

(2003) 08 AHC CK 0160

Allahabad High Court

Case No: C.M.W.P. No. 11720 of 1992

Managing Director, U.P. State
Handloom Corporation and
Another

APPELLANT

Vs

Presiding Officer, Labour Court
and Others

RESPONDENT

Date of Decision: Aug. 18, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2003) 6 AWC 4883

Hon'ble Judges: Anjani Kumar, J

Bench: Single Bench

Advocate: Devendra Pratap and Shiv Nath Singh, for the Appellant; P.K. Singh and S.C., for the Respondent

Final Decision: Allowed

Judgement

Anjani Kumar, J.

The employers-U.P. State Handloom Corporation aggrieved by the award of the Labour Court, U.P., Lucknow, dated 19th April, 1991, passed in Adjudication Case No. 198 of 1986, have approached this Court by means of present writ petition under Article 226 of the Constitution of India with the prayer that since the award is ex parte award, therefore, the same may be set aside and employers may be heard after giving opportunity of hearing, copy whereof is annexed as Annexure-14 to the writ petition.

2. The facts leading to the filing of present writ petition are that the following dispute was referred to before the Labour Court for adjudication:

other language

3. It appears that the workman concerned has filed an application that since the workman is residing at Kanpur, the work place of the workman is also Kanpur and the employers' head office is also at Kanpur, therefore the dispute which has been referred to the Labour Court, Lucknow may be transferred from Labour Court, Lucknow to Labour Court, Kanpur. However, no orders were passed for transfer of the adjudication case. The Labour Court has passed an order that the Labour Court itself is not competent to transfer any case for adjudication, which has been referred to be decided by it, to any other Labour Court. The Labour Court proceeded to decide the dispute as the same was referred to the Labour Court, Lucknow and answered the reference vide its award dated 19th April, 1991 in favour of the workman. The Labour Court directed that termination of services of the workman concerned with effect from 10th February, 1983, by the employers was not legal and directed for reinstatement of the workman with continuity of service and full back wages.

4. Aggrieved by the aforesaid award, the employers preferred an application dated 30th July, 1991, with the prayer to recall its award/orders made in the case and allow due and reasonable opportunity of hearing to the employers to contest the matter. In the meantime, the employers have approached before this Court by means of Writ Petition No. Nil of 1992, which was decided by this Court vide its order dated 27th February, 1992. The relevant portion of the judgment of this Court is reproduced as below:

"The Respondents are directed not to recover the amount in pursuance of the award, which is pending decision in review/recall application filed by Petitioner, till review or recall application is not decided. However, it is made clear if the orders on the review/recall application are passed, the Respondents shall be free to recover the amount according to law.

The petition is disposed of.

Dated: 27.2.1992

Sd. N.L.G...J.

5. Thereafter the application for recall/review moved on behalf of the employers was heard by the Labour Court and the Labour Court vide its order dated 10th March, 1992, rejected the said application. Learned Counsel appearing on behalf of the employers argued that admittedly the award is ex parte and in view of the law laid down by the Apex Court in case of Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, the ex parte award can be set aside and the Labour Court has erred in refusing to set aside the ex parte award. The Labour Court has considered the aforesaid argument and the explanation submitted by the employers as to why they have not filed application within ten days of the ex parte award and recorded a finding that no doubt that the Labour Court has power to set aside the ex parte award, but in the facts and circumstances of the present case, no

case for setting aside the ex parte award is made out. This being the findings of fact, this Court will not in appeal over the findings arrived at by the Labour Court after considering the material evidence on record in refusing to set aside the ex parte award, therefore, the order dated 10th March, 1992, does not warrant any interference by this Court in exercise of its power under Article 226 of the Constitution of India. Coming to the award, the Labour Court has categorically recorded finding in favour of the workman and held that admittedly the provisions of Section 6N of the Act have not been complied with by the employers before terminating the services of the workman concerned, therefore, the reference is answered in favour of the workman and the workman was directed for reinstatement with continuity of service and full back wages. These findings also do not warrant any interference by this Court under Article 226 of the Constitution of India, as admittedly the employers have not contested the matter and there was no evidence in rebuttal.

6. Lastly it has been submitted by the learned Counsel for the employers that admittedly the workman has not worked for all these days and therefore on the principles of "no work no pay", the workman concerned is not entitled for full back wages. So far as this argument of learned Counsel for the employers is concerned, in my opinion, the ends of justice will meet in case the award is modified to the extent that the workman concerned shall be reinstated with continuity of service, but shall be paid only half of the wages from the date of termination till date of the award. The award of the Labour Court is modified accordingly.

7. In view of what has been stated above, the writ petition is allowed in part. The award of the Labour Court is modified accordingly.