

Surendra Kumar Sharma Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Apr-08-2002

Reported in : III(2003)ACC548; 2002(2)AWC1556; [2002(93)FLR911];
(2002)2UPLBEC1368

Judge : M. Katju and ;Rakesh Tiwari, JJ.

Acts : [Constitution of India](#) - Article 50; Workmen's Compensation Act, 1923 -
Sections 20

Appeal No. : C.M.W.P. No. 11072 of 2002

Appellant : Surendra Kumar Sharma

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : P.K. Jain, Adv.

Judgement :

M. Katju and Rakesh Tiwari, JJ.

1. Learned standing counsel may file counter-affidavit within three weeks,
2. Issue notice to newly impleaded respondent No. 3 returnable at an early date.

3. Prima facie, we are of the opinion that the Commissioner of Workmen's Compensation Act should only be a person of a legal background like a lawyer or a retired Judge. Although Section 20 of the Workmen's Compensation Act, 1923, states that the State Government may by notification in the Official Gazette, appoint any person to be a Commissioner for Workmen's Compensation, but we are of the opinion that after the Constitution has come into force in 1950, Section 20 of the Act must be read in the light of Article 50 of the Constitution which directs that there shall be separation between the Executive and the Judiciary. Since the Workmen Compensation Commissioner is to decide Judicial disputes, we are of the opinion that the State Government can only appoint a person who has a legal background. This is so for two reasons : (1) such person will be trained in the law and will be knowing the relevant rules and the development of the case laws pertaining to the Workmen's Compensation Act : (2) such a person will inspire confidence of the public because he will be independent, whereas a person of an Executive background is likely to have a pro-executive bias which will colour his thinking.

4. In fact, the purpose of enacting Article 50 in the Constitution was to have an Independent judiciary which inspires confidence in the public, and hence in our prima facie opinion, a person who decides legal disputes must be an independent person with a legal background, such as a lawyer or a retired Judge, and not a member of the Executive, otherwise Article 50 of the Constitution will be violated. It may be pointed out that under Section 23 of the Act the Commissioner has all the powers of a civil court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and compelling the production of documents and material objects and he is deemed to be a civil court for the purpose of Section 195, Cr. P.C. Section 24 of the Act states that parties can be represented by a legal practitioner or by an official of an Insurance Company or a registered Trade Union or by an inspector. Section 25 prescribes the manner of recording evidence. Under Section 30, an appeal is prescribed to the High Court on questions of law.

5. These provisions clearly indicate that the Commissioner is a Tribunal exercising judicial powers. Hence, in view of Article 50 of the Constitution, he must be a person of a legal background like a lawyer or a retired Judge so that the public

confidence may be maintained and proper Judicial verdicts be delivered which can only be done by a trained judicial mind.

6. In the circumstances, we issue notice to respondent No. 3 and all other persons who are functioning as Commissioner of Workmen's Compensation and are not from legal background to show cause why their appointments, may not be cancelled. We further direct that the posts of Commissioners of Workmen's Compensation shall be filled only by persons from a legal background as mentioned above.

7. Learned standing counsel will send the notices to all the Workmen Compensation Commissioners in U. P. who are not of legal background. The notices may be sent through the Labour Commissioner, Kanpur, who will serve it on the persons concerned. List on 6.5.2002.

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