Jai Prakash Ahirwar Vs State of U.P. and others

Court: Allahabad High Court

Date of Decision: March 21, 2012

Acts Referred: Uttar Pradesh Industrial Disputes Act, 1947 â€" Section 4K

Citation: (2012) 5 ADJ 768 : (2012) 4 AWC 4341 : (2012) 133 FLR 711

Hon'ble Judges: Sunil Hali, J

Bench: Single Bench

Advocate: Rakesh Kr. Shukla, for the Appellant; R.P. Tiwari, S.N. Dubey and C.S.C., for the Respondent

Final Decision: Allowed

Judgement

Sunil Hali, J.
The claimant was working as a workman in the petitioner"s company. He was terminated from service. The order of

termination was questioned by him before the Labour Court. A reference had been made by the State Government. The Labour Court allowed the

claim of the claimant and set aside the order of termination with a direction to the petitioner to reinstate the workman and pay his back wages. The

writ petition was, however, filed in this Court against the said order which was dismissed with a modification that in stead of full wages, 75% back

wages will be paid to the workman. An application was filed u/s 6H of U.P. Industrial Disputes Act by the workman. A direction was issued to the

petitioner to pay an amount of Rs. 72,769. This order has been challenged in the present writ petition.

Vide order dated 18.8.2006 the writ petition was dismissed. However, on 5.2.2009 the judgment was recalled on an application filed by the

workman.

2. The contention of the petitioner is that the workman had been offered to be reinstated in pursuance of the award but he did not join and instead

moved an application u/s 6H of the Act. The contention of the petitioner is that proceedings initiated u/s 6H (1) are without jurisdiction and the said

amount could not be recovered when there was a dispute with regard to his reinstatement.

3. The petitioner states that notice was issued on 25.5.2003 to the workman to rejoin his duties but he failed to do so as a result of which his

services became liable to be terminated. Without complying the notice the respondent No. 4 filed an application u/s 6H of the Act for recovery of

his wages w.e.f. 1.8.2002. Objection has been filed by the petitioner to the said application stating that respondent No. 4 could not present himself

on duty and thus he is not entitled to claim any wages as he has not done any work during this period. Without examining the objections filed by the

petitioner the impugned award has been passed.

4. The case of the petitioner is that while passing the award on the application of respondent No. 4, respondent No. 2 did not consider that the

workman had never presented himself for duty as per the notice dated 25.5.2003 issued by the petitioner. He refused to accept the duty allocated

by the petitioner and thus was not entitled to get any relief in terms of Section 6H of the Act.

5. It is trite law as held by the Supreme Court that post award wages cannot be recovered u/s 6H (1) more particularly when the amount claimed

is disputed by the employer.

6. Section 6H (1) of the Act applies to a case where money is due to a workman under an award or a settlement or under provisions of Section 6J

to 6R which has already been concluded and ascertained and where there is no dispute with regard to its calculation or computation. Section 6H

(2) applies to monetary and non-monetary benefits. In case of monetary benefits, it applies to such benefit which is due but is not calculated and

there is a dispute with regard to its calculation. Section 6H (2) takes within its purview such benefits in terms of money, even though, the right on

which the claim is based, is disputed by the employer.

7. The Apex Court in Kays Construction Co. (P) Ltd. Vs. State of Uttar Pradesh and Others, , made it clear that back wages as per the award is

money due"" which could be recovered u/s 6H (1) of the Act even if the amount is not determined and only a mere arithmetical calculation is

required to be made, but whether post award wages could be recovered u/s 6H (1) is a moot question which is required to be decided.

8. The second question which arises for consideration is as to whether post award wages amounts to a benefit that can be computed in terms of

money u/s 6H (2).

9. The settled law is that proceedings u/s 6H (1) of the Act are execution proceedings and disputed questions of fact cannot be adjudicated in the

proceedings. The question of entitlement as per the award is seriously disputed by one party or where rate of wages is seriously disputed by one

party such question cannot be adjudicated by the authority u/s 6H (1) and such questions could only be decided by a Labour Court.

10. The authority vested with the power thereunder cannot determine any complicated question of law and fact. It cannot determine a dispute with

regard to existence of legal right.

11. In the present case it will be seen that what the workman claims Is post award wages. As already stated herein above, post award wage does

not come under category of money due and consequently an application u/s 6H (1) cannot be filed.

12. Assuming that the present application was filed u/s 6-H (2) of Act, still it has to be examined as to whether such a benefit can be claimed when

the employer disputes the entitlement of the workman to receive such benefit.

13. The expression entitlement used in Section 6H would be both monetary as well as non-monetary. The workman claims monetary benefit on

account of an award passed by the Labour Court directing his reinstatement. He claims wages from the date of his reinstatement till filing of the

application before the Labour Court u/s 6H of the Act. The petitioner has taken clear stand that despite notice he did not resume his duty as a

consequence of which he would not be entitled to any benefit on this account as he has not performed duty In this behalf. This is an issue which is

required to be adjudicated by the appropriate authority. The appropriate remedy would be to refer the matter to the Labour Court by seeking

reference u/s 4K of U.P. Industrial Disputes Act. The Labour Court exercising the power u/s 6H (1) lacks power to adjudicate in this behalf. The

entitlement of the workman should not be under dispute. Admittedly, the entitlement of the claim has been disputed. In view of this, I find force in

this writ petition. The writ petition is allowed and impugned order is set aside and recovery issued shall stand quashed.