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State of U.P. and ors. Vs. Bindeshari Nath Pandey and anr.

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Court : Allahabad

Decided On : Jul-28-2004

Reported in : [2004(102)FLR1138]; (2004)3UPLBEC2615

Judge : Anjani Kumar, J.

Acts : Uttar Pradesh Industrial Disputes Act, 1947 - Sections 6N; [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petition No. 42852 of 2003

Appellant : State of U.P. and ors.

Respondent : Bindeshari Nath Pandey and anr.

Advocate for Def. : G.P. Singh, Adv. and ;S.C.

Advocate for Pet/Ap. : S.C.

Disposition : Petition dismissed

Judgement :

Anjani Kumar, J.

1. Heard learned Counsel for the petitioners and Sri G.P. Singh who has put in appearance on behalf of Respondent No. 1.

2. This employers writ petition, is directed against the award of the Labour Court, Gorakhpur dated 28th January, 1999 in Adjudication Case No. 21 of 1989. The following dispute was referred to the Labour Court.

'KYA SEWAYOJAKON DWARA APNE SHRAMIK BINDESHWARI NATH PANDEY, THOOTH LIPIK, PUTRA SHRI RAM SUMER PANDEY KI SEWAYEN DINANK 1.10.82 SE SAMAPT KIYA JANA UCHIT TATHA/ATHAWA VAIDHANIK HAI? YADI NAHIN. TO SAMBANDHTIT SHRAMIK KYA HITLABH/ ANUTOSH PANE KA ANDHIKARI HAI EVAM ANYA KIS VIVRAN SAHIT

3. The Labour Court, on receipt of reference issued notice to the petitioner as well as workman concerned. The parties have exchanged their pleadings and adduced their evidence.

4. In short the case set up by the petitioner-employer is that Respondent No. 1 was appointed as daily wager on the basis of availability of work and particularly worked in the Session 1982-83 and his services were not terminated but because there was no work of daily wager, his engagement came to an end.

5. The workman concerned has set up a case that he has been working in the Session 1975-76 and worked continuously till 1982-83. His services were terminated from 1st October 1982. It is also contended that while terminating the services of the workman concerned provision of Section 6-N of Industrial Disputes Act has not been complied with. No notice as contemplated under the said Act has been issued to the workman concerned.

6. The Labour Court recorded a finding that the workman concerned was terminated with effect from 1st October, 1982 without complying the provision of Section 6-N. Therefore, directed reinstatement of workman concerned with continuity in service and the backwages. These findings of the Labour Court has been assailed by the learned Counsel for the petitioners but I do not find any error in these findings which are based on material on the record. In this view of the matter the award of the Labour Court does not warrant any interference.

7. Lastly it is submitted that admittedly the workman has not worked since 1st October, 1982 and backwages for the said period is not justified. In this view of the matter the award of the Labour Court, so far as backwages are concerned deserves to be quashed and is hereby quashed in view of the decision in Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya and Anr., (2002) 6 SCC 40. The award of the Labour Court is modified to the extent that the workman concerned shall be entitled to get half wages from the date of award till the date of reinstatement.

8. With the aforesaid modification this writ petition is dismissed.

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