**(2011) 131 FLR 402 : (2012) 1 LLJ 868 : (2011) LLR 1275**

**Allahabad High Court**

**Case No:** Writ Petition No. 24989 of 1998

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| Satya Prakash and Sons | | APPELLANT |
| | Vs | |
| Presiding Officer, Labour Court, Kanpur and another | | RESPONDENT |

**Date of Decision:** July 7, 2011

**Acts Referred:**

- Industrial Disputes Act, 1947 - Section 17B

**Citation:** (2011) 131 FLR 402 : (2012) 1 LLJ 868 : (2011) LLR 1275

**Hon'ble Judges:** S.U. Khan, J

**Bench:** Single Bench

**Final Decision:** Allowed

**Judgement**

Sibghat Ullah Khan, J.
Heard learned Counsel for the parties.This writ petition is directed against award dated 30.5.1997 given by Presiding Officer, Labour Court (3) Kanpur in adjudication case No. 197 of 1995. The matter which was referred to the Labour Court was as to whether the action of petitioner-employer terminating the service of its workman-respondent No. 2-Sudama Lal w.e.f. 1.4.1994 was just and valid or not? Respondent No. 2 asserted that he had been employed by the petitioner on 12.12.1997 as Munsi/clerk on a permanent post and petitioner was running Atta Chakki, expeller and Chara ki machine, that on demand of proper wages his services were terminated without any notice or retrenchment compensation and that he was also disabled hence he could do the work of labour/physical labour. No one appeared on behalf of the petitioner hence the matter was decided ex parte by the Labour Court. Respondent No. 2 filed two documents one was a letter written by him to the petitioner dated 2.5.1994 protesting against his termination dated 1.4.1994. In another dispute between the same parties before Labour Court (2), Kanpur the petitioner-employer had filed some reply on 28.2.1997 copy of which was filed

in the adjudication case in question by respondent No. 2. In the said reply petitioner had admitted that respondent was his employee. Respondent No. 2 further stated that at the time of termination he was getting Rs. 800/- per month wages. Labour Court held the termination to be illegal and directed reinstatement with full back wages.

2. In para 3 of the writ petition it is stated that petitioner hardly employed two or three labourers. In para 4 of the writ petition, it is mentioned that respondent No. 2 was working at petitioner''s Atta Chakki, that he had taken an advance which amounted to more than 13,000/- and on 1.4.1994 respondent No. 2 along with his entire family left Phaphund, district Etawah (where petitioner''s establishment is situate) and since then he has not returned to Phaphund and has settled at Delhi where he was an employee in a mill. In para 5 of the writ petition it has been stated that respondent No. 2 has not given his address either of Delhi or of Phaphund and that he has given his address as C/o Sri Rishi Kant Tiwari, Advocate 84/120 Karwalo Nagar, Kanpur which proves that respondent No. 2 was employed at Delhi and was concealing his present address so that exact place of his posting may not be ascertained. It has also been stated that the registered notice which was sent by the Labour Court was not never received by or tendered to the petitioner.

3. It is very strange that in spite of the above allegation of permanent shifting of respondent No. 2 to Delhi and his working for gain there, he again concealed his address. Respondent No. 2 in his counter affidavit filed on 5.8.2010 did not give his address, the address in the counter affidavit is same as given before the Labour Court i.e. C/o Sri Rishi Kant Tiwari, Advocate R/o 84/120 Karwalo Nagar, Kanpur. In para 6 of the counter affidavit it has been stated as follows:--

That in reply to contents of paragraph 5 of the writ petition it is submitted that the answering respondent was residing in Phaphund at the time of institution of the case before the Labour Court. Mere furnishing address of somebody else does not construed that the person is not resident of the place concerned. There was no reason for the answering-respondent to hide his address as he was very much present in the locality where he was residing during course of his employment with the petitioner''s firm. It is also pertinent to mention here that the averments made in Civil Misc. Modification Application filed by the petitioner (in order to modify the interim order dated 17.08.1998) does not stand correct as no proof have been furnished by the petitioner while submitting that the answering-respondent has been residing in Delhi. Since the answering-respondent is disable person so it is not as easy for him in compare to other person to be mobile.

4. From the above it is quite clear that respondent No. 2 very cunningly has refused to give his address. It has not been denied categorically that respondent No. 2 is residing at Delhi. It is further proved that respondent No. 2 is fraudulently concealing the material fact in order to receive salary from two places.

5. Disabled persons do not have a licence to defraud.

In para 3 of the writ petition it was stated that petitioner engaged hardly two or 3 labourers. In para 4 of the counter affidavit, this fact has not been denied.

6. In this writ petition an interim order passed on 17.8.1998 directing the petitioner to comply with the provisions of 17-B of Industrial Disputes Act It has been recorded in the order sheet on 7.3.2011 that learned Counsel for the petitioner-employer stated that in terms of the interim order petitioner had paid Rs. 2,00,000/- to the workman, however, learned Counsel for the workman-respondent No. 2 stated that his client had received only Rs. 1,50,000/-.

7. As respondent No. 2 had joined service at Delhi hence he was not entitled to claim reinstatement. Respondent No. 2 was also guilty of material concealment, amounting to fraud while filing counter affidavit in this writ petition.

8. Accordingly writ petition is allowed. Impugned order is set aside and it is directed that 50% of the amount which has been received by respondent No, 2 under interim order passed in this writ petition shall be recovered from him by the Labour Court and paid to the petitioner.