

(2013) 01 AHC CK 0476

Allahabad High Court

Case No: C.M.W.P. No's. 39886 of 2001 and 68963 of 2006

M/s. Laxmi Ratan Cotton Mills (A
unit of N.T.C. (U.P.)) Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court
(III) and Another

RESPONDENT

Date of Decision: Jan. 7, 2013

Citation: (2013) 4 AWC 4016

Hon'ble Judges: Sibghat Ullah Khan, J

Bench: Single Bench

Advocate: Devendra Pratap Singh and M.S. Shahu, for the Appellant; Ajay Shankar, Ajay Sharma, D.R.S. Chauhan and Shekhar Kumar, for the Respondent

Judgement

Sibghat Ullah Khan, J.

The first writ petition is directed against award of the labour court given by Presiding Officer, Labour Court (III), U.P., Kanpur in Adjudication Case No. 16 of 1990 dated 16.5.2001. The matter which was referred to the labour court was as to whether the action of the petitioner employer terminating the services of its workman-respondent No. 2-Ram Swaroop with effect from 31.8.1982 was just and valid or not. The labour court held that the workman had worked with the petitioner employer from 7.8.1981 to 30.8.1982 hence termination without payment " of retrenchment compensation was illegal. Accordingly reinstatement alongwith full wages with effect from the date of the award was directed. Through interim order dated 3.12.2001 passed in this writ petition operation of the impugned award was stayed subject to reinstatement in service of the workman and payment of full wages last drawn.

2. The second writ petition is directed against recovery orders dated 2.7.2005 and 24.8.2006 passed by the Presiding Officer, Labour Court IV. U.P., Kanpur in Misc. Case No. 15 of 2002 directing recovery of about Rs. 33,000 (salary from 1.12.2001 to 31.10.2002) pursuant to the award challenged in the first writ petition. Those orders

were passed u/s 33C of Industrial Disputes Act.

3. The workman had admitted that since 1978 he was employee of the contractor however he asserted that since 7.8.1981 he became direct employee of the petitioner. The petitioner contended that the workman was employee of the contractor and until the end he remained employee of the contractor. The dispute was raised after seven years, i.e., in the year 1989. Supreme Court in the following authorities has held that seven or more years delay in raising the dispute is fatal.

1. [Assistant Engineer, C.A.D., Kota Vs. Dhan Kunwar](#) ;
2. [Chief Engineer, Ranjit Sagar Dam and Another Vs. Sham Lal](#), and
3. [Ram Preeti Yadav Vs. Mahendra Pratap Yadav and Others](#) .

4. Learned counsel for the petitioner has argued that the Concern in question, i.e., M/s. Laxmi Rattan Cotton Mills has been taken over by National Textile and is one of its units hence reference could not be made by Government of Uttar Pradesh as has been done. In this regard learned counsel has cited the judgment dated 14.9.2004 given in Civil Misc. Writ Petition No. 45538 of 2003, [National Textile Corporation Ltd. Vs. State of U.P. and Others](#), . After following the authority of the Supreme Court in [Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.](#), , it has been held therein that in respect of industrial disputes concerning National Textile Corporation. State Government is not appropriate Government and it is the Central Government which is appropriate Government. The said judgment has been followed in some other cases also. The point is squarely covered by the said authority.

5. Accordingly, in view of reference being bad having been made by the State Government and dispute having been raised after seven years impugned award is liable to be set aside. However, Supreme Court in [Haryana Urban Development Authority Vs. Om Pal](#), , has held that even if award in favour of the workman is to be set aside and employer is not at all at fault still some compensation may be directed to be paid to the workman.

6. About Rs. 33,000 has already been received by the workman. It has also been argued by learned counsel for the petitioner that in 2004 the concern has been completely closed.

7. Accordingly, in view of the above impugned award is set aside. However, petitioner is directed to pay Rs. 20,000 more (in addition to Rs. 33,000 already received by the workman under the impugned award). This amount shall be paid within three months failing which since after three months till actual payment/deposit/realisation 1% per month interest shall be payable thereupon. Both the writ petitions are disposed of accordingly.