(2013) 04 AHC CK 0276

Allahabad High Court

Case No: Writ-C. No. 24303 of 1996

Agragami Kshetra Vikas Agency		APPELLANT
	Vs	
Presiding Officer and Others		RESPONDENT

Date of Decision: April 26, 2013

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2(s)

Citation: (2013) 3 LLJ 331

Hon'ble Judges: Tarun Agarwala, J

Bench: Single Bench

Advocate: H.N. Singh and B. Narayan Singh, for the Appellant; Arvind Srivastava, B.N. Singh, B.R. Singh and Bijai Prakash Tiwari, for the Respondent

Final Decision: Dismissed

Judgement

Tarun Agarwala, J.

Heard Sri H.N. Singh, the learned counsel for the petitioner and Sri V.P. Tiwari, the learned counsel for the respondent workman. The petitioner has challenged the validity and legality of the award dated 7th September, 1995 directing reinstatement of the workman with 50 per cent backwages. The facts leading to the filing of the writ petition is, that the petitioner is a charitable society registered under the Societies Registration Act, 1860 and was running an agency in Etawah, where the workman was initially appointed as a Driver in the year 1984. The services of the workman was terminated by an order dated 1st June, 1985, and subsequently, by an order dated 22nd July, 1985, the workman was reappointed as an Engine Mechanic on a temporary basis. Subsequently on the resignation of Rambabu Singh working as a Mechanic, the petitioner was given an appointment letter by an order dated 06th February, 1986 on the post of Mechanic on a fixed pay of Rs. 425/- per month. On the basis of this order, the workman continued to work as a Mechanic till a notice dated 5th July, 1988 was issued indicating that since the agency had closed down pursuant to the Government Order dated 16th June, 1988, his services were

no longer required and accordingly one month''s notice was given to the workman. The services of the workman accordingly came to an end on 04th August, 1988.

2. The workman, being aggrieved, by the alleged notice dated 5th July, 1988, raised an industrial dispute, which was referred to the labour court for adjudication. Before the labour court, the workman contended that he was appointed in 1984 as a Mechanic and that his services were arbitrarily terminated by an order dated 5th July, 1988 without complying with the provisions of Section 6-N of the Industrial Disputes Act.

3. On the other hand, the employers contended that the workman was appointed as a Mechanic on a fixed pay by an order dated 06th February, 1986, and in view of the Government Order dated 16th June, 1988 closing the agency w.e.f. 31st March, 1988, the services of the workman was no longer required, and accordingly, a notice dated 05th July, 1988 was issued given the workman one month''s notice.

4. In rejoinder affidavit, the workman contended that even though his services were terminated on 1st June, 1985, he was allowed to continue and work as a Mechanic.

5. The labour court after considering the matter held that even though, the workman was appointed in 1984 as a mechanic and his services were terminated on 1st June, 1985, the workman was allowed to continue without any break in service. The labour court held that the order of termination by the notice dated 05th July, 1988 was illegal and in violation of provision of Section 6-N of the U.P. Industrial Disputes Act. The labour court further held that the Government order dated 16th June, 1988 contemplated that certain persons would continue to work and one of the post on which a person to continue was the post of Mechanic, and therefore held that the order of termination was illegal since there had been a violation of Section 6-N of the Act, the workman would be reinstated with continuity of service and 50 per cent wages. The petitioner, being aggrieved by the award, has filed the present writ petition.

6. The learned counsel for the petitioner submitted that the award of the labour court cannot be sustained inasmuch as the agency had closed down irrevocably, and therefore, the question of reinstatement of the workman did not arise. It was further urged that the provision of Section 6-N having not been complied with, at best, was a technical error for which suitable retrenchment compensation would be paid inasmuch as the petitioner had given a notice to the workman indicating the reason for his retrenchment. The learned counsel for the petitioner submitted that the labour court committed an error in directing reinstatement with 50 per cent wages. In the end, the learned counsel for the petitioner submitted that the petitioner is a charitable authority registered under the Societies Registration Act and is not an "industry" as contemplated u/s 2-(s) of the U.P. Industrial Disputes Act. Therefore, no industrial dispute could be raised nor was the workman working as a "workman" under the U.P. Industrial Disputes Act. It was contended that the

services of the employee is regulated under the bylaws framed by the society.

