Gangeshwar Limited Vs Presiding Officer, Labour Court and Another

Court: Allahabad High Court

Date of Decision: July 2, 2003

Acts Referred: Industrial Disputes Act, 1947 â€" Section 25F
Uttar Pradesh Industrial Disputes Act, 1947 â€" Section 6N

Citation: (2003) 2 UPLBEC 1663

Hon'ble Judges: Anjani Kumar, J

Bench: Single Bench

Advocate: Vinod Sinha and S.P. Singh, for the Appellant; Bhupendra Nath Singh and S.C., for the Respondent

Final Decision: Dismissed

Judgement

Anjani Kumar, J.
This writ petition was heard and dismissed by me vide Order dated 2.7.2003 for the reasons to be recorded later on.

Now, here are the reasons for dismissing the aforesaid writ petition.

2. This writ petition is listed under the heading "Order", as there is a stay vacated application filed on behalf of the contesting respondent. Learned

Counsel appearing on behalf of the petitioner stated that since the writ petition is listed only for orders, this Court should not decide the matter on

merits. I find that interest of justice demands that it is in the interest of the petitioner as well as the contesting respondent that the matter may be

finally decided, therefore, I have heard learned Counsel for the parties on merits.

3. The petitioner, by means of present writ petition under Article 226 of the Constitution of India, has challenged the award of the Labour Court,

U.P., Dehradun dated 23rd May, 1996, passed in Adjudication Case No. 139 of 1990, copy whereof is annexed as Annexure-2 to the writ

petition. The following dispute was referred to by the State Government in exercise of power u/s 4-K of the U.P. Industrial Disputes Act, 1947

(hereinafter referred to as the "Act") vide its order dated 24th August, 1990, before the Labour Court for adjudication :

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vuqfpr rFkk vFkok voS/kkfud gS \ ;fn gkÃ¯Â¿Â½] rks lcaf/kr Jfed D;k ykHk@vuqrks""k Ã¯Â¿Â½fjyhQÃ¯Â¿Â½ ikus dk vf/kdkjh gS] rFkk vU; fdl fooj.k lfgr **

4. After receipt of the reference, the Labour Court issued notices to the parties and the parties concerned have exchanged their affidavits and

adduced evidence. The Labour Court has relied upon a Notification dated 15th July, 1982, copy whereof is annexed along with the counter-

affidavit, which is a statement registered under the provisions of U.P. Industrial Disputes Act, 1947, which provides as under:

ORDER

1. The management shall pay the amount of gratuity to a retiring workmen as may be found due to him by the management on receipt of a

clearance slip from the workmen in respect of articles of stores, advance etc. The workman shall simultaneously vacate his quarter and hand over

its possession to the management.

2. The retiring workman shall be deemed to be in service and shall be entitled to full wages and all fringe benefits as long as the employer does not

tender the due amount of gratuity to him.

3. Receipt of payment of the amount of gratuity found due by the employer shall not prejudice the right of the workman to raise a dispute about it,

if he considers the amount disputable even on vacation of the quarter and exit from the service.

4. This order shall apply to all workman covered by the Wage Board for the Sugar Industry and shall remain inforce till December 31, 1983.

5. From the reference, it is clear that the services of the workman concerned were terminated by the petitioner-employer with effect from 1st

November, 1986. It is not disputed either before this Court, or before the Labour Court that while terminating the services of the workman

concerned, the gratuity, which is found due upon the employer, has not been paid to the workman. In this view of the matter, the Labour Court

found that in terms of the aforesaid Notification ""the retiring workman shall be deemed to be in service and shall be entitled to full wages and all

fringe benefits as long as the employer does not tender the due amount of gratuity to him"" and held that the termination of services of the workman

concerned with effect from 1st November, 1986 is illegal and that the workman is entitled for gratuity/arrears of gratuity, wages and all fringe

benefits, as if the workman is still in employment. Learned Counsel for the petitioner-employer has relied upon a phraseology used in the aforesaid

Government Notification, referred to above, that at least in the year 1993 the employer has tendered the amount of gratuity and therefore, the view

taken by the Labour Court in awarding the wages till the date of the award is wholly erroneous. If the language used in Paragraph 1 of the

aforesaid Notification compared with the language of Section 25F and Section 6-N of the Industrial Disputes Act, 1947, which has been

interpreted by the Apex Court in the case of The State of Bombay and Ors. v. The Hospital Mazdoor Sabha and Ors., reported in AIR 1960

Supreme Court 610, it reveals that Apex Court while interpreting the provision of Section 25F, which is para materia to the language used in

Paragraph 1 of the aforesaid Notification, has held that the termination of services of the workman concerned without payment of retrenchment

compensation will be illegal. I do not find that the view taken by the Labour Court in interpreting the aforesaid provision of the Notification,

referred to above, suffers from any error, much less error of law. In this view of the matter, the argument advanced on behalf of the petitioner-

employer deserves to be rejected and is hereby rejected. No other argument was advanced on behalf of learned Counsel for the petitioner.

6. In view of what has been stated above, this writ petition has no force and accordingly dismissed. The interim order, if any, stands vacated.

However, the parties shall bear their own costs.