

**(2011) 07 AHC CK 0266**

**Allahabad High Court**

**Case No:** Writ C No. 10662 of 2000

Duncans Industries  
Limited

APPELLANT

Vs

Presiding Officer and  
others

RESPONDENT

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

**Acts Referred:**

- Industrial Disputes Act, 1947 - Section 17B

**Citation:** (2011) 131 FLR 143

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

**Bench:** Single Bench

**Final Decision:** Disposed Of

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### **Judgement**

S.U. Khan, J.

Heard learned Counsel for the parties.

This writ petition is directed against award dated 2.8.1999 given by Presiding Officer, Labour Court (1st) U.P. Kanpur in adjudication case No. 265 of 1997. The matter which was referred to the Labour Court was as to whether the action of petitioner-employer terminating the service of its workman (Process Technician Grade A) S.D. Ram respondent No. 2 w.e.f. 23.7.1997 was just and valid or not? The workman's Services were terminated after domestic enquiry. Charge-sheet was given on 16.8.1996 alleging violation of Clauses 23-J and 23-N of standing orders. The allegation related to an incident of 9.8.1996. The allegation made by compressor and synthesis block of Ammonia Plant of the Factory was that the respondent No. 2 Commissioned No. 1 Secondary Catchpot LCV without closing the drain valve which resulted in leakage of ammonia in a large quantity in No. 1 synthesis area and further the respondent No. 2 did not inform about this leakage to the control room and also did not ignite fire alarm and on the other hand he ran away from the Section. It was further alleged that with great

difficulty ammonia was controlled and there was further likelihood of severe fire in case leakage had not been promptly checked. The Labour Court held the termination to be illegal hence it directed reinstatement with full back wages. The Labour Court held that there was no negligence of the respondent No. 2 in the incident of leakage of ammonia. Clauses 23-J and 23-N of the standing orders are quoted below:

23-J:--Negligence or neglect of work repeated on not less than three occasions within six months.

23-N:--failure to observe safety instruction/ unauthorized removal interference or damage to machinery, guards, fencing and other safety devise installed in the premises of the industrial establishment.

2. In this writ petition, an interim order was passed on 9.3.2000 staying the operation of the impugned award provided the petitioner complied with the provisions of section 17-B of the Industrial Disputes Act (requiring payment of last drawn wages). Learned Counsel for the petitioner has stated that an amount of Rs. 1,17,348/- was paid by the petitioner to the respondent No. 2 for the period from February, 2000 to March, 2001.

In para 36 of the counter affidavit sworn by respondent No. 2 himself it has been stated as follows:--

That the contents of paragraph 45 of the writ petition are denied as stated. It is respectfully submitted that workman-respondent No. 2 was illegally dismissed from service by the petitioner-company. The workman-respondent No. 2 is out of employment since 1997 and is not working anywhere.

3. However, in the supplementary affidavit filed on 17.5.2001 by the petitioner it was stated that the respondent No. 2 was working with Gas Authority of India (GAI) since 20.5.1998. In the supplementary counter-affidavit filed on 16.3.2011 it has been admitted in para 7 that respondent No. 2 is working with GAI with the additional assertion that his family was suffering and one of his sons died in the year 1998 hence he was in need of some job and therefore he joined service of Gas Authority of India Limited District Auraiya as Plant Operator, after obtaining experience certificate from the petitioner company, which was issued by Sri Rajiv Bakshi, the then Manager, (Legal) of the petitioner-company. On the basis of the experience certificates dated 19.1.1998 and 12.5.1998 the Gas Authority of India granted job to the petitioner on 11.4.1998. In the supplementary rejoinder affidavit the fact of issuance of experience certificate by Sri Bakshi has been denied. In para 17 of the supplementary counter-affidavit it has been stated that on 20.10.2007 Gas Authority of India terminated the services of respondent No. 2. Learned Counsel for the petitioner states that it was petitioner's complaint that service was terminated.

4. As respondent No. 2 was gainfully employed hence order of reinstatement passed by the Labour Court has to be set aside and is hereby set aside. The amount received by the

petitioner under interim order passed by this Court in this writ petition shall be deemed to be sufficient back wages from the date of termination till the date on which respondent No. 2 joined service with Gas Authority of India.

5. I do not consider it appropriate to record any finding regarding genuineness of the experience certificates purported to have been issued by Sri Bakshi.

Writ petition is accordingly disposed of.

6. It does not appear that respondent No. 1 has acted in fair manner. However as the reinstatement order passed by the Labour Court in favour of the respondent No. 2 has been set aside through this judgment on the ground that the respondent No. 2 had joined service with Gas Authority of India and as the charge against the respondent No. 2 on the basis of which his services were terminated was not serious hence Gas Authority of India may consider to take back the respondent No. 2 in service. However, it is clarified that this is merely a sympathetic observation and not a direction in the least to Gas Authority of India. If Gas Authority of India take back the respondent No. 2 in service, then it would be a humanitarian act, however, if respondent No. 2 is not taken back in service by Gas Authority of India then respondent No. 2 will have absolutely no legal and enforceable right to compel the Gas Authority of India to take him back in service on the basis of observations made herein before.