleaded that the Union made an application dated 21.4.1987 to the Conciliation Board on which reference dated 31.3.1989 was made and there being no new material, the State Government erred in making the amendment vide order dated 6.9.1989 in the reference. According to the petitioner, Sri P.P. Arora, the then Executive Engineer, vide letter dated 20.9.1975. directed the workman to help Sri P.S. Gupta, the then R.G.C, working in the same office. According to the petitioner, the workman was directed to help Sri P.S. Gupta, R.G.C, and this could not be taken to mean that the work of R.G.C. was taken from the workman. It was pleaded that the workman was not entitled to the benefit of the principle of equal pay for equal work. The Labour Court ignoring the material on record had given its award dated 31.8.1993, directing giving of pay and designation of R.G.C. since June, 1973 to the workman, which will put a heavy financial burden on the petitioner. The workman filed his counter affidavit admitting his appointment as Daftari since 4.8.1972. He stated that since June, 1973 he was performing the diary and dispatch work on the instruction of the authority, which work was done by a R.G.C. He asserted that he was doing the said work on the written order of the Executive Engineer, Sri P.P. Arora, dated 20.9.1975. He requested several times to give him the pay and designation of R.G.C. and subsequently made applications therefor. When his demand was not met by the petitioner, he raised the industrial dispute. It was stated that the Union moved the application for condonation of delay to which the petitioner filed objections and after considering the matter, the Regional Conciliation Officer condoned the delay and the said order having not been challenged by the petitioner, the same has become final. The workman stated that from the oral and documentary evidence on record the Labour Court found that the petitioner was performing the diary and dispatch work, which is done by a R.G.C. and, therefore, he was rightly awarded the benefit from June, 1973. In the rejoinder affidavit filed by the petitioner, the averments of the counter affidavit has been

denied and those of writ petition have been reiterated. The Labour Court found that the amendment made by the State Government in the reference was legal and valid. It further found that the delay was condoned by the Conciliation Board after considering the objection of the employer and the said order had become final as the employer did not challenge the same. From the oral and documentary evidence on record, the Labour Court found that the workman used to discharge the duties of R.G.C. On the basis of these findings, the Labour Court directed for giving of pay and designation to the workman from June, 1973.

4. I have heard Sri Subhash Chandra Snvastava, learned Counsel for the petitioner and Sri S.C. Shukla, learned Counsel appearing for the respondent No. 2. The learned Counsel for the petitioner submitted that the workman was not assigned the work of R.G.C. as would be clear from the letter dated 20.9.1975 but was directed to help Sri P.S. Gupta, another R.G.C., in his work. The responsibility for disposal of the work was also of Sri P.S. Gupta and not of the workman. Thus, he was not entitled to claim pay scale and designation of R.G.C. prior to the date of his promotion. He further submitted that the dispute was raised for the first time in the year 1987, i.e., after more than 10 years from the alleged date of claim and, therefore, the dispute itself was not referable. In any event, he submitted, the Labour Court has erred in law in granting the relief as it ought to have been limited from the date of raising of the dispute or making the reference and if that is taken into consideration, no effective relief could have been granted. In support of his various pleas, he has relied upon the following decisions:

(i) Dhirendra Kumar Singh and Ors. v. U.P. State Road Transport Corporation, Lucknow and Ors. 1988 UPLBLC 763

(ii) [Mew Ram Kanojia Vs. All India Institute of Medical Sciences and Others](#), ; and

(iii) Assistant Executive Engineer, Karnataka v. Shivalinga, (2002) 1 LLJ 457SC

The learned Counsel for the respondent No. 2, on the other hand, submitted that the workman had been discharging the duties of R.G.C. since very beginning and the written order was given only on 20.9.1975. The workman is not claiming equal pay for equal work but the designation and pay for the work of R.G.C, which he had performed. He further submitted that the reference having been made by the State Government upon being satisfied that there existed an industrial dispute, merely because it has been raised after 10 years, would not disentitle the workman from claiming the relief. In support of his various pleas, he has relied upon the following decisions:

(i) [National Textile Corporation \(U.P.\) Ltd. Unit : Swadeshi Cotton Mills Vs. Presiding Officer, Labour Court I and Others](#),

(ii) [U.P. State Electricity Board and Others Vs. Presiding Officer, Labour Court and Others](#),

(iii) Nagar Mahapalika, Gorakhpur v. Labour Court, Gorakhpur and Ors. 1997 (75) FLR 147

(iv) U.P. State Road Transport Corporation v. Shankar Tiwari and Anr. Civil Misc. Writ Petition No. 30245 of 1994, decided on 11.9.1997.

(v) Mahavir Singh v. U.P. State Electricity Board and Ors. Civil Appeal No. 2451 of 1998, decided on 27.4.1998;

(vi) [Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another](#), and

(vii) Sapan Kumar Pundit v. U.P. State Electricity Board and Ors. 2001 SCC 946.

Having given our anxious consideration to the various pleas raised by the learned Counsel for the parties, I find that it is not necessary to go into the question regarding inordinate delay in making the reference as the petition is liable to be allowed on merit.

5. The labour Court had granted the designation and pay from June, 1973 when there was no order in writing directing the workman to do the work of R.G.C. Even in the order dated 20.9.1975, the petitioner had directed the workman to help Sri P.S. Gupta, R.G.C, in his work, making the responsibility for disposal of work on Sri P.S. Gupta and not upon the workman. This letter dated 20.9.1975 has not been denied by the workman. Helping a R.G.C. in doing his work, would not tantamount to working as R.G.C. himself. The question of designation and pay for the period anterior to regular promotion of the workman, i.e., 15.3.1978, was, therefore, not warranted. Even otherwise, a Division Bench of this Court in the case of Dhirendra Kumar Singh (supra) has held that the claim of wages payable for the work discharged should be awarded from the date when the controversy is raised before the Court or some other authority competent to adjudicate it. Similar view has been taken by the Apex Court in the case of Daily rated Casual Labour employee under [Daily Rated Casual Labour Employed under P and T Department Vs. Union of India \(UOI\) and Others](#), Respectfully following the aforesaid two decisions, which are binding, I am of the considered opinion that the Labour Court had erred in awarding the designation and pay to the workman from June, 1973 instead of the date when the dispute was raised in the year 1987 whereas from 15.3.1978 itself the workman has been promoted as R.G.C. and is drawing salary as such. Therefore, the workman cannot claim the designation and pay from June 1973 and, therefore, is entitled to no relief. The decisions relied upon by the learned Counsel for the respondent No. 2 regarding designation and pay of higher category would not be applicable in the present case in as much as in all those cases it has been found as a fact that for very long time the workman had been performing the duties of a higher post independently and with full responsibility. In view of the foregoing discussions, the award of the Labour Court, impugned in the present writ petition, cannot be sustained and is hereby set aside. The writ petition succeeds and is hereby allowed.