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Court : Allahabad

Decided On : Jan-09-2004

Reported in : [2004(101)FLR595]; (2004)1UPLBEC968

Judge : Rakesh Tiwari, J.

Acts : Uttar Pradesh Industrial Disputes Act, 1947 - Sections 6H, 6H(2) and 33C(2); Constitution of India - Article 226

Appeal No. : Civil Misc. Writ Petition No. 30320 of 2001

Appellant : Awdhesh Kumar Singh

Respondent : Ganesh Polytecs Ltd. Through Its Manager

Advocate for Def. : V.K. Jaiswal, Adv. and ;S.C.

Advocate for Pet/Ap. : Bhoopendra Nath Singh, Adv.

Disposition : Petition dismissed

Judgement :

Rakesh Tiwari, J.

1. Heard Counsel for the parties and perused the record.

2. The petitioner has challenged the validity and correctness of the order dated 2.6.2001 passed by the Labour Court-IV, U.P., Kanpur in Misc. Case No. 274 of 1999 regarding claim for computation of benefits payable under Section 6-H (2) of the U.P. Industrial Disputes Act.

3. By the impugned order the Labour Court has rejected the claim of the petitioner in respect of over time wages, Dearness Allowance etc. The claim of the petitioner was that he was entitled to over time wages and Dearness Allowance as per the minimum wage fixed by the State of U.P. in addition to work done by him on weekly holiday, national festival holidays. The claim application filed by the petitioner.

4. The case of the employer before the Labour Court was that the petitioner workmen was engaged as Driver in the Motor Section on daily wages and was paid minimum wages applicable to a daily wager. It was also the case of the respondent that no over time work was taken by the petitioner on any date and workman had also not worked on weekly holidays etc. as claimed by him. Lastly it was also stated that the chart and documents submitted by him in support of his claim was based on fabricated documents and till it is adjudicated in reference under Section 4-K of the U.P. Industrial Dispute Act that the petitioner had in fact performed over time work as well as has worked on weekly holidays etc. as claimed by him he has no existing right as such and the claim filed after much delay under Section 6-H (2) is liable to be dismissed.

5. It also appears from the record that the petitioner has annexed the chart with the claim petition showing that he had worked 4 to 5 hours daily. However from his evidence on record it is apparent that he had never worked for 4 to 5 hours daily and that even according to his own case as it is apparent from Paragraph 5 of the award that he was working at different times. It also appears that the petitioners services had came to an end on 23.10.1998 and he has filed claimed application on 24.8.1999 wherein he claimed over time wages and other Dearness Allowance right from 1.1.1994. He never gave any notice earlier that he is entitled to the aforesaid claim. It is for the first time after about 10 months of his retirement that he filed the claim.

6. The Labour Court after appreciation of the evidence on record held that petitioner had not worked in the factory but was employed for Driving the car of the family and as such was not entitled to any over time wages. The workmen did not discharge his burden of proof to support of his claim and also did not file any documentary evidence etc. from which it could be established that he was working in the factory for 12 hours daily and on holidays also. The Labour Court on the basis of Ex. E-1 for the years 1994 and 1998 found that there is no entry that the workmen had performed any over timework. The employers have proved their case regarding the advance payment made to the workmen amounting to Rs. 15,000/-.

7. The finding of the fact recorded by the Labour Court is that the petitioner has not worked as over time based on record and evidence. There is no illegality or infirmity in the impugned order passed by the Labour Court under Section 6-H that the workman had not been able to prove his case at all. Petitioner's claim is not based on any existing right and the question whether the petitioner has worked over time in the concern or not is beyond the scope of Section 6-H(2). It is to be decided on evidence dispute of facts regarding claim for 1.1.1994 was also belated. He did not dare to file claim while in service. There is no limitation provided under Section 33-C (2). The proceedings in such case are summery in nature. Claim of over time since 1994 at a flat rate from 2 to 8 hours per day does not stand to reason as to why the workmen would go on working over time for hours together daily and would not claim payment for it before his termination of service.

8. No perversity or illegality could be shown by the Counsel for the petitionerin the impugned order. It is not a fit case for interference under Article 226 of the Constitution of India. Petition is accordingly fails and dismissed. No order as tocosts.

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