7. On the other hand, the learned counsel for the respondent submitted that the workman was appointed on a permanent post of mechanic and, even though, the agency had closed down by a Government Order dated 16th June, 1986, the society continued to function and the post of Mechanic continued to remain in existence. Consequently, there was no error in the order of the Labour Court directing reinstatement with 50 per cent backwages. The learned counsel submitted that the fact that petitioners'' society is still in existence is proved by the fact that pursuant to the recovery certificate issued by the Deputy Labour Commissioner u/s 6-H(1) of the U.P. Industrial Disputes Act, the Revenue Authority seized the office and the accounts of the petitioners'' society. This by itself is an indication that the society is in existence. The learned counsel further submitted that since the provisions of Section 6-N of the U.P. Industrial Disputes Act had not been complied with, the workman was liable to be reinstated in service.

8. Having heard the learned counsel for the parties, the Court finds that the Government Order dated 16th June, 1988, indicates that the agency had closed w.e.f. 31st March, 1988. There is nothing to indicate that the agency had closed down irrevocably or that the society stood dissolved under the provisions of the Societies Registration Act. However, closure of the agency or dissolution of the society are irrelevants the dispute can be decided without going into this controversy. Whether, the U.P. Industrial Disputes Act is applicable or not cannot be taken into consideration since factual averments were neither alleged before the labour court nor has been stated in the present writ petition. The Court is constrained to observe that such arguments could not be allowed to be raised by the learned counsel for the petitioner in the absence of any pleadings. Even though, it may be a point of law, nonetheless, such point of law can only be argued on the basis of pleadings placed before the Court.

9. This Court, however, finds that the labour court has committed a manifest error in holding that the workman was working continuously on the post of Mechanic since 1984. The evidence before the labour court is otherwise. The workman was appointed as a driver in 1984. His services were terminated on 1st June, 1985, which is admitted by the workman, though he contends, that even though his services was terminated, he continued to work as a Mechanic, but the evidence is otherwise, namely, that prior to his termination on 1st June, 1985, the workman was working as a driver. This was a different post. The workman was initially appointed as a driver and after his termination was reappointed as a Engine Mechanic, and thereafter, as a Mechanic. These different posts have been clearly proved by the witness of the petitioner, which has not been considered by the labour court. The Court is of the opinion that the finding of the labour court that the workman continued to work as a Mechanic from 1984 is perverse and is against the material evidence that has been brought on record.

10. The record indicates that the workman was initially appointed as a driver, and thereafter was reappointed as a Engine Mechanic dated 22nd July, 1985 on a temporary basis. Subsequently by an order of 06th February, 1986, the workman was appointed as a Mechanic on a fixed pay. There is nothing to indicate that the petitioner was appointed on a regular post and that an appointment on a fixed pay does not mean that the workman was appointed on a regular post.

11. In the light of this evidence, which has been brought on record coupled with the fact that the agency where the petitioner was working had closed down and, even though, the Government Order dated 16th June, 1988 contemplated that to carry out the necessary work, the employers may continue to keep the services of the workers on certain posts, it does not mean that there is a permanent requirement of work in a charitable institution. In the opinion of the court, the labour court committed an error in directing reinstatement of the workman.

12. There is no doubt that the employers'' gave one month''s notice but failed to offer or pay retrenchment compensation as provided u/s 6-N of the U.P. Industrial Disputes Act. To that extent, the labour court was justified in holding that the provision of Section 6-N of the U.P. Industrial Disputes Act had not been complied with. The labour court, however, committed an error in directing reinstatement.

13. In the light of the aforesaid, the Court is of the opinion that the award of the labour court directing reinstatement of the workman cannot be sustained and, to that extent, the award is set aside and is modified that instead of reinstatement, the workman would be liable for payment of compensation.

14. The matter is of the year 1988. 24 years have elapsed and the Court is of the opinion that it will not be prudent for the Court to remit the matter again to the labour court to calculate the quantum of retrenchment compensation to be paid. Considering the fact that the matter has become old, the Court is of the opinion that lump sum payment towards retrenchment compensation should be paid. The court is of the opinion that Rs. 50,000/- would suffice towards retrenchment compensation.

15. In view of the aforesaid, the writ petition is partly allowed. The award of the labour court directing reinstatement of the workman with 50 percent backwages is quashed to that extent, and is modified to the extent that instead of reinstatement alongwith 50 percent backwages, the workman would be paid Rs. 50,000/- as lump sum compensation. The amount of Rs. 50,000/- would be paid within four weeks from today, failing which, it would be open to the petitioner to move an application before this Court.

16. In view of the aforesaid, parties shall bear their own cost. In the light of the aforesaid, the connected writ petition filed by the workman for enforcement of the recovery certificate fails and is dismissed.