

(1991) 12 AHC CK 0060

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 11917 of 1981

Shesh Narain Bajpai

APPELLANT

Vs

Labour Court IV and Others

RESPONDENT

Date of Decision: Dec. 20, 1991

Acts Referred:

- Uttar Pradesh Industrial Disputes Act, 1947 - Section 6N

Citation: (1992) 1 AWC 233

Hon'ble Judges: Ravi S. Dhavan, J

Bench: Single Bench

Advocate: P.D. Kaushik and Arvind Kumar, for the Appellant; V.C. Misra and S.V. Misra, for the Respondent

Final Decision: Partly Allowed

Judgement

Ravi S. Dhavan, J.

Shesh Narain Bajpai was employed by the U.P. State Food and Essential Commodities Corporation Limited at its Kanpur Unit as a Salesman in a temporary capacity. His services were terminated for a cause. It is alleged that he has embezzled the goods for the Corporation, aforesaid. His services were terminated on 19 May, 1977.

2. On the other hand, a First Information Report (FIR) was filed by the Sub Divisional Magistrate at Govind Nagar Police Station, Kanpur, with an. allegation that the workman, Shesh Narain Bajpai, has misappropriated the goods of the Corporation which were placed in his charge as a Supurdgar (receiver). Consequent upon the FIR being inquired a criminal case was instituted in the court of the Chief Metropolitan Magistrate, Kanpur, as Case No. 861 of 1981 and this case is still pending.

3. In the meantime, Shesh Narain Bajpai sought adjudication on the termination of his services by the Corporation, by a Labour Court. The Labour Court declined to interfere with the order of termination holding it to be a discharge simpliciter u/s 6N

of the U.P. Industrial Disputes Act 1947.

4. This Court has heard the Petitioner, in person, and Learned Counsel appearing on behalf of the Corporation, Mr. V.C. Mishra, Senior Advocate. The Court has perused the record of the writ petition and the impugned order dated 25 April, 1981 arising out of an Adjudication Case No. 175 of 1979 decided by the Labour Court (IV), U.P. Kanpur.

5. This Court is of the view that the award suffers from an error and needs to be corrected by a writ of certiorari. Once the Labour Court came to the conclusion that services of the workman were terminated for a cause and the cause being an allegation that he had embezzled the properties of the Corporation, then it was imperative for the Labour Court to have rested its decision on the question whether the employer had held a domestic inquiry against the workman to be *prima facie* satisfied that the allegation against the workman could hold and, further, that the workman was given an opportunity to meet the allegation. To terminate the services of a workman because a criminal case was pending and to call it retrenchment u/s 6N of the Act, aforesaid, implies that the workman carries a stigma of embezzlement without a domestic inquiry and the trial before the magistrate yet to see a decision. The workman has yet to have an opportunity of explaining the allegations against him which ever be the forum. The only forum where he can meet the allegation at present is in the criminal case, which is still pending before the Magistrate.

6. Thus, the order of termination of the workman on the ground that it was a retrenchment, is irregular and cannot hold under the law. At best it is now clear that there are charges against the workman and he could only be suspended. This does not take away the right of the employer to hold a domestic inquiry on any action following suspension. But until such a domestic inquiry is held and if the employer desires to await the verdict of the criminal case, the workman will be entitled to the suspension allowance, since 19 May, 1977, the date of the termination order. The suspension allowance will of course be in accordance with the service regulations of the Corporation. The court is making these observations as no material is available before the court on what exactly should be the suspension allowance. Suspension and the criteria of its payment is provided in the service regulations of the Corporation, under Chapter III, Clause 23. The Court had directed the Corporation to place the service regulations for the perusal of the court.

7. In these circumstances the award of (he Labour Court dated 25 April, 1981, in Adjudication Case No. 175 of 1979 is quashed so far as it upholds the termination of services of the Petitioner.

8. Thus, the case is remanded back to the Labour Court for reopening the Adjudication Case No. 175 of 1979 for examining the suspension allowance available to the Petitioner and make an appropriate order.

9. In these circumstances the writ petition is partly allowed, but there will be no order on costs